

Foreign workers in the labour market in the Czech Republic and in selected European countries

Čižinský Pavel, Čech Valentová Eva

Hradečná Pavla, Holíková Klára, Jelínková Marie

Rozumek Martin, Rozumková Pavla

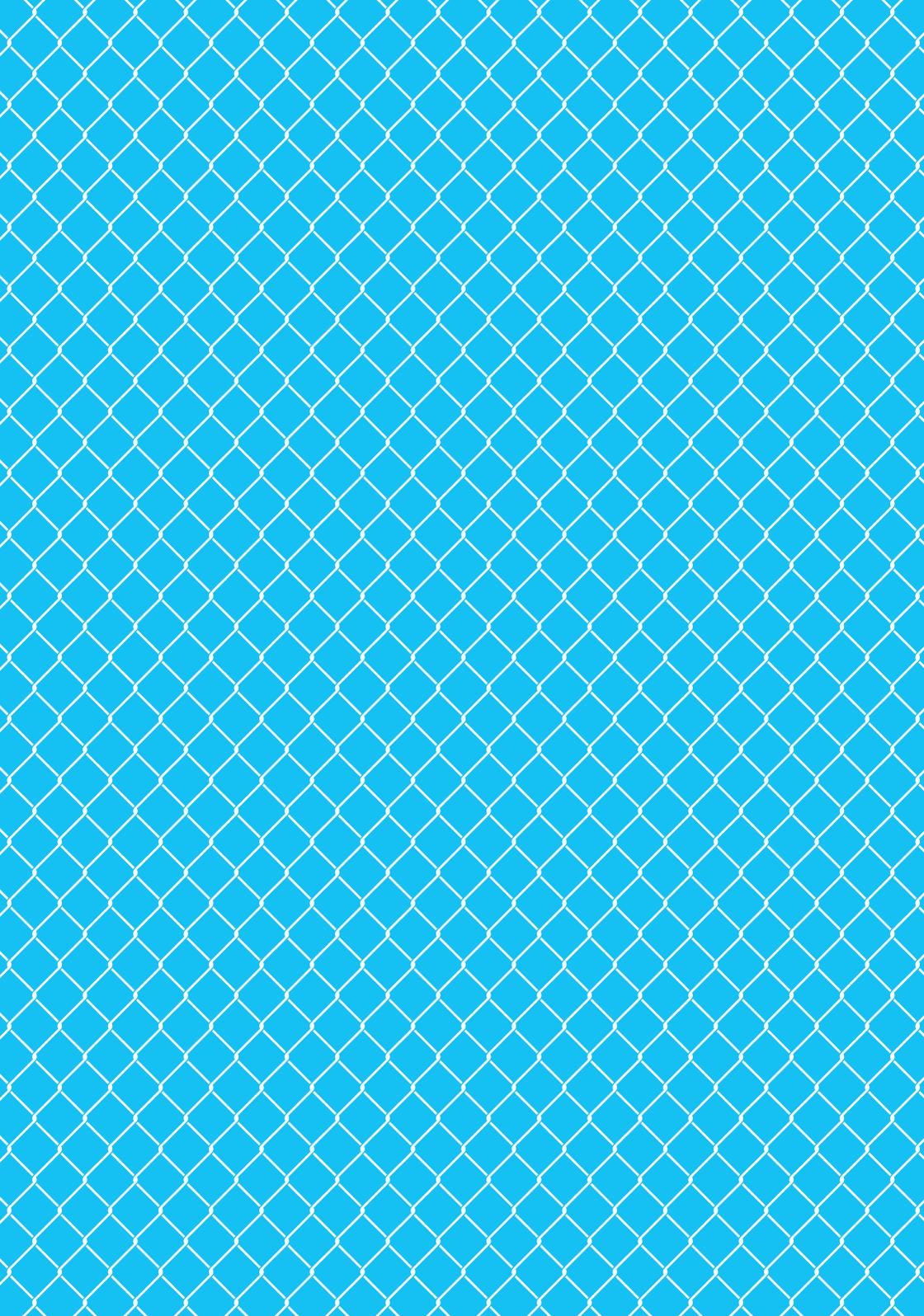
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Foreword

Dear reader,

the publication we have prepared for you concerns a relatively narrow issue: the position of foreign workers in the labour market in the Czech Republic and in several other selected countries of the European Union. Our original intention was to address mainly the question of job safety for these persons, as well as work accidents and occupational diseases. Not forgetting the wider context, we wanted to look into dignified treatment and equal and non-discriminatory conditions in the labour market for all stakeholders. After thorough consideration, we expanded the present publication by including a classification of authorizations to stay, a section on social rights, access to health care, specific incentives for attracting labour migrants, and also a comparison of the advantages or disadvantages of circular migration in relation to the permanent one – and last but not least we included an assessment of the current or forthcoming common regulations of labour migration within the EU. The whole text ends with proposals of labour migration models, both for the national level as well as for the equally important EU level.

By way of introduction, it is now appropriate to introduce the authors of the present text. It is a team of experts, predominantly lawyers but also sociologists, who have in the long run dealt with specific questions in the field of migration; in particular, they pay attention to those topics that remain unsolved, aside the main interest, or controversial in the perception of the majority of the society. The authorship team comes from three Czech non-profit organizations (namely from the Association for Integration and Migration, the Organization for Aid to Refugees and the Multicultural Center Prague) which are behind dozens of interesting projects, presentations and public debates, several expert books, and hundreds of submitted legislative proposals. The organizations also have addressed thousands, or rather tens of thousands, of individual cases of individuals in need.

Yet we should not forget the challenge involved in this undertaking; its aim being to provide a theoretical overview of all aspects related to foreign employment, regardless of whether they concern EU- or third-country nationals, and to do so without categorization according to the necessary skills or types of labour migration. The main effort was put into applying practical knowledge from everyday counselling and the formulation of generalizations, and to drawing attention to the problems which the state does not address in the long-term, deliberately or unconsciously overlooking and dismissing or trivializing them. The aim of the whole publication is to contribute to the formulation of proposals in this field which would change the whole system or parts of it. And last but not least, another objective is to defend not only the presence of foreign workers in the labour market, but in the first place to uphold their legitimate claim to equal treatment and fair conditions.

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Authors: Čížinský Pavel, Čech Valentová Eva, Hradečná Pavla, Holíková Klára, Jelínková Marie, Rozumek Martin, Rozumková Pavla

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In creating the publication, we started from a basic, clear and simple premise consisting of the fact that besides Czech nationals, non-discriminatory treatment and work safety concern all foreign employees and all types of labour migrants too, and that no group of foreign workers should be exposed to unequal conditions in the labour market, regardless of what type of work the migrant workers in this group perform or how long their stay is for this purpose in the Czech Republic.

The publication was created as part of the project Foreign workers in the labour market, supported by the European Social Fund in the Czech Republic via the OP LZZ program and by the state budget of the Czech Republic, within a specific framework focused exclusively on international co-operation. This fact has enabled us to engage foreign partners, thanks to whom we could focus more on the comparative aspect of the publication.

It has to be mentioned at this point that foreigners in the labour market do not constitute a homogeneous group in the Czech Republic nor in other countries of the European Union, included in the present study. The more interesting the comparison of Czech and foreign labour markets gets, it is all the more difficult to include and take into account all the specificities which concern the work-related stay of foreigners.

In our analytical activities, we were greatly inspired by our German partner organization Caritasverband für die Diözese Osnabrück, which is involved in direct work with the target group of foreign workers in the Federal Republic of Germany. This organization shared with us both examples of best practice, as well as experience gathered over the years in Germany connected to the admission of foreigners to the labour market and showed what did not work and is not up to date. This organization has been active in the field of labour migration for over thirty years, and because of this it has the ability to perceive various issues of foreign employment in a wider historical context. It is a perspective which we consider very much needed, especially since such a viewpoint is usually missing at the Czech level. In the Czech Republic, among other things, the Caritasverband für die Diözese Osnabrück actively participated in a public debate for civil servants, workers in various non-profit organizations, academics and foreigners themselves, aimed at sanctioning illegal labour and the implications of the so-called Sanctions directive. Our German partners helped us also with the organization of a round table with the theme of drawing a comparison between the issues of labour migration in the Czech Republic and in the Federal Republic of Germany, which took place at the Czech embassy in Berlin in the spring of this year (2014).

The second foreign organization which has been very supportive not only in the writing of this publication, but also in the implementation of the whole project, was the British non-profit organization Anti-Slavery International, since 1939 dealing with slave labour, exploitation, and working conditions. This oldest international human rights organization currently oper-

ates throughout the world at local, national and international levels in order to eliminate exploitation and slave and forced labour. Similarly to the German partner, Anti-Slavery International was also involved in the debate in the Czech Republic, aimed at the expert public, which addressed in particular the wide array of problems foreign workers face in the labour market, from precarious work to forced crime.

The present text received its final form in the spring and in the summer of 2014, at the time around European Parliament elections. At a time when, in an effort to impress the voters, many of the political parties and their candidates used (or rather misused) the topic of labour migration and rode the closely related wave of nationalism to enrage the public and encourage it in antiimmigration moods. At a time when a disturbing polarisation of Czech society is becoming more and more apparent.

How is it possible that the debate on migration has shifted to this level precisely in the Czech Republic, which, according to the available statistics, with its four percent of foreigners, belongs to one of the most homogeneous states in Europe? Do foreigners really have such a simple life in this country that they are able to take work away from the unemployed job-seeking Czech citizens? And what is the current attitude of the Czech authorities to all this? Until recently, the Czech state stood behind the biggest incentives for the entry of foreign employees into the Czech labour market. How do we deal with the legitimate expectations of thousands of foreigners who responded to these incentives and now find themselves in the position of undesirable persons, having the role of scapegoats for various social problems of the majority of the society? What labour force do we want, need, tolerate and what are their needs in contrast? What is useful for the state not from a short-term ad hoc perspective, but above all in the long run? In our publication, we are trying to find answers to these and similar questions.

*On behalf of the authors
Pavla Hradečná*

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1. Introduction

1.1 A brief introduction into the issue

Labour migration has always been an integral part of human civilization, and heated debates over its form, legal framework and actual position have accompanied it from time immemorial not only in the European area. We can say, though, that within the EU, labour migration is nowadays a significant phenomenon and also a theme for discussions of both scientific as well as popular nature. At the moment, the EU is a popular destination for labour migrants from third countries. It offers migrants not only incomparably better wage opportunities when considering the common incomes in the labour markets of their countries of origin, but also new opportunities concerning work and life which the migrants have demanded without success in their respective home countries. By their admission, the EU itself meets its demand for workers who are lacking in certain segments of its economy. It also compensates for various deficits caused by low natality or by the aging population and for the necessity to secure a sufficient portion of population in productive age. Furthermore, by the admission of foreign workers, other motives are fulfilled: the pressure resulting from the lobbying of domestic businesses to which the foreign work force reduces wage costs is dissipated, and/or countries better their chances to succeed in the economic competition both at the national and at the European or international level.

An ever greater role is played also by the so-called internal mobility within the European labour market. It is possible to track (and it is of course no great surprise) the flow of labour migrants from the poorer parts of the EU into its richer countries (in European labour markets, European citizens have preference over the citizens of third countries).¹ Therefore, highly qualified citizens of Spain, Poland, Bulgaria or Romania head to Scandinavia or other countries in Western Europe, because they cannot ad-

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¹ The preference of workers from EU member states follows from Article 46 of the Treaty on the functioning of the European Union, which guarantees free movement of persons within the Internal Market. To be more precise, the Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on the freedom of movement for workers within the Union, which in Art. 1 explicitly says: „1. Any national of a Member State shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State. 2. He shall in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.“. Restrictions are allowed by Annex V of the Treaty of Accession. In response to the concerns of certain EU member states regarding a large inflow of employees from the newly acceded states, it allowed the establishment of temporary restrictions in the area of job mobility during the EU enlargement process.

equately utilize their education in their respective countries of origin. Highly qualified foreigners from outside the territory of the EU subsequently come to fill their original positions.² But also workers with low levels of qualification leave the poorer countries of the EU, be they those who have been unemployed for a long-term as well as those who are motivated by the higher wages paid in the target country. Their positions, too, are filled by foreign workers from third countries. The trend of the last years is an increasing number of migrating women,³ which we can find in the area of low qualified work, in particular in the nursing and social services of the host countries. European countries are trying to respond to this situation when native employees actually become replaced by the foreign work force, by changing the conditions for the admission of foreign migrants. These adjustments are, when simplified a little, based on pushing the migrants out of their jobs and on the attempts of the state to replace them by domestic workers.⁴

The attitude of individual countries towards foreign employment, the level to which migration is necessary, the integration of migration and its preferred types are some of the most discussed issues of the present time in the debate concerning migration. The character, frequency and type of labour migration in particular can be some of the factors used to evaluate the level of economic and political stability of a country. We do not need to go far for examples. In the period of economic growth at the beginning of the new millennium, the Czech Republic itself proactively searched for and invited a foreign work force to come to its labour market. Experts speak in this context about conforming migration policy, as well as other public policies, to the competitive state.⁵ It is no coincidence that in the Czech labour market it was foreign-

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² We can speak about the so-called brain exchange phenomenon; for details see Chapter 2.

³ For the topic of the feminization of migration see e.g. Castles, S., Miller, Mark). *The Age of Migration. International Population Movements in the Modern World*. New York : Guilford Press 1993, p. 8-9 or Bludau, H., Ezzeddine, P. (eds.). 2013. "Gender and Family in Migration". *Lidé města/Urban People* 15 (2).

⁴ See the conclusions presented at the international conference *Free movement for workers in Europe – the fair way*. Berlin, 9 April 2014, more detailed information available at: http://www.buendnis-gegen-menschenhandel.de/sites/default/files/2014.04.09_fairemobilitaet_dgb_international_conference_free_movement_for_workers_in_europe_en.pdf.

⁵ See Čaněk, M. Čaněk, M. *Když chybí politický zájem o rovnoprávné postavení pracovních migrantů a migrantek*. [When there is lacking political interest in the equal position of labour migrants.] *Přístupy odborů a inspekce práce v České republice*. [The approaches of the trade unions and the State Labour Inspection Office in the Czech Republic.] *Migraceonline*, Praha, 2012. Available at <http://www.migraceonline.cz/cz/e-knihovna/kdyz-chybi-politicky-zajem-o-rovnopravne-postaveni-pracovnich-migrantu-a-migrantek-pristupy-odboru-a-inspekce-prace-v-ceske>. (Accessed on 10 June 2014.) Čaněk explains the term "competitive state" as follows: "A competitive state competes with other governments in the regional or global economy to lure transnational capital into its own territory, which

ers who were hit the hardest and with the greatest intensity by the economic crisis which started in 2008 and continued in the following years. The state logically decided to favour the domestic workers at the level of legislation measures also, and the risks connected to the temporality of the labour relations of foreigners fully manifested themselves.⁶ The state did not cover the costs of their unemployment and except for facilitating their return to the country of origin it did not admit to any responsibility for their arrival. Thus they were forced to leave the country, or to seek refuge in informal economy, and in that way they were in fact sentenced to irregular stay or to the risks of surreptitious labour relations.

1.2 The background of this analysis and the methodology

For the target EU countries, the current challenge is or should be creating such migration policies that would be able to quickly respond to the current needs in the labour market, while ensuring equal and nondiscriminatory treatment, in other words while guaranteeing the upholding of human rights in general. Therefore, what provided an incentive for this publication to be created, was, among others, the question: To what extent are European countries successful in implementing the policies of migration control, and how do they manage to balance the interests of various stakeholders involved in the issue of foreign employment, comprising the state, the majority of society, employers, trade unions and in particular the migrants themselves?

Furthermore we identified an absence of any such comparison of systems of labour migration, which could give a comprehensive answer to the question stated above. At

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includes also facilitating access to the appropriate labour force for the capital", quoting from Jessop, B. (2002). *The Future of the Capitalist State*. Cambridge: Polity Press.

⁶ Čaněk, M. quoted above; Čaněk discusses the so-called dual precariousness of the situation of labour migrants as they are, as well as all the other workers in an unequal position towards the employers, because their living depends on performing work for wage. The impacts of inequality are much more significant in the case of such workers who do not reach the ideal of a standard labour relation, (i.e., in the context of the Czech Republic, do not receive a contract of indefinite duration) and instead they have uncertain jobs with low incomes and low levels of legal and social protection. Just like other experts (cf. Sayad, A. (2006). *L'immigration ou les paradoxes de l'altérité*. 1. *L'illusion du provisoire*. Paris: Raisons d'agir), he identifies the second reason for the precariousness of their situation to the fact that, for labour migrants, having a job is not only a necessity but also a condition for their existence in the host country.

the same time we hold the opinion that it is important to perceive the whole issue from a different perspective than from the local or regional position only. We are convinced that it is possible to find examples of best practice concerning the attitudes towards labour migrants in other countries and that the Czech Republic can draw inspiration from these. Therefore, we decided to compile these texts, the purpose of which is to explore the national systems of admission of labour migrants in selected EU countries and, based on the research results, attempt to propose an optimal modification of the practice of admission and stay of labour migrants.

The first of the investigated countries, Great Britain, has lately adopted a relatively advanced legislation which among others defines forced labour and exploitation as a separate criminal offense. This change was followed by a change in the mode of labour inspections and in the attitude of the inspection authorities towards forced labour or exploitation including what indicators are to be used in this regard (i.e. in the area which is highly problematic in the Czech Republic). Germany, the second of the selected countries, is known for its elaborate methodology of labour inspections, among other things, with regard to both employers and migrants themselves. Austria, the third of the investigated countries, subjects foreigners to a number of legal restrictions. The negative impact of these restrictions is deepened by insufficient measures supporting integration. Migration and integration are perceived here from the perspective of security, and not as a double-sided social process between migrants and the receiving society. Germany and Austria have a shared history of the admissions of the so-called “gastarbeiters” in the 1960s and 1970s. This organized recruitment was originally set up as a system of circular migration. However, in this respect, the system failed and the majority of the migrants did not return to their countries of origin, and the original system of temporary labour migration developed into a regulated migration stream.⁷

Our aim was not only to focus on the individual integration policies relating to labour migrants, but also on setting the whole problem area in the context of the current developments at the EU level, including an evaluation of the proposals for the future regulation of the common migration policy, and in the context of the framework of ILO (International Labour Organization) conventions and their possible revisions. There-

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⁷ See Fassman, H., Reeger, U. *Austria: From guest worker migration to a country of immigration*. IDEA Working Papers, No. 1. December 2008. Available at: http://www.idea6fp.uw.edu.pl/pliki/WP1_Austria.pdf (accessed on 13 June 2014). See also: Valentová, E. (ed). *Zvýšení role neziskového sektoru v oblasti sociální integrace pracovních migrantů v České republice*. [Increasing the role of NGOs in the social integration of labour migrants in the Czech Republic]. Association for integration and migration, Prague, 2012. Available at: http://www.migrace.com/docs/130220_simi_publikace_ke_cteni_dvoustrany.pdf (accessed on 13 June 2014).

fore, comparative methods played a crucial role in the creation of this analysis. We evaluated the data and reports on foreign employment, including statistical data, expert studies, analytical studies and projects available in this area. In order to be able to make any conclusions regarding the individual models of labour migration and their functionality, it was necessary to compare also the conditions of entry to the host country and subsequently to the labour market, including the different types of visas and types of residence, the presence or absence of admission quotas, the administrative difficulty of the entire process including the speed and quality of the decision-making processes regarding permits for entry, the complexity of obtaining a validated proof education, but also to compare the ways of preventing exploitation or specific programmes for attracting labour migrants. It was necessary to include also other circumstances related to the stay of foreigners in the country, be it the extent of social rights or the freedom of movement in the labour market (including for example the protection period in case of the loss of employment), a comparison of their access to health insurance or an evaluation of various programmes for occupational safety and health at work.

There are other issues that play a specific role in the assessment of the success of individual systems of labour migration. These aspects were also taken into account: the access of the employed migrants to permanent residence; the success rate of the return programmes; the experience of the host country with accommodating a larger number of foreigners or regularization in all possible forms it can take. Another aspect which cannot be neglected is an assessment of the experiences of the countries selected for comparison with either temporary or circular migration on one hand and with permanent migration on the other hand. We conclude the present publication with proposals for working models of labour migration at both the national and the EU level.

It is well known that in the labour market, female migrants are subject to cumulative disadvantage compared with male migrants, as well as compared with men and women from the majority of society. They face several causes of discrimination at the same time (discrimination because of gender reasons, because of belonging to certain social group and because of ethnicity).⁸ Therefore we decide to pay special attention also to the question of the position of women in the labour market.

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⁸ The so-called triple invisibility, that is how this combination of factors is termed in academic literature. For further details see e.g. Ezzedine, P. *Reflecting Gender in the Migration Process*. In Collective of Authors (eds.). *Migrace a rozvoj, rozvojový potenciál mezinárodní migrace*. [Migration and development, development potential of international migration.] Prague: Charles University in Prague, Faculty of Social Sciences, 2011, pp. 229–242. Available at http://www.iom.cz/files/Kapitola_11_-_Reflexe_genderu_v_procesu_migrace.pdf. (Accessed on 18 May 2014.)

Regarding our approach to the study, we chose a time-tested combination of an analytically-descriptive method accompanied by a method of classification and simultaneously making substantial use of comparison. We made the effort to gather a sufficiently large and representative body of knowledge from both theory and practice, to be able to capture and describe the field of foreign employment, or to be more precise, the process of labour migration, in the Czech Republic and in the selected EU countries from more perspectives – so that the description would reflect the reality as much as possible and it would be as thorough as possible. Based on this, we then drew some generalizing conclusions and made suggestions with examples of good practice.

1.3 Starting points of the analysis and research questions

It is appropriate to mention that few other topics generate the amount of emotions, conflicting opinions and arguments as issues related to the presence of foreigners in the labour market manage to do. For illustration, let us have a look at the pre-election rhetorics of various political parties during the recently held elections to the European Parliament. Although there are common rules at the EU level, regarding the conditions for entry and stay of foreigners (not only) for the purpose of employment; measures against irregular migration, unauthorized stay, and illegal work; or the fight against human trafficking, not to mention various binding international treaties, member states still have a relatively wide space for how to handle their labour market issues. Despite all efforts to create a single immigration policy, the interests of national states still have plenty of room to be implemented. In spite of this fact, 15 out of 26 Czech political parties selected for a survey by one of the most popular printed media, responded to the question about how they would suggest changing the immigration policy with the recommendation of entrusting the control over immigration policy to the national states.⁹ Besides that, Czech political parties drew the attention of voters using the sub-

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⁹ See a poll by MF Dnes, published in this daily newspaper on 20 May 2014 in an article entitled "We will close the borders, promise the candidates to the European Parliament" (Uzavřeme hranice, slibují adepti europarlamentu), for details see www.idnes.cz.

ject of the abuse of social benefits by foreigners and the imaginary stealing of jobs from Czechs by immigrants, in particular third country nationals.¹⁰

Taking a closer look, it is obvious that at least in the Czech context, foreigners (without permanent residence) from outside the EU who stay here for the purpose of employment practically cannot abuse state social benefits under the current system – and they cannot take jobs away from Czechs either (speaking of the legal labour market). With few exceptions, they can only be employed on announced vacant positions which, with regard to the qualifications required or because of the lack of available workers, cannot be filled otherwise.¹¹ By contrast, either the migrants themselves or their family members are systematically discriminated against as far as the area of unemployment benefits and health insurance is concerned.¹² They have, for example, the duty to contribute to the system of social security, but in many cases they cannot benefit from it. Migrants also are not entitled to any return of payments in case they leave the country permanently. Similarly, they cannot receive unemployment benefits before gaining permanent residence, etc.

It is significant that for the current Czech state of affairs it is predominantly migrants and the cheap labour force who are blamed for the decline of real wages and growth of unemployment as they allegedly ruin the price of labour in the labour market, thus worsening the position of Czech citizens. However, it is necessary to take into account that *"in fact it is not foreigners who take jobs away from Czechs, but primarily the poorly functioning public administration. In certain sectors, it pays for employers to employ unauthorized workers, because they can pay them less, and they do not have to cover the costs of social security. The majority of unemployed Czechs would not work under such conditions. If we replaced all the migrants working for substantially lower wages, we would have to put up with a substantial increase in the prices of certain goods and services". In this context, it is important to mention two other important observations. Firstly it is obvious that virtually anybody could be blamed for the drop in wages: e.g. young graduates, forced to accept unpaid*

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¹⁰ See for example manifestos of Czech political parties Věci Veřejné (available at <https://www.veciverejne.cz/program-eurovolby-2014.html>, accessed on 14 June 2014), and Úsvit přímé demokracie (available at <http://www.hnutiusvit.cz/program-hnuti/>, accessed on 14th June 2014).

¹¹ See Act No. 435/2004 Coll., on Employment.

¹² See e.g. (government) Report on the State of Human Rights in the Czech Republic in 2012, 2013 etc., suggestions and opinions of the Consortium of Migrants Assisting Organizations in the Czech Republic (available at <http://www.konsorcium-nno.cz/>, accessed on 13 June 2014) or recommendations of the United Nations Committee on Economic, Social and Cultural Rights for the Czech Republic dated 23 May 2014, (E/C.12/CZE/CO/2), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCZE%2fCO%2f2&Lang=en, accessed on 13 June 2014).

*internships to gain the experiences they need, but also employees in pre-retirement age, willing to work part time to keep their job. At the same time, foreigners are not always willing to work for less than the domestic population. In many countries with a well-developed model of collective bargaining, it would not even be possible.*¹³ In the Czech Republic, we do not have (with a few exceptions) a well-developed model of collective bargaining that would, among other things, include also the labour conditions of foreign employees. Trade unions¹⁴ are interested mainly in the risks connected to the presence of foreigners in the Czech ...

¹³ For this argumentation see Horňáček, J., Matoška, L. Migranti, psanci těchto voleb. [Migrants, the outcasts of these elections.] In: A2alarm - an on-line daily commentator of a cultural fortnightly (magazine) A2. Available at <http://a2alarm.cz/2014/05/migranti-psanci-techto-voleb/>. (Accessed on 25 May 2014.)

¹⁴ E.g. on 2 February 2009, in an interview for a daily newspaper E15, the president of the Czech-Moravian Confederation of Trade Unions answered a question about whether the trade unions will "fight for the rights of migrants" as follows: "Foreign workers - and this applies in particular to employees from outside the EU - who lose a job and do not have a chance to obtain it again, should have an opportunity to go home with dignity. The government which has enabled them with its legislation to come to the country should also help them to return. But the Czech employees come first for us of course," (available at <http://www.cmkos.cz/medialni-prezentace/tisk/1306-3>). In 2008, during the approval process of an amendment simplifying the administrative demands of employing foreigners, trade unions unequivocally stood against any "softening of the regulatory mechanisms in the field of employment of foreign workers" (see: <http://www.cmkos.cz/vyklady-nazory-a-stanoviska/zamestnanost/806-3/stanovisko-cmkos-k-navrhu-zakona-o-zamestnanosti>) and against the "influx of foreigners to the Czech labour market which is coping with growing unemployment" (<http://www.cmkos.cz/vyklady-nazory-a-stanoviska/1629-3/informace-cmkos-k-volbam-do-poslanecke-snemovny>). And not only that, the unions focused more attention on this topic than on the criticism of tightening up the rules for receiving assistance in material need. For more detail see Čížinský, P., Hradečná, P. Systémy přijímání zahraničních pracovníků s nižší kvalifikací. (Systems of Admission of Less Qualified Foreign Workers.) In *Východiska migračních politik (Basis of Migration Policies. A study)*, Consortium of Migrants Assisting Organisations in the Czech Republic, Prague, 2012. See also for example Janičko, P., who gives an accurate idea about the attitude of trade unions to migrants when he says that: "CMKOS is an organisations which primarily defends the interests of its members who are mostly Czech employees. It is therefore only natural that, while taking a stance on individual proposals, CMKOS is mainly focused on their interests and has the major goal of ensuring a high level of employment, respectively avoiding the growth of unemployment in the Czech labour market and for the citizens of the Czech Republic. In this context, the fact that virtually no foreigners are members of the CMKOS presents a certain limiting factor for the activities of CMKOS. It is not caused by the statutes of CMKOS (or the statutes of its member unions), but by the lack of interest among foreigners to join the unions. This phenomenon has a wide range of causes. The main obstacle for their involvement in the unions is the fact that they are mostly employed on a temporary basis, thus not seeing a long-term perspective for their participation within the Czech society. Other aspects that play a role are: language barrier, lack of information and a general anti-union atmosphere in society, the negative attitude of certain employers towards trade unions, and also the lack of adequate activity of some trade unions. The efforts of CMKOS aimed at the protection of the Czech labour market and its actions in favour of the employment of domestic workers in particular, grow in importance especially in the period of the confrontation of the Czech Republic with economic crisis and the resulting high levels of unemployment. Having said this, it would be wrong to see the position of CMKOS as a general refusal of migration and as a discriminatory approach towards migrants from third countries. At the core of its position is an effort to prevent such situations that would, in the final effect, be the ones to lead to the restrictions of rights of both Czech and foreign employees in the Czech labour market." For details see Janičko, P. Postoj CMKOS k problematice zaměstnávání cizinců a k novele zákona o pobytu cizinců. [The position of CMKOS on the problem of employment of foreigners and towards the Amendments to the

labour market. They claim that foreigners threaten the existing standard of rights of domestic employees.¹⁵

In contrast, an abuse of the difficult position of migrants by employers is almost a rule because of the repeatedly criticized interconnection of work and residence permits, among other things. Regarding this issue, nothing will change despite the newly implemented single-permit directive and the new institute of the so-called employee card, already facing criticism shortly after its introduction. Another fact which is closely connected to the attitude of employers is the fact that restrictive immigration policies are breeding grounds for the growth of the black market with unauthorized migrants who are under the threat of expulsion in the case of disclosure. This is in fact the view we have been trying to present to both experts and the general public for many years.

As shown above, half of the subjects that ran in the Czech elections to the European Parliament emphasized the subject of migration in their campaigns.¹⁶ However, in the end, no far-right, nationalist and xenophobic party succeeded in the Czech Republic, in contrast to other European countries. The successes of the French National Front and the British UKIP were the most remarkable ones; also the Austrian far-right movement saw success. In Germany, the former head of the far-right National Democratic Party, Udo Voigt, was elected a member of the European parliament. Voigt openly endorses the Nazi ideology. The electoral slogans of this party included: "The whole Europe is flooded by foreigners".¹⁷ The elections thus led to an unusual increase in the number of eurosceptic populist MEPs. It is possible that the strengthening of extreme and anti-immigration parties will have an impact on the change of the European approach to the problem of migration or foreign policy¹⁸ in the long term, yet for the time being it is assumed that their ...

Residence of Aliens Act.] Prague, October 2013. Available at <http://migraceonline.cz/cz/e-knihovna/postoj-cmkos-k-problematice-zamestnavani-cizincu-a-k-novele-zakona-o-pobytu-cizincu>. (Accessed on 13 June 2014.)

¹⁵ Quoted from Pehe, J. Český problém s imigrací [Czech problem with immigration]. *ČRo Plus*, 21 April 2014. Available at <http://www.pehe.cz/Members/redaktor/cesky-problem-s-imigraci>. (Accessed on 14 June 2014.)

¹⁶ See for example Jirsa, Z. Czech EP Elections: What are Migrants Doing in the Campaign? (Article). *V4 revue*, 21 May 2014. Available at <http://visegradrevue.eu/?p=2680>. (Accessed on 16 July 2014.)

¹⁷ Do Evropského parlamentu se dostal i člen německé krajně pravicové strany (článek). [A member of a German far-right party entered the European parliament] (article). *Židovský tiskový a informační servis*. [Jewish Press and Information Service.] Available at <http://www.ztis.cz/rubrika/zidovske-komunity-ve-svete/clanek/do-evropskeho-parlamentu-se-dostal-iclen-nemecke-k>. (Accessed on 14 June 2014.)

¹⁸ See Czech public television - Two lessons of European elections: Increase of nationalism and ignorant east. *Czech Television*, 26 May 2014. Available at: <http://m.ceskatelevize.cz/CT24/Svet/274694-two-poucení-of-eurovoleb-narust-and-a-ignorantsky-vychod/>, Accessed on 14 June 2014.)

greater number will most likely result only in an increase in the frequency with which we will hear anti-immigration rhetoric, often targeting labour migrants, in the Parliament.¹⁹

Although even the individual authors of this analysis hold different opinions on this very complex issue, it is possible to agree on the fact that many European countries deliberately create through their legal regulations second- or even third-class employees, who can be exploited, pressurized and abused.

When summing up the case of the Czech Republic, such criticism is justified.²⁰ The critics mainly refer to the fact that the preparations of the new migrant legislation, which started in the times of the last right-wing government, aimed at making life more difficult for foreigners, using their work and then forcing them out of the country. What makes matters worse, though, is that such opinions are shared by a wide range of Czech political parties. Among Czech politicians, the only consensus regarding this issue which can be seen relates to the category of highly qualified employees. We can say that no political party dares to question the (hypothetical) inflow of scientific elites and genial brains.

Is it possible then to reduce labour migration to a group of foreigners who come to jobs requiring very high qualifications? It is obvious that, with regard to its elite position, this category will be negligible when compared to other foreigners in the labour market in terms of numbers. Furthermore, this category is not threatened by any serious form of certain negative implications which are otherwise related to labour migration in general – or at least not the same form which concerns other types of labour migration which we identified based on our long-term experiences. What we have in mind by this is the following: in particular the unprecedentedly low levels of employees' rights and their problematic enforceability; uneven conditions in the labour market in comparison with Czech employees; the more or less real threat of descent into informal economy, being dealt with in a way which is not only on the verge of discrimination, but often resembles criminal activities in the sense of forced labour; and last but not least the totally unsatisfactory situation in the field of occupational safety, namely the resulting accidents at work or occupational diseases.

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¹⁹ See European Policy Centre. June 2014 EPC Policy Update for EPIM. Brussels, 2014. Available at http://www.epim.info/wp-content/uploads/2014/06/EPC-Update-for-EPIM_June2014.pdf (Accessed on 14 June 2014).

²⁰ See Horňáček, J. Matoška, L., quoted above.

We are on the safe side when we say that European countries compete for highly qualified foreigners. However, for many reasons, the economies of individual countries usually need foreign employees with lower qualifications also, who are able to maintain the required quality of economic production. Many citizens of the host countries, including the Czech Republic, wish at the same time that there be as few foreigners as possible in their territory and, if they are to be there, then with as few rights as possible. On closer inspection, we can hardly find any economic or social benefits for this stance.

In this momentwe, together with other experts,²¹ ask the **question of whether EU member states in the future intend to rely on importing a foreign labour force and whether they will compete for new workers**, or whether they will chose a different way such as the development of educational programmes aiming to adapt the already present domestic and foreign labour force to the actual needs of the labour market. **Or will they on the contrary attempt to push foreign employees out of the labour market? What strategy will European countries choose in relation to foreign employment in the long run? Is there any universally applicable model of labour migration?**

Regarding the Czech Republic, it is necessary to mention²² that the importance of the subject of labour migration has notably increased during the last years, with an estimated peak at the turn of the years 2008/2009. At that time, the state, but also the media and other entities, drew a significant amount of attention to the stories of Asian workers who got into debt before coming to the Czech Republic and due to the economic crisis and the strict setting of Czech legislation, their ability to pay these debts off came under threat.²³ To some extent, this development corresponds with the growing interest of human right organizations in labour migrants, but also with the development within the EU.²⁴

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²¹ See Horáková, M. Umíme využít pracovní potenciál cizinců? [Do we know how to make use of the labour potential of foreign nationals?]. In: Langer, T., Veteška, J (eds.). Další vzdělávání ve světě migrujícího trhu práce [Further education in light of the migrating labour market]. International conference proceedings. Jan Amos Komenský University, Prague, 2009. Available at http://praha.vupsv.cz/Fulltext/Do_1493.pdf (accessed on 5 June 2014).

²² For more details see Čižinský, P., Hradečná, P. Systémy přijímání zahraničních pracovníků s nižší kvalifikací [Systems of Admission of Less Qualified Foreign Workers.] (quoted above)

²³ E.g. the daily newspaper Lidové noviny dated 5 February 2009, published an article with the title: "Zoufalý Vietnamec drží hladovku" [A desperate Vietnamese goes on hunger strike] see http://www.lidovky.cz/ln-zoufaly-vietnamec-drzi-hladovku-duu-zpravu-domov.aspx?c=A090205_204238_ln_domov_tma

²⁴ A gradual change of priorities can be seen in the changes in terminology. The Treaty of Amsterdam of 1997 used the term "common asylum and immigration policy". In contrast to that, the French Presidency in 2008 pushed through the adoption of European Pact on Immigration and Asylum, where migration already holds the first place.

There is an agreement among experts dealing with migration that²⁵ compared to the situation cca. Twenty years ago, the subject of labour migration has become relevant again. Consensus exists also in the fact that one of the main issues to be addressed is the way in which developed countries can solve their structural lack of labour force for unqualified positions by means of migration. What dominates the present debate is the view that migration as such has a great potential for the development of poorer countries and that, to enhance this effect, it is desirable that labour migration be as circular as possible. That is why we took a closer look at the topic of circular and temporary migration in our analysis. Among others we look for an answer to the question: is it appropriate to **introduce programmes of temporary labour migration, and is it an adequate way of addressing the lack of unqualified work force in developed countries?**

Finally we can state that in all the selected countries analyzed for their policies towards migrants in the labour market, restrictions related to the effort to reduce the rights of these persons can also be found (although in greater or lesser degree). They are reflected for example, in the limited possibilities to extend the duration of stay or in other things. **But, speaking of European countries, is this position beneficial?** Understandably we put emphasis on the Czech Republic and therefore we look into the question of **whether we take the same approach as other European countries: Do we use the same motivational elements in our efforts to guarantee the needed amount of labour force in the right moment, and do we proceed at least as efficiently as the countries involved in the comparison? We are thus also interested in the question of whether our country is competitive in this respect and, if so, what are the limits and possible risks of its competitiveness.**

1.4 Terminology

In the following chapters we work with many terms which are specific to the area of foreign employment. Generally, we give an explanation of the respective terms in individual sections. However, it is suitable to specify certain terms already in the beginning. Last but

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²⁵ E.g. Castles, S. Back to the Future? Can Europe meet its Labour Needs through Temporary Migration? Working paper No. 1. International Migration Institute, University of Oxford, 2006, and others.

not least we would like to mention that in the text we prefer using the generic masculine, even though we understand it is not quite precise in describing the target group.

Probably the most frequently used term in this publication is the word **migration**, expressing in its meaning the transfer of individuals and groups in space. Migration can be internal or external. It is the case of internal migration when a person moves within one country. External migration takes place outside the borders of the country of origin or the country of last permanent residence of an individual. A criterion concerning integration into migration movements is usually the length of stay or legal status. Economics treats migration as the international movement of a labour force, or as the mobility of one of the production factors. It understands migration as the "relatively voluntary, mostly economically motivated movement of people across borders of a country for the purpose of a relatively long-term or permanent residence."²⁶ As it is usually stated, this movement, together with natality and mortality, is a key element in the process of population development. Migration has a significant influence over the social and cultural changes of a population at all levels.²⁷

A migrant is a person, who moves from one place to another. When a migrant leaves a region (we consider a country to be a territorial unit in this case), he is called an emigrant. And vice versa, when a person comes into a territory, it is an immigrant. A labour migrant is, then, every person changing his place of residence in the sense of the above-mentioned definition for the purpose of labour. Within a wider concept, a labour migrant is also a person whose primary intention for the movement was not work, however, who then started performing work in the host country (typically asylum seekers or foreign students, etc.).

In the global context, the term **foreigner** defines the status of a person in relation to a country from which s/he does not originally come, i.e. a person is perceived as a foreigner from the perspective of another country, the nationality of which s/he does not hold. In the European context it is a person who is not the citizen of any EU member state. The Czech Republic, being one of the EU member states, divides foreigners into two groups. To the first group belong those foreigners and their family members who come from EU countries, Switzerland, Latvia, Norway and Iceland. The second group

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²⁶ Cf. Očásková, K. Evropská migrace a multikulturní společnost [The European Migration and Multicultural Society - a diploma thesis]. PdF MU, Brno, 2006. Available at http://is.muni.cz/th/66198/pedf_m/kopletni_diplomka.pdf. (Accessed on 5 June 2014). Quoted from Cihelková, E and coll. : Světová ekonomika - základní nárys a nový vývoj. [The world economy - basic overview and new trends of development]. Lecture notes, VSE, Prague, 1996.

²⁷ See the terminological dictionary of the Ministry of the Interior of the Czech Republic (MVCR), available at <http://www.mvcr.cz/clanek/terminologicky-slovník.aspx>. (Accessed on 5 June 2014.)

consists of foreigners from third countries who come from other than the above mentioned states. A foreigner is defined as "natural person who is not a citizen of the Czech Republic, including the citizen of the European Union" under the Act on Residence of Aliens in the Czech Republic.²⁸ The terms foreigner, alien and migrant are considered synonyms in this publication used as synonyms and are used interchangeably.

A foreigner has the right to remain in our territory when meeting legal requirements. In that case we speak of **legal residence or stay**. If the legal requirements are not met, we refer to his or her stay as illegal, unauthorized or irregular. However, e.g. the European Parliament holds the view that the term illegal alien (migrant) induces "very negative images" and EU member states as well as EU authorities should prefer such terms as *unreported worker (migrant)* or *person without documents/undocumented migrant*.²⁹

In this context, we further mention the term **irregular (illegal, unauthorized) migration**. According to the Czech Ministry of the Interior (MVCR), what falls under this definition is: unauthorized entry into the territory of the country or unauthorized departure, i.e. an illegal crossing of the outer Schengen border of the Czech Republic; also unauthorized stay at our territory, or alternatively a stay contrary to the purpose for which the residence permit was issued. Such a situation as when a foreigner stays in the territory of the host country legally but at the same time violates labour or other regulations for employment and business is sometimes described as quasi-legal. This description is the subject of debate and does not correspond with the above-mentioned definition of illegal migration, as viewed by the MVCR. According to the MVCR, such stay violates the purpose for which the residence permit was issued and therefore is illegal in nature.³⁰

Here we must mention that in this publication, we use the terms *illegal (foreigner, migrant, migration)* and also *irregular or unauthorized* without any intention to induce

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²⁸ See Section 1 paragraph 2 of Act no. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic and amendments to certain other acts, as amended (hereinafter "Residence Act").

²⁹ See e.g. Article 159 of the European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the EU 2004-2008 (2007/2145(INI)).

³⁰ Cf. Čaněk, M., quoted above, who states that the term *quasi-legal* refers to such a situation when the migrants are in the country legally but their work is associated with violations of labour law and other regulations for the employment and entrepreneurship of migrants (Drbohlav et al. 2009: 4; Nekorjak 2009). Ruhs and Anderson use the term "*semi-compliance (with the rules)*". It is according to them "a distinct and contested space of (il)legality that serves important functions. It allows employers and migrants to maximize economic benefits from employment while minimizing the threat of state sanctions for violations of immigration law." (Ruhs, Anderson 2010b: 195). *Disputes concerning quasi-legality refer to the complex and dynamic process of creating legality/illegality and the ambiguity of borders between "legality" and "illegality" in a modern state (Heyman 1999).*"

any negative connotations and with the awareness that from a philosophically-ethical perspective, it is self-evident that people by definition cannot be illegal. Also other terms which are used in relation to foreigners (e.g. undocumented, without papers, etc.), in our view, do not adequately capture the human rights aspect. In our opinion, these terms are burdened with similar imperfections regarding the correct depiction of the described phenomenon and/or the personhood of the target group as holders of human rights, guaranteeing decent human existence.

It is only *pro forma* that we note that another relatively frequent term – **migration policy (understood in the sense of migration policy of the EU)** means and describes a set of rules (and also plans and strategies) regulating the entry and residence of nationals of other (third countries) in the territory of the host countries (i.e. in the territory of the EU countries). Those rules lead to both direct and indirect regulation or, alternatively, management (or control) of the cross-border movement of people (in the case of the EU, it is movement across its outer borders) and of their stay in the states of which these persons are not citizens.

It follows from the nature of this publication that we address the issue of the labour market. **Labour market** can be defined as the meeting point of supply and demand of labour, where the supplying and demanding enter mutual relations to determine the price of the supplied and demanded goods from both of their perspectives as well as with respect to the needs of the economy of the state. Conditions and the position of persons in the labour market are defined by the law. Therefore, we can say that the labour market is more or less regulated. A labour market based on illegal labour can be described as illegal (alternatively irregular), another term used is also unofficial or informal. These more or less identical terms describe basically the same thing: the fact that a certain proportion of the relations in the existing labour market is subject to rules outside any legal framework.

As it was already mentioned, the term **unauthorized labour** (also illegal labour, undocumented labour, etc.) can be briefly described as follows: a natural person does not work for another legal or natural person on the basis of an employment relationship or any other contract. Besides that, in the case of foreigners, the work performance also breaches the legislation regulating the employment of foreigners. We talk about illegal labour also in the cases when foreigners are hired as entrepreneurs to hold positions in which they clearly operate as employees.

Further, equally important terms applied in this publication are defined separately in the individual chapters for an easier orientation in the text. We are also aware of certain simplifications in the definitions used, given by the extent and focus of this analysis.

2. Classification of labour migration in the context of the policy of migration control

2.1 Theory for practice

As mentioned in the previous chapter, we perceive migration as any long-term change of residence of a person or a group of people. In this publication we focus predominantly on international migration, meaning a movement of people or groups of people across state borders. In order to better understand the phenomenon of migration, it is crucial to realize that migration does not take only one form; furthermore the form itself can evolve and change. One of the many cases of such a transformation is the perception of *migration over time*. A closer look at everyday life and, more importantly, into the intentions of migrants reveals that the commonly applied classification of migration as *temporary*, *long-term* or *permanent* often does not match the original plans of migrants. For example migrants who arrive expecting a stay of one year or less, when it is possible in the host country, often decide to remain longer.

It is also just as important to consider the attitude of the host countries when it comes to setting migration policies – it matters whether and to what extent they recognize that migration is a natural phenomenon which cannot be fully controlled, but it can be channelled. The reason being that there are human beings involved, each with their own will and multiple motives for their decisions, rather than things which can be moved from one place to another more or less arbitrarily. To understand what options governments have to channel migration, it is important to understand the causes of migration and the way it functions. Looking deeper into migration theories which deal with this topic, we find that it is a particularly interesting issue connected to fundamental questions (What are the real reasons behind migration? Why do people from a particular country migrate? What takes them to a particular country?). Exploring these questions brings essential knowledge for setting migration-related policies. Individual migration theories are fundamentally affected by the respective field which defines the perspective applied to the theory (economics, geography, sociology, etc.). They are also affected differently depending on what type of migrating unit they choose to analyze (individuals, households, etc.), what other variables they reflect (time, micro or macro view, national or international context, etc.), and their primary focus (beginning of migration, sustainment of migration, etc.).

Although certain migration theories can complement each other, mostly they provide a different perspective and therefore also different answers regarding the reasons, causes and trajectory of migration, as well as regarding whether and how we can influence migration. The absence of a single comprehensive migration theory and the range of answers to these questions does not necessarily make the situation

unclear, rather it fosters a deeper understanding. For instance the network theory applied to migration explains well the importance of mutual contacts and information sharing among migrants; institutional theory explains the roles of stakeholders who influence migration; and neoclassic microeconomic theory explains the behavior of migrants from the view of individual choice and calculation of costs and benefits, etc. We consider understanding different migration theories, or rather reflecting different approaches towards migration, as well as the awareness that migration is a natural phenomenon, crucial for the establishment of migration policies. Unfortunately, the current debate is dominated by a one-sided understanding of migration and migrants are still perceived predominantly as commodities and not as people with their own reasons and decision-making capacities. Castles and Miller aptly point to this problem (p. 33, 2009): *The failure of policy makers and analysts to see international migration as a dynamic social process is at the root of many political and social problems. The source of this failure is often one-sided focus on economic models of migration, which claim that migration is an individual response to market factors. This has led to the belief that migration can be turned on and off like a tap, by changing policy settings which influence the costs and benefits for migrants. But migration may continue due to social factors, even when the economic factors which initiated the movement have been completely transformed.*

In response to many of the questions we ask throughout this text, what is crucial is the setting of migration policies. A legitimate government policy usually aims for (i.e. prefers or enables/makes harder or impossible) certain types of migration: e.g. from the point of view of causes: *labour migration (highly qualified or unqualified), family migration, migration for studies, migration for protection*, etc. and comes up with different policies regarding *voluntary* migration and *forced* migration (most often with asylum policies) or regarding *legal* and *illegal migration*. Nevertheless, a question which sometimes arises is whether individual countries really know or can know what their goals are in the area of migration. Another question is connected to achieving these goals: what means are appropriate to use, and which ways should be avoided?

2.2 Categorization of labour migration

Before we start getting familiar with the respective types/categories of labour migration, it is important to stress that these categories are usually subject to change (for

instance, voluntary migration can change to forced migration), and although they do not necessarily have to change, in time, such a change may occur. Furthermore, migrants usually fall into several different categories of migration depending on the perspective we use when looking at migration.

The above-mentioned categories of voluntary and forced migration can have and usually have links and connections with the labour market. The same applies to authorized and unauthorized migration. Migration is a consequence of many either stimulating or deterring factors which need to be taken into account in a comprehensive way. The attractiveness of the labour market environment (both legal and informal) of both the country of origin and the target country; in particular the situation in the labour market and its structural inequalities (e.g. the legal framework, unemployment levels, average wage, openness of the labour market, etc.), belong among certain major factors influencing migration – while bearing in mind the complexity of both the foreigners' motives and the interests of the host state and society.

The already-mentioned division of labour migration into voluntary or forced deserves special attention to begin with. In the case of voluntary migration, the foreigner himself or herself makes decisions based on the maximization of his or her own profits, gaining new pieces of experience or other advantages. In the case of forced migration, the aspect of free will is missing,³¹ although the distinction between both cases can be rather subjective. In particular, the category of forced labour migration, comprising human trafficking for the purpose of labour exploitation³² and also the abuse of domestic workers, is a phenomenon that has attracted significant attention

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³¹ Forced labour migration in this context is understood as one of the categories of forced migration in general, containing other subcategories; for example we talk about forced migration caused by armed conflicts, natural or chemical disasters, famine and even by the implementation of certain types of development projects (e.g. for the protection of certain areas) or by development projects focused on construction (building of water dams, etc.). We are aware that there are various definitions of forced migration, some authors distinguish between violent migration and forced migration (e.g. Peterson, W., quoted from Drbohlav, D., Uherek, Z. Reflection on Migration Theories, available at <http://web.natur.cuni.cz/ksgrrek/illegal/clanky/uherek-teorie.pdf>), (accessed on 2 June 2014).

³² The European Court of Human Rights defines forced labour in the light of Art. 2 of the Convention Concerning Forced or Compulsory Labour, 1930 (No. 29) - According to this definition, it is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The Convention Concerning Forced or Compulsory Labour was implemented under Act No. 506/1990 Coll. in the Czech Republic. The Convention is available for example at: <http://www.mpsv.cz/files/clanky/1171/029.pdf> / http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:Co29 (accessed on 7 July 2014).

recently and rightly so, both because of its huge dimensions as well as because of the related negative effects in the field of human rights.³³

One of the basic ways to categorize labour migration may be whether it is legal migration or illegal, or rather not illegal but irregular/unauthorized/undocumented. Governments do support legal migration in various modifications and levels of intensity, and they frame conditions for it. By contrast, they attempt to minimize or preferably completely eradicate³⁴ undocumented labour migration, either by the use of repressive tools (financial sanctions, bans on entry into the country, deportations, etc.) or alternatively they implement liberal instruments (regularization programmes, financial bonification on leaving the country, etc.).

When we get back to the classification which is directly linked to migration, then, on all accounts, the typology of labour migration includes a division into both supply-determined and demand-determined migration. This classification is based on which side initiates migration, i.e. whether the first impulse came from the target country or the foreigners themselves. This classification again does not apply exclusively to labour migration; however, in the labour migration field especially, supply and demand examples are clearly identifiable. As described in the introductory chapter, the competition of the majority of (not only) European countries for highly qualified foreign workers (see e.g. Green card or Blue card programmes) can be used as an example of a typical supply-determined migration. In this context, the risk of the so called brain drain phenomenon is often mentioned, while brain drain affects mainly the countries of origin. Although the problem of highly educated elites leaving the country is usually attributed to developing countries, it can be seen with an increasing frequency also within the

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³³ According to the information published in the Proposal for a Council Decision on the position to be adopted on behalf of the European Union at the 103rd session of the International Labour Conference concerning the Recommendation to supplement the Forced Labour Convention No. 29 (1930), of the International Labour Organisation, adopted in Brussels on 14 April 2014, the International Labour Organization estimates regarding the number of victims of forced labour in the whole world reach at least 20.9 million persons, which is an enormous number. For details see e.g. <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-239-EN-F1-1.Pdf> (accessed on 8 July 2014). Thus the Forced Labour Convention will probably see through a revision it rightly deserves, and which will help to tackle shortcomings in the implementation of measures for combating human trafficking for the purpose of forced labour. We find the attempts of states to tackle this issue in many other legislation documents, see e.g. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victim, etc.

³⁴ It is important to mention that it is - de iure - logically the (un/suitable) legislative framework of a specific migration policy that creates or defines illegal migration; both legislative and non-legislative legal measures related to migration, naturally to a large extent, determine the number of irregular migrants in a given country.

European Union. Losing domestic workers to a foreign country in connection with the so called supply-determined migration is however not a matter linked to the segment of highly educated groups of employees only, but it concerns also specific crafts and other services with an identified lack of labour force in the host country³⁵ (e.g. nurses). In contrast, demand-determined migration is frequently associated with foreigners of low qualification arriving to the host country because of their own impetus. The risk for the host country can be a massive growth in the number of migrants in its labour market, or more precisely, the associated phenomena such as the pressure to reduce wages or employment standards in general and the replacement of native employees by foreigners. Furthermore, there are concerns in the host countries that these persons will not be able to maintain employment in the long term and will subsequently become burdens to their social systems. Thus it can be said that the governments are in general currently trying to reduce demand-determined migration as much as possible (see e.g. the temporary restrictions on the free movement of workers within the EU for the new member countries).

Another aspect to consider regarding the classification of migration may be whether we look at labour migration (the migrant lives and works in the territory of the host country) or commuter migration³⁶ (the foreigner remains a permanent resident of the source country, but commutes to work in the host country: either daily, which is an option mainly for work activities near the state borders, or within a very short span, typically with a weekly frequency). The undisputable

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³⁵ Among other terms used in this context, one can find the so-called **brain exchange** (which is a mutual international exchange of qualified employees, represented particularly by employees of multinational corporations; in this way domestic experts go abroad and in their place come foreign experts) or **brain circulation**, meaning a repeated or more precisely reversed movement of workers with tertiary education between the country of origin and the target country. The temporary or permanent returns to countries of origin can even result in the **brain gain** phenomenon, attributed to the situation when profits from emigration outweigh the losses and emigration therefore has a positive effect for both the source country and the host country (e.g. gains in the form of skills and experience obtained, remittances, new business networks, etc.). For further details see e.g. Schroth, J., Stojanov, R. Brain drain / Brain gain / Brain circulation In: *Migrace a rozvoj, rozvojový potenciál mezinárodní migrace*. [Migration and development, development potential of international migration] Collective of authors, Charles University, Prague, 2010, pp. 72–90, available at http://www.iom.cz/files/Kapitola_4_-_Brain_drain__Brain_gain__Brain_circulation.pdf (accessed on 5 June 2014) or Lenomar, A. *International Labour Migration in Selected European Countries* (diploma thesis). Masaryk University, Brno, 2010. Available at: http://is.muni.cz/th/50555/esf_m_az/DP-Ales_Lenomar-TEXT.pdf (accessed on 5 June 2014).

³⁶ It is necessary to add here that commuter migration does not meet the condition for migration stipulated above, which is a long-term change of residence.

advantage of commuting consists in the fact that the foreigner usually receives higher wages in the host country, while his or her costs in the home country are lower compared to the costs s/he would have to cover if s/he lived in the country to which s/he commutes.

Returning to the time criteria mentioned in the introduction, we can easily classify labour migration according to the length of its duration. Based on this aspect, we can differentiate permanent or more precisely long-term labour migration (usually in the length of two and more years³⁷), from short-term migration; a typical example of which are seasonal workers. Mutual and time-limited employment for the purpose of improving language skills and professional know-how or intercultural exchanges is specific in its nature. Another special category can be included to cover such cases when an employee departs to work abroad on the instruction of his or her employer. The employee works abroad for this employer on a specific task for a limited time period; the duration of this stay is known in advance. Thus the employee remains tied by the employment relationship to his or her original employer, but on his or her instruction s/he works temporarily in another country. This category of labour migration, i.e. sending workers abroad, is currently frequently discussed in the context of the directive concerning the posting of workers in the framework of the provision of services,³⁸ recently adopted by the European Parliament.

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³⁷ See for example Mazúrová, Z. Labour migration and its impacts on the labour market (diploma thesis). Masaryk University, Brno, 2008. Available on the http://is.muni.cz/th/99548/esf_m/Diplomova_prace_mazurova.pdf, (accessed on 8 June 2014).

³⁸ For further details see European Parliament legislative resolution of 16 April 2014 on the proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (COM(2012) 131). Available for example at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0415+0+DOC+XML+Vo//EN> (accessed on 8 July 2014). The new directive should primarily target for example such companies that post their workers abroad just for official records and establish so-called letter box companies in countries where there are lower costs of social contributions for employees and the execution of other employee rights is less costly, too: by doing that, they try to evade social and other standards of their home country by formally operating abroad and only "posting" their employees to the home country. Similarly, the directive should be aimed against such companies which make their employees into fake entrepreneurs, thus finding a way to lower their costs significantly in some countries. Through these frauds, the companies in question abuse the Directive No. 96/71/EC concerning posting of workers in the framework of the provision of services, which enables companies to post workers abroad temporarily and regulates the minimal protection which the employers posting employees to another Member State must guarantee to their workers, for the period of exercising work in the territory of the EU Member State. According to some opinions, even the new regulation, though, will not effectively prevent abuse of the norm (see for example Krutílek, O. Nepřipravme se o jednu z mála skutečných svobod EU [Let's not deprive ourselves of

Last but not least, it is necessary to mention the division into circular migration, i.e. repeated labour migration and temporary labour migration,³⁹ in contrast to lasting or permanent migration. In the latter case, the migrant spends the rest of his or her life in the host country and sometimes even receives the citizenship of the country.

As some sources state,⁴⁰ the difference between circular labour migration and temporary labour migration consists in the fact that circular migration can be regarded as a certain movement of foreign employees back and forth between the EU and the country of origin (and it includes a change of residence, unlike commuting) which is made possible for example through established conditions for a simpler (re-)entry of this type of migrants, while the temporary migration is rather a one-off movement followed by a time-restricted stay in the EU.⁴¹ In another concept,⁴² the difference is seen in the fact that while temporary migration includes all forms of movement which do not have a permanent character, circular migration is a category of temporary migration which contains recurring returns of the migrant and cyclical patterns of movement which are part of the permanent mobility of the migrant between the place of origin and the target destination. From yet another point of view, circular migration is a term describing social reality, i.e. the movement of a certain individual between his or her country of origin and the target country, while this person can choose freely whether to

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one of the true freedoms of EU]. In: Revue politika, 6/2010 available at <http://www.revuepolitika.cz/clanky/1322/nepripravme-se-o-jednu-z-mala-skutecných-svobod-eu>, (accessed on 9 June 2014). Besides that, the critics draw attention to the only actual objective of the directive: to reduce the numbers of foreign staff from the poorer countries of the European Union in the territory of its richer states (see e.g. Euroskop, available at <https://www.euroskop.cz/8958/23959/clanek/ep-schvalil-nova-pravidla-pro-vysilani-zamestnancu-do-zahranici/>. ČTK, on 17 April 2014 (accessed on 9 June 2014).)

³⁹ Neither of the terms *circular* or *temporary* migration appear in the Czech legislation, thus, their general definition is not available.

⁴⁰ See e.g. EMN Study – Temporary and Circular Migration: Empirical Evidence, Current Policy Practice and Future Options in EU Member States. The Czech Republic. Study of the European Migration Network, 2010. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/05a_czech_republic_national_report_circular_migration_version_2nov2010_en.pdf. (Accessed on 8 July 2014).

⁴¹ For further information on the topic see e.g. K. Newland and A. Terrazas of Migration Policy Institute in their contribution to the Global Forum on Migration and Development in 2009. The authors state that circular migration is not to be confused with the usual understanding of temporary migration, which does not establish the dynamics of a permanent engagement of the migrant in both countries. Available at http://www.gfmd2009.org/UserFiles/file/RT%202_2%20NEWLAND_TERRAZAS%20paper%20%28EN%29%5B1%5D.pdf.

⁴² Hugo, G. Circular Migration and Development: an Asia-Pacific Perspective (article), 2007. Available at: http://aa.ecn.cz/img_upload/6334coc7298d6b396d213ccd19be5999/GHugo_CircularMigrationAndDevelopment.pdf (accessed on 9 July 2014).

continue migrating this way or to remain in one of these countries. In a simplified way, circular migration can be understood as a social phenomenon⁴³ and the programme of temporary labour migration as a policy. However, the programme of temporary labour migration can be one of the tools helping to achieve the desired effect of circularity.⁴⁴

2.3 Policy of migration control in relation to the labour market

As we have already outlined, various systems of worker admission can be generally assigned to a category which can receive the comprehensive label: **policy of migration control**. With a certain level of simplification, though, it can be stated that from the legal perspective, labour migration represents the only/last segment of migration which may be still regulated, reduced and possibly even completely eliminated by modern democratic states. Regarding family migration (the so-called family reunification) or humanitarian⁴⁵ migration, human right standards of international law restrain migration policies of individual countries. This also applies, given the perspective of EU law, to a certain extent to the migration for studies.⁴⁶ Within the EU there is of course – as a result of the freedom of movement – to a large extent also limited space for the control of labour migration when concerning the citizens of other EU Member States. At least from the legal perspective, labour migration of third country nationals is thus the main topic for the people responsible for the creation of migration policies in the states analyzed in this study.

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⁴³ In this concept, circular patterns of migration are usually classified based on their length as temporary migration or seasonal labour migration, and according to the qualification achieved as low, medium or highly qualified migration.

⁴⁴ See Čižinský, P., Hradečná, P. Systémy přijímání zahraničních pracovníků s nižší kvalifikací [Systems of Admission of Less Qualified Foreign Workers]. In: Basis of Migration Policies. a study, Consortium of Migrants Assisting Organizations in the Czech Republic. Available at: <http://www.konsorcium-nno.cz/dokumenty-ke-stazeni.html> (accessed on 5 June 2014).

⁴⁵ It does not comprise only refugees as defined by international law, but also other forms of forced migration and possibly also other foreigners in situations which are complex from a humanitarian or legal perspective (e.g. victims of human trafficking or persons without citizenship).

⁴⁶ The Council directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

The first question a policy maker in the area of labour migration control should ask, should read as follows: Is it really necessary to regulate this field (or certain segments of this field), and if yes, to what extent is it actually possible? The urge of modern democratic states to control the movement of people for work is not self-evident, and it is a very illogical element of the ideology of a modern deregulated economy that takes pride in its victory over centrally planned economies. In this context, it seems reasonable to mention the opinion that it is impossible to control migration, since it can be only channelled; it would, however, deserve a debate in its own right, and this is not in direct relationship to the content of this study. This applies not only in the sense that even a very repressive government policy does not always succeed in closing down the migration stream and fence building may turn out a futile enterprise, but also to the opposite case: Namely that even relatively generous incentives will not necessarily induce a migration stream, and the effort of a state to invite those migrants, who are in demand, can also turn out as a failure. In any case, it is necessary to have in mind that a modern democratic state may impose regulations only on those migrants who are interested in moving to its territory, and there are often less people interested in doing so than might appear to be the case to those concerned about the "flooding" of their country by foreigners.

If a state decides to regulate labour migration, it must also define what interests it intends to foster by its migration control policy, or more precisely, what social effects it wants to achieve by its migration policy. The so-called 'safety values' come to mind at this point. Safety is a term used broadly in the context of migration, and the analysis of it would also completely exceed the scope of this study. Nevertheless it may be said that in the practice of European states, what is meant by safety is not only the protection against crime, but also the interest of power of the institutions making decisions on the rights of migrants and respect towards the resentments of the majority of the population against migrants. The second area of interest which is taken into account can be economic profit, both for public budgets as well as for private entrepreneurs. Other possible interests are: demographic concerns, cultural exchange and enrichment or an effort to contribute to the solution of humanitarian problems or towards creating a cohesive society. Based on the decision concerning a particular one from these values or yet other values, it is then possible to make a decision on two basic political issues concerning migration:

▸ who will be allowed to immigrate (primarily cultural, economic or educational criteria can be applied) and

▸ what status will these migrants have in the host country (will it be migration for a definite period of time set in advance only, without the possibility of extension? Effective return mechanisms are an integral part of such a migration policy; they enable the state in case of a need to make the migrants efficiently and quickly leave the country and return to their country of origin. Or is the government trying to attract the migrants to settle in the country and welcomes their full integration into the host society?), and also what rights will these migrants have? – for example the right to bring their family, the right to change their employer, etc.

The last questions to be addressed are regarding the means the state wants to utilize to promote its above-defined objectives. Such means may include various incentives and benefits (e.g. tax reliefs, allowances for reintegration upon return to the country of origin, accelerated procedures to gain residential/citizenship rights, etc.), but also threats and sanctions (e.g. the restriction of residence rights in the case of failure to learn the local language, criminal sanctions for breaching the residence regime, etc.). Taking into account for example certain current issues concerning the closely watched activities related to migration in the Mediterranean Sea (Malta sells its state citizenship, whereas this "naturalization policy" is executed by a private company; at the same time, Italy threatens by criminal prosecution those fishermen who would help the drowning refugees by the shores of Lampedusa), we can see that European states still have a relatively wide range for the selection of means to achieve their migration objectives.

A general question which arises, and which will naturally draw our attention in the following chapters, is whether the migration policy, or more accurately the policy of migration control, should allow (or even oblige) the labour migrants (possibly only some of them) to settle and integrate into the society in the host country, or whether it should rigorously insist on the principle that labour migration remains temporary, and because of that (some) migrants are to be forced to depart after a certain period of time? We consider this question very relevant and topical, and not only in the Czech Republic but all over Europe.

2.4 Harmonizing the needs of foreigners and target countries as a condition sine qua non

European states attempt to set such a policy of controlled (selective) migration able to respond in a flexible way to both the current and future needs of the labour market, but we are of the opinion that these attempts have so far been of very limited success. As experts state,⁴⁷ the demand for foreign employees in the current capitalist economies is explained by the growing flexibility and deregulation of the economy, among other things, which jointly create the need for cheap labour force from abroad. It is of course completely within the competencies of each country what specific approach to labour migration it will choose regarding migration management and what criteria for the admission of foreigners to the labour market it sets – in the European area, however, established common rules need to be adhered to. Nevertheless, it is always necessary to bear in mind that the approach chosen and the political, and subsequently legislative, decisions taken do not import only a labour force in the sense of certain goods, but also specific individuals with all the rights they are entitled to because of the nature of human existence. Therefore, the interests of the migrants should not be left out when discussing issues connected to migrant employment; this is, though, currently often the case in many European countries and in fact also in the whole of the European Union. We consider such systems of migrant employee admission completely unacceptable and, in their long term consequences and impacts, also dysfunctional.⁴⁸

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⁴⁷ See Čaněk, M. *Když chybí politický zájem o rovnoprávné postavení pracovních migrantů a migrantek*. [When there is a lack of political interest in the equal position of labour migrants.] *Přístupy odborů a inspekce práce v České republice*. [The approaches of the trade unions and the State Labour Inspection Office in the Czech Republic.] *Migraceonline*, Praha, 2012. Available at <http://www.migraceonline.cz/cz/e-knihovna/kdyz-chybi-politicky-zajem-o-rovnopravne-postaveni-pracovnich-migrantu-a-migrantek-pristupy-odboru-a-inspekce-prace-v-ceske> (accessed on 11 June 2014).

⁴⁸ According to Castles 2006 (In Schroth, Stojanov, p. 75 nn.) states like Germany, France, or the USA imported only labour force and not "people" - they had plans for workers to come for a precisely limited time period only, without families and without the necessity to receive any rights, since they were supposed to return home. The wages and working conditions were nevertheless frequently beneath the standard of domestic employees). As Schroth and Stojanov state further, from the perspective of the current debate, it is interesting to notice that the fact that a certain percentage of these migrants never returned to their countries of origin was not the subject of any greater criticism until economic problems appeared for example in Germany (unemployment) and particularly until social tensions arose in connection with the fact that (predominantly) a part of the Turkish community did not integrate sufficiently into the German society. At the moment it is debated which was

At the same time we admit that dealing with the problem of labour migration while respecting the interests of states, migrants and aspects related to human rights can be and also is really difficult in its entirety. Nevertheless, even here we cannot avoid the conclusions that a high level of restrictions – identified particularly in the systems of temporary labour migration – inevitably results in an increase of illegal labour migration which is undoubtedly an undesirable phenomenon. Thus we agree that *"We live in a world where the unequal distribution of wealth is a reality. There are countries, where it is very difficult to secure a basic living whilst simultaneously there are countries where it is comparatively easy. In this world, the movement of persons from the poor to the better off countries is absolutely clear. Obstacles to such movement, such as a restrictive migration policy, rarely achieve their intended goal. Rather individuals wishing to migrate will have to rely on more flexible and less legal ways."*⁴⁹ Despite the restrictive measures of the European states aimed, in particular, at unqualified migrants, or even as a result of these measures, these workers reside in the territory of the EU in indecent and vulnerable positions. However, they carry out work which the citizens of the host country are not interested in for various reasons (which are not the subject of this study) and often regardless of the level of their employee rights. They are so dependent on their employers that it borders on slavery, which at the same time reduces the standards of employee rights of other workers and breaches the rules of competition between employers as a consequence. This unwanted outcome in our opinion certainly does not correspond to the initial idea of a policy of migration control, which thus in this context fails without a doubt.⁵⁰

Because systems of labour migration are complex and contain multiple levels, we are able to anticipate that at the moment there is no single best model of migration

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the bigger mistake – the fact that Germany failed to ensure that the invited foreigners return or that it did not ensure their successful integration in time when it was evident that they would not leave. Experts also debate the matter of whether it is possible to set up a scheme for the temporary employment of migrant workers in the developed countries where the economic sector – i.e. employers – has a large influence over politics. In many sectors, particularly in those requiring higher qualifications, employers prefer long-term employment to avoid the constant training of new staff to replace the employees who had been sufficiently trained and experienced already. See Schroth, J., Stojanov, R. Brain drain / Brain gain / Brain circulation. In: Collective of authors. *Migrace a rozvoj, rozvojový potenciál mezinárodní migrace*. [Migration and development, development potential of international migration.] Available at http://www.iom.cz/files/Kapitola_4_-_Brain_drain__Brain_gain__Brain_circulation.pdf. (Accessed on 11 June 2014.)

⁴⁹ Quoted from Burčíková, P. *Trafficking in Human Beings and Forced Labour or Labour Exploitation in the Czech Republic*. La Strada, Prague, 2006, p. 10. Available at http://www.strada.cz/images/Publikace/English/trafficking_in_human_beings.pdf. (Accessed on 9 June 2014.)

⁵⁰ For further details see Čizinský, P. Hradečná P., (quoted above)

policies in relation to the labour market, but it is necessary to continually monitor and reflect whether the theoretical setting of the policy of migration control corresponds to the need of practice, or more precisely, can actually reflect these needs. No matter which of the above-mentioned types of labour migration a country adopts, it runs the risk of commodification⁵¹ in relation to migrant employment, which accompanies the current form of foreign employment (not only) in the member states of the European Union. Thus the perception of migrants as goods in the labour market of the target country and the treatment of migrants as goods in the debates about the future perspectives of the labour migration as well, should be, in our opinion, eliminated to the highest possible degree.

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⁵¹ Čaněk, M., quoted above

3. A brief overview of migration policy settings and data on migration in the countries compared

European migration policy has so far existed as a policy with specialised focus on the harmonization of conditions for specific groups of migrants (e.g. students, scientists, family members). In the 1990s, a common formulation of migration policy was expected to become the norm, yet it is happening only to a certain (limited) extent. However, although the decisions of whether or not to accept workers from outside the EU remain within the powers of the individual member states, the conditions for their entry are gradually becoming more harmonized and the issues which individual member states face have in many respects become the same. A markedly more profound harmonisation could be seen, which is no surprise, in the area of asylum policy: It is mentioned only in passing here - in particular in such moments where asylum policy affects the position of foreigners in the labour market in a more significant way. The following chapter presents a brief overview of various migration policies and of the practical impact of these policies in the Czech Republic, Germany, Austria and the United Kingdom⁵² (in the area of migration policy, the UK holds a number of exemptions regarding the harmonization with the European legislation), the focus being especially on labour migration. The text, thus, depicts various migration policy concepts and contains descriptions of migration reality in these countries, while acknowledging that some terms used in the investigated countries differ, that the analyzed categories of data are not necessarily uniform and that the latest available statistics differ as well, according to various sources. All figures presented relate exclusively to legally residing foreigners, while the term "foreigner" includes both citizens from outside the EU (the so-called third-country nationals) and the citizens of other EU countries.

The countries described also use different approaches to defining the term "migrant". For example, in the Czech Republic, those persons who have been residing in the Czech Republic long-term and who do not possess Czech citizenship are referred to as migrants: once they receive citizenship (i.e. once they are naturalized), these naturalized persons no longer appear in any statistics on migrants, not even under a different label or term. What does a comparison with Germany show? Its statistics speak about migrants using the above-mentioned meaning, but besides that Germany uses the term "persons with a migration background", covering all those who came to Germany after the year 1950 and their offspring. Similarly, in Austria, the term "persons with a migration background" covers all those whose

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⁵² I.e. the United Kingdom of Great Britain and Northern Ireland.

parents were born outside the Austrian territory. In Great Britain, what is most widely used is the term "foreign-born residents" (or "persons born abroad"), comprising all those with legal residence in Britain and with a foreign birthplace - regardless of their possible naturalization and origin. The data presented attempt to provide a reasonable level of comparability, yet in some cases, the categories available for comparison are not based on the same definition. In these cases, then, we are careful to note which definition of migrant/foreigner/person with a migration background is being referred to.

3.1 The Czech Republic

Basic information⁵³

In 2012⁵⁴, according to official statistics, 10.5 million people lived in the Czech Republic; 438 000 being foreigners with residence permits - thus representing a total of 4.2 % of the whole population. Out of this number of foreigners, 212 455 held permanent residence permits, 213 569 were authorized for a stay of twelve months and more, and 9 922 held a visa entitling them to stay for more than ninety days. The total number of asylum seekers was only 2 166. In 2012, asylum was granted to forty-nine persons while in this year, 753 subjects had asked for international protection.

Out of the total number of foreigners, 247 800 were men and 188 100 women, the representation of women among foreigners thus reaching 43 %. Among foreigners, the absolute majority of persons are in the productive age (the age group 0-19 years comprises 57 700 persons, 20-39 years: 203 700 persons, 40-59 years: 144 100 persons, and above 60 years: 30 300 persons).

Out of all legally residing foreigners, 160 600 people were the citizens of other EU countries: i.e., EU citizens form 37 % of all the foreigners who legally reside in the Czech Republic. Among them, the most numerous group is comprised of Slovaks (85 800 persons, i.e. slightly more than a half of all EU citizens and about 20 % of the total

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⁵³ The data presented here are provided by the Czech Statistical Office as of 31st December 2012, they are available at www.czso.cz.

⁵⁴ Given the date of writing this publication (spring 2014) the available data for 2012 are used: up-to-date data on migration in the year 2013 have not been published in all countries compared.

number of foreigners), followed by Poles (19 200), Germans (17 100), and by smaller groups of Bulgarians, Romanians, British, Austrians and Italians.

The number of legally residing third-country nationals was 275 300, i.e. 63 % of all legally residing foreigners. Among them were mostly Ukrainians (112 500), who thus represent the largest group of foreigners in the Czech Republic (26 % of all its legally residing foreigners and 41 % of foreigners from third countries). Ukrainians were followed by Vietnamese (57 300), Russians (32 900), and well behind these nationalities by US citizens (6 900) - and further by Moldovans, Chinese, Mongols, Kazakhs, Belarusians and others. The number of citizenships awarded in 2012 was 2 036.

Regarding the position in employment, as of the 31st December 2011⁵⁵, in the Czech Republic, 310 900 foreigners were employed, comprising 71 % of all its legally residing foreigners. (The employment rate among the citizens of the Czech Republic varies around 55 % and the rate of economic activity in the citizens varies around 59 %.) Among the employed foreigners, 34 % were women. Regarding the position in employment, a total of 93 000 employed foreigners held a trade certificate (i.e. 30 % were self-employed and 217 800 were employees⁵⁶ (70 %). When comparing the employment positions, a marked difference between the employment position of EU citizens and third-country nationals can be seen. Out of 174 500 employed EU citizens, only 11 % were self-employed and what clearly predominated was the position of employees (89 %). This is in stark contrast to third-country nationals, among whom we can find more than half (53 %) are self-employed people (so-called OSVČ), compared to those holding the positions of employees (47 %). In the majority of the population, self-employed workers form roughly 12.5 % of⁵⁷ the whole working population.

A brief overview of the characteristics of the Czech migration policy

Migration and integration issues fall under the remit of the Czech Ministry of the Interior. The Ministry of Labour and Social Affairs is responsible for the policies

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⁵⁵ For 2012, comparable data are not available.

⁵⁶ More precisely put - were registered with labour offices.

⁵⁷ According to the data by the Czech Social Security Administration, which we rely on in this case, in 2012 there were only 627 596 self-employed persons for whom this was the main working activity. For the sake of completeness, in 2012, the total number of self-employed persons (with self-employment being either the main or side activity) was 994 088 persons.

related to the labour market. Short-stay and long-stay visa applications⁵⁸ are submitted at embassies, thus this area partly falls within the remit of the Ministry of Foreign Affairs.

Czech migration policy towards third-country nationals is based on one crucial principle: It is the possibility of long-term stay granted when the applicant meets specific conditions connected to a certain *purpose* of stay. Such a purpose is most frequently employment, studies, self-employment, and family life. The number of applicants (and, indirectly, also the number of the permits issued) is further influenced by an on-line registration system called Visapoint, through which the applications for residence permits are submitted. Visapoint, however, through a pre-set maximum, limits the number of visa/stay applications which the individual embassies manage to handle. Czech migration policy thus does not belong to migration policy systems based either on quotas or on points, but it has its very own informal system of regulating the number of visa/stay applications. The combination of these two principles (i.e. the need for meeting the conditions connected to a specific purpose of stay for example by finding a job or by being admitted to studies and at the same time the existence of quotas for application submission) in practice leads to the fact that there are potential migrants, who meet all requirements needed for long-term visa, but ironically, they do not even have the opportunity to file their application. The Ministry of Foreign Affairs shows an effort to at least partly eliminate this problem. (Concerning the conditions of entry of migrants to the territory and the labour market of the Czech Republic, see details in section 4.1.)

Following its establishment in 1993, the Czech Republic has quite quickly become an immigration and transit country. Up to the mid-1990s, its migration policy had been relatively liberal and the number of foreigners in the country was in essence negligible until then when it began to go on a gradual rise. Back then, there was no legal way (except for marrying a Czech citizen) to become naturalized⁵⁹ in the country. Unfortunately, the 1990s did not see the formulation of any comprehensive national migration strategy but rather a gradual tightening up of the regulations and practice concerning foreigners. Migration policies were designed in particular in the context of the EU enlargement negotiations and the

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⁵⁸ These are then decided upon by the Ministry of the Interior while taking into consideration the view of the embassy.

⁵⁹ For details see Baršová, Barša, 2005, p. 222.

harmonization of the Czech legislation with EU law. From 2000 to 2008 (i.e. in the years when the increase in the number of foreigners was the fastest), the number of foreigners in the Czech Republic doubled and reached nearly 450 000 persons. The structural aid for integration into society provided by the authorities, though, was more than imperfect. Since 1999, the stay of foreigners is regulated by *Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic*, and by *Act No. 325/1999 Coll., on Asylum*. On one hand, these pieces of legislation resulted in a fundamental tightening up of the rules for the entry and residence of foreigners, on the other hand, under certain conditions, they introduced the option of their permanent stay in the country. Besides that, the Residence Act has been repeatedly amended, as a result of which it is a rather unclear and chaotic piece of legislation. Since 2008, due to the economic crisis, the CR has seen a strengthening of rules and limitations concerning the admission of foreigners to the labour market. In this time, the government adopted a series of measures the aim of which was not only to limit and prevent the entry of migrants to the Czech Republic, but also to reduce the number of migrants already residing in the country. In 2009, government resolution No. 171/2009 was issued, on maintaining security in connection with the dismissals of foreign workers due to the economic crisis. In connection to that, two return programmes aimed at foreigners who lost their jobs because of the crisis were implemented. Restrictive government measures against migrants continued to be applied also in 2010 when a recommendation was issued requiring all labour offices to consequently monitor the labour market and issue employment permits to foreigners with increased prudence⁶⁰. They were asked not to issue employment permits to foreigners for such job positions that can be filled by persons with a free admission to the Czech labour market. The length of the stay or the level of integration of individual foreigners was completely disregarded. Further restrictions and a fundamental change in the migration agenda was brought about by an amendment to the Residence Act, which went into effect on the 1st January 2011. To this date, all residential issues, except for short-term visas, were taken over by the Ministry of the Interior and its Department of asylum and migration policy.

What was characteristic of the year 2012, then, was a large quantity of directives, guidelines and measures issued by the Ministry of Labour and Social Affairs that

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⁶⁰ <http://www.mpsv.cz/cs/8662>, accessed on 14 July 2014

were not beneficial to migrants. The whole development escalated on 25th January 2012 when a very controversial methodical instruction was issued to all regional branches of the labour office. On the basis of this instruction, effective from July 2012 on, these offices were to stop granting employment permission to migrants in such cases when the qualification required was lower than completed secondary education (with a leaving exam comparable to A levels or a high school diploma). The existing employment permits could be extended by six months only. Beyond the obligations imposed by the Act on Employment, an obligation to submit employment permit applications together with validated proof of professional qualification was introduced. Taking into account the criticism voiced by the employers especially, this instruction was softened by another instruction from the 8th of March 2012. According to this instruction, individual labour office branches were to very carefully consider any issuance of an employment permit for low-qualified positions. These permits were to be issued in those cases only where non-issuance could lead to severe economic implications for the employer, resulting in the loss of jobs and dismissal. This instruction was under criticism, too. On 17 August 2012, a directive by the director general of the Czech labour office was published. This directive No. 19/2012, procedures and guidelines for the implementation of the foreign employment policy, contained further specification of the instructions previously issued by the Ministry of Labour and Social Affairs.

The last and very fundamental change is represented by Act No. 101/2014 Coll., which came into effect on the 24th of June 2014, i.e. when this text was being completed. This Act amended Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic. Furthermore, it amended certain other pieces of legislation - Act No. 435/2004 Coll., on Employment, Act No. 262/2006 (the Labour Code), Act No. 18/2004 Coll., on the Recognition of Professional Qualification, and certain other acts. The reason for the amendment of the above-mentioned regulations is the implementation of the Directive by the European Parliament and Council 2011/98/EU of 13 December 2011, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a member state and a common set of rights for third-country workers legally residing in a member state. The crucial point of the single permit concept is represented by a combined document (an employee card)⁶¹, which would authorize migrants

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⁶¹ See Chap. 4.1

both to stay and to perform a specific job. According to the hitherto existing legislation, there were two concepts which allowed migrants to perform work in the Czech Republic. Migrants needed either an employment permit⁶² simultaneously with an authorization to stay (in the form of a visa or residence permit), or there was a special type of stay for the purpose of employment, on the basis of a Green⁶³ or Blue card,⁶⁴ each of which comprised both a permit for employment and a residence permit.⁶⁵

The single permit should be of help to migrants and their employers, as it is meant to simplify procedures and facilitate controls concerning the authorization to stay and the legality of employment. It is, however, necessary to draw attention to a certain tension between the desire for a fair approach to foreigners and their equality of rights on one hand, and the fact of how easy it is to carry out controls of migrants on the other hand. The large administrative burden caused by the issuance of biometric IDs also needs to be mentioned at this point. This way, the above-mentioned amendment brought about a fundamental change of legislation in the area of labour migration. The new legislation foresees the abolishment of long-term visas for the purpose of employment and of Green cards (see above), or rather their merger into one employee card. The option to stay on the basis of a Blue card remains in place (for details see Chap. 4.1). The admission of migrants to the labour

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⁶² In case this obligation was applicable and the foreigner concerned was not exempt from it (see Section 3 Paragraph 2 and 3 of the Act on Employment, and Section 98 of the Act on Employment).

⁶³ This type of authorization was meant to simplify admission to the labour market for selected groups of migrants, based on nationality (see Decree No. 29/2013 Coll.).

⁶⁴ This type of authorization makes admission to the labour market easier for selected groups of migrants, the conditions being that a person has completed a university education of a duration of at least three years, along with gross wages higher than 37.692,- CZK (see Section 42i of the Residence Act and a Communication by the Ministry of Labour and Social Affairs No. 70/2014 Coll., on the amount of the average gross annual wages in the Czech Republic in 2013 for the purposes of issuing Blue cards).

⁶⁵ For the sake of completeness, it is necessary to add that in particular in response to the long-term problems accompanying the migration agenda (in particular connected to the non-adherence to the administrative deadlines by the Ministry of the Interior and the overall time demands and delays connected to issuing an authorization to stay to third-country nationals), the Czech Republic has launched two new projects. These projects are not integrated into the overall system, but they are in line with what certain major employers need. One is called *Fast Track* and enables a fast-track of the agenda connected to issuing authorizations to stay for the cases of intra-corporate transfer of managers or of localized managers or specialists (for more details see <http://www.czechinvest.org/data/files/zrychlenna-procedura-pro-vnitropodnikovu-prevadune-a-lokalizovane-zamustnance-zahranicnich-investoru-3656-cz.pdf>, accessed on 14 July 2014). The other is entitled *Welcome Package* and it allows for a significantly faster administration of residence agenda for investors (particularly for key managers and specialists), under specific conditions (see <http://www.czechinvest.org/data/files/welcome-package-3752-cz.pdf>, accessed on 14 July 2014).

market, as compared to the earlier legislation (when this area was primarily under the remit of the Ministry of Labour and Social Affairs), is to an ever greater extent getting under the remit of the Ministry of the Interior. The Czech Home Office continues to strengthen its position in this area.⁶⁶

3.2 Germany

Basic information⁶⁷

In 2012, a total of 80.5 million people lived in the territory of the Federal Republic of Germany, 7 213 000 being foreigners with authorization to stay: this represents 8.9 % of the total population. Out of this number, 1 238 400 foreigners were born in Germany (17 %). 2 120 600 foreigners, i.e. 29 %, have spent twenty five and more years in Germany. As for the persons with a migration background, in the case of Germany, they are defined as those who came into Germany after 1950, and their offspring. Their number has reached the proportion of 20 % of the German population, i.e. about 15.7 million people. Most of these persons (8.6 million) hold German nationality, while the rest remain foreigners (migrants).

In recent years, Germany has seen a significant increase in the number of asylum applications. In 2012, Germany received 64 500 asylum applications. Around 13.5 % of these applications were found justified: 8 764 persons obtained the refugee status and 8 376 persons received subsidiary protection (including 5 480 Syrians).⁶⁸

Out of the total number of foreigners, 3 711 300 were men and 3 502 300 were women, the representation of women among foreigners thus reaching 49 %. Among foreigners, the absolute majority of persons are in the productive age (age group 0-19

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⁶⁶ Čížinský, P., 2014, Nová úprava pracovní migrace cizinců v ČR [New regulation of the labour migration of foreigners in the Czech Republic], available at <http://migraceonline.cz/cz/e-knihovna/analyza-nova-uprava-pracovni-migrace-cizincu-do-cr>, accessed on 14 July 2014. Since 4 July 2011, residence permits containing the so-called biometric data - facial images and fingerprints obtained through a special technical equipment - are being issued in the Czech Republic.

⁶⁷ Data as of 31 December 2012, unless stated otherwise. The data come from the German Federal Statistical Office: www.destatis.de, unless stated otherwise.

⁶⁸ It is appropriate to specify that one year later (2013), because of the conflict in Syria, Germany has seen a rapid increase in the number of applications, up to 127 023 applications. Out of these, 10 915 persons obtained refugee status, and 9 213 received subsidiary protection (including 5795 Syrians).

years comprises 986 200 persons, 20-45 years: 3 654 800 persons, 45-64 years: 1 859 700 persons, and above 65 years: 712 800 persons).

Out of all legally residing foreigners, 5 726 900 people were the citizens of other EU countries: i.e., EU citizens form 79 % of all the foreigners who legally reside in Germany. Among them the largest groups are Poles (532 300), Italians (529 400), Greeks (298 200) and Austrians (176 300).

The number of legally residing third-country nationals was 1 486 800 people, i.e. 21 % of all the legally residing foreigners. Among them, the highest representation was reached by Turks (1 157 700), Croats⁶⁹ (224 900), Russians (202 000), and the citizens of Bosnia and Herzegovina (155 300). In 2012, 112 300 persons were naturalized, especially Turks (33 200).

The employment rate among persons with a migration background lies around 45 % (7 281 000 persons), as compared to 50 % in the rest of the German society. Regarding their position in employment, 10.4 % of persons with a migration background were self-employed, which is similar to the majority of the population: according to the data from the year 2012, 11 % of Germans were self-employed, showing that the position of employees clearly dominates.

A brief overview of the characteristics of the German migration policy

In Germany, it is the federal level in particular which addresses migration and asylum legislation. The agenda connected to migration and integration is administered mainly by the German Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, abbreviated as BAMF), which falls under the Federal Ministry of the Interior. Various issues of labour migration are addressed jointly with the federal Ministry of Labour and Social Affairs. The responsibility for admission and the issuing of visas is delegated to embassies and consulate generals (see Chap. 4.2).

Post-war migration to (Western) Germany began in the 1950s for economic reasons: the country hired contract workers from abroad. After 1973, the policy of active recruitment was over and the state put a lot of effort into curbing immigration, though without much success. Furthermore, Germany faced high numbers of the so-called "Aussiedler" (emigrants, expats) and asylum seekers, whose motivation to migrate was not primarily based on the economy, but on politics or his-

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⁶⁹ These are the data for the year 2012. Please note that on 1 July 2013 Croatia acceded to the EU.

tory. Because of such a massive immigration, since the end of the 1980s, when the immigration of asylum seekers and expats started to reach its peak, Germany has been referred to as a target and receiving country (see Jungius 2011). In the year 1993, a marked strengthening of asylum policies took place. In the second half of the 1990s and in the first years of the 21st century, Germany has experienced the highest increase in migration so far. A fundamental change in German migration and integration policy occurred as late as in the period around the year 2000; what ranks among the most significant changes is the amendment to the Act on Citizenship. Since 2005, an Act on the Residence of Foreigners (see below) has been in effect in Germany. It was amended in 2007 and as a result of that, in 2008 and in 2009, for the first time since the unification of Germany, the overall migration balance for Germany was negative.⁷⁰

In recent years, German visa and migration policy has reflected primarily the economic priorities of the country, in close relation to the so-called needs of the labour market.⁷¹ Thus - in a secondary way - it strives to remedy the demographic deficiency it suffers and which is reflected in the labour market by certain positions remaining vacant, especially the highly qualified ones. As expressed by Jungius,⁷² there is the general idea that for both demographic and economic reasons, Germany needs a greater influx of new migrants. The political responses to this fact are however rather schizophrenic. On one hand, all understand that the gradual decline and ageing of the German population, together with the ever larger lack of skilled labour, represent a serious threat to the German pension system and the economic future of the country. (...) On the other hand, though, Germany imposed more regulations on migration making it less simple and it strictly limited the admission of foreigners to its labour market by creating various barriers protecting its market from newcomers." The whole German system of the residence of foreigners is, similarly to the Czech one, based on the dominant requirement of meeting a specific purpose of stay. What qualifies for such a purpose are, in particular studies: profit-

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⁷⁰ For details see Jungius 2011, p. 4.

⁷¹ See Section 18 Paragraph 1 of the Act on Residence (*AufenthG*): Die Zulassung ausländischer Beschäftigter orientiert sich an den Erfordernissen des Wirtschaftsstandortes Deutschland unter Berücksichtigung der Verhältnisse auf dem Arbeitsmarkt und dem Erfordernis, die Arbeitslosigkeit wirksam zu bekämpfen. Internationale Verträge bleiben unberührt...

⁷² Jungius, B.: *Pracovní migrace a systémy sociálního zabezpečení: Německo [Labour migration and social security systems: Germany]*, MKC, *Flexi-In-Security*, 2011, p. 4, available at <http://migraceonline.cz/cz/e-knihovna/kriize-zamestnanosti-migrantu-v-nemecku-zprava-o-nemecku>, accessed on 14 July 2014.

making activity, unification with family which has already been living in Germany, or possibly international obligations, humanitarian or political reasons. Within the framework of the existing authorization to stay, when in the territory, a change in the purpose of stay is usually not possible.

For migrants, Germany is one of the most important countries of destination in Europe, and the largest category of foreigners in the territory of the Federal Republic of Germany is comprised of **EU citizens** (see above). According to the German Act on Residence (*AufenthG*), these foreigners **do not need any residence title** (*Aufenthaltstitel*) for their entry and stay in the territory - i.e. **no visa**⁷³ or **residence permit**⁷⁴, and they enjoy the right of free movement concerning the entry to and movement in the territory, as well as their family members.⁷⁵ With a stay of more than 3 months, they have only the so-called **notification duty** with the Registration Office (*Einwohnermeldeamt*).⁷⁶ In this category of foreigners, the purpose of stay has to be declared, too. This person can, then, reside in the territory as an employee or a jobseeker, as a self-employed person, or as a person who either makes use of or provides services, and as an unemployed person. The same conditions are in place for the **citizens of Iceland, Liechtenstein and Norway**,⁷⁷ and further **for the nationals of Switzerland**. All other **third-country nationals** need one of the respective migration authorizations for their entry and stay in the territory of the FRG.

Today, in Germany, no generally applicable quantitative **quotas** are in place regarding labour migration control.⁷⁸ Through bilateral agreements with third countries, however, a partial application of quotas is possible, yet their practical application is

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⁷³ The Act on Residence (*AufenthG*) makes the visa have the nature of an independent residence title. According to the Act on Residence, the visa holder is authorized to stay in the territory of Germany for the period of its validity. See http://www.auswaertiges-amt.de/en/einreiseundaufenthalt/zuwanderungsrecht_node.html.

⁷⁴ An exception are the citizens of Croatia: restrictions in relation to the labour market (see below) apply to them.

⁷⁵ Section 2 of the Act on the Free movement of EU citizens (*Freizüg/EU*).

⁷⁶ At the Registration Office ("Meldeamt"), or the local city council corresponding to the place of residence, the foreigner is obliged to register within 1 week from having moved to Germany (this applies to stays for a period of more than 3 months). Subsequently, the foreigner receives a confirmation of the stay (*Freizügigkeitsbescheinigung*) from the corresponding foreign office, which the registration office sends the data to, on the basis of Section 5 Paragraph 1 of the Act on the Free movement/EU (*Freizüg/EU*), which confirms that the respective foreigner has the right of free movement. The office is obliged to check whether the foreigner disposes with sufficient means for the stay and whether s/he has adequate health insurance. See http://www.pressburg.diplo.de/Vertretung/pressburg/sk/04/Einreise_2C_20Visa_2C_20Zoll/Seite_einreisebestimmungen.html.

⁷⁷ These countries, in addition to EU member states, participate in the Agreement on the European Economic Area.

⁷⁸ Exceptions are possible, for example in relation to seasonal work. In 2011, the Federal Ministry of Labour and Social Affairs set an annual quota for the employment of seasonal workers from third countries to 150,000 persons. See *The Application of Quotas in EU Member States as a measure for managing labour migration from third countries*, Euro-

minimal. Germany has concluded agreements of mutual cooperation with most Central and Eastern European countries. Arrangements on the number of workers placed in German companies within the framework of corporate cooperation or negotiations regarding the conditions for ensuring professional or language training for workers from partner countries were part of these agreements.⁷⁹ It may be stated that the regulation of the labour market de facto occurs through setting the legal conditions in particular, on the basis of which foreigners receive the authorization to reside and work in the FRG (e.g. by creating a list of the so-called sought-after employees or by using an analysis of the needs of employers).⁸⁰

In Germany, the current system of labour migration is tailored to the needs and requirements of the labour market, yet only from the point of view of the highly qualified and qualified sectors. It is true that for third-country nationals, migration to Germany is in principle restricted to belonging to certain professions. Such a selective approach to the settings of labour migration was under the criticism of the Organisation for Economic Cooperation and Development (OECD). In its recommendations, the OECD proposed to supplement the existing immigration options for those for which one would not need to prove holding a university degree. On the contrary, according to the OECD, it would be suitable to pay greater consideration to specific criteria of human capital.⁸¹ Although in the recent years, many legislative measures have been adopted which to some extent liberalize the admission of third-country nationals to the German labour market, still, third-country nationals can enter the labour market especially when they are educated professionals (individuals who have completed university education which had lasted for 3 years at minimum, and with work experience), students, or close family members. An authorization to receive a work permit, requested before the issuance of a residence permit, can be obtained by those foreigners only who fall

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pean Migration Network, 2013, available at http://www.emnbelgium.be/sites/default/files/publications/emn_inform_application_of_quotas.pdf, accessed on the 12 June 2014

⁷⁹ In the years 2008-2009, these quotas covered a total of 46,740 workers from thirteen partner countries. Their use in practice was limited however, e.g. in the year 2008, a mere 16,576 workers were positioned in Germany. Similarly, as for the participation in professional and language training, in the year 2008 there were only 742 workers out of the planned 11 050 who used this option, in the year 2011 it was used by 533 subjects out of the planned 10 050. See *The Application of Quotas in EU Member States as a measure for managing labour migration from third countries*, European Migration Network, 2013, p. 4, available at http://www.emnbelgium.be/sites/default/files/publications/emn_inform_application_of_quotas.pdf.

⁸⁰ See http://www.emnbelgium.be/sites/default/files/publications/emn_inform_application_of_quotas.pdf.

⁸¹ In: *Attracting highly qualified and qualified third-country nationals*, Federal Office for Migration and Refugees, 2013, p. 5: "However, the OECD recommends to supplement the current possibilities of immigration that do not require a university degree, for instance, also with a greater consideration of specific human capital criteria."

within one of the specific professional groups (IT specialists, scientists, highly qualified workers with high income, etc.) or those who can prove that their work is in the interest of the public. For workers without qualification or with low qualification, admission to the German labour market is considerably limited.

3.3 Austria

Basic information⁸²

In 2012, according to official statistics, 8.4 million people lived in Austria, 1 004 000 being foreigners with residence permits - which represents a total of 11.9 % of the whole population. In the area of the migration statistics, though, Austria operates with the term persons with a migration background, which includes both the first generation of foreigners (i.e. those who were born out of Austria, but moved in to Austria) and the second generation of foreigners (those born to the first generation of immigrants). From this perspective, there were 1.579 million people with a migration background residing in Austria (this number of course includes also naturalized persons), making up roughly 18.9 % of the total population. Out of this number, 1.167 million people are first-generation migrants and the remaining 412 200 are second-generation migrants. In 2012, 17 400 asylum applications were submitted in Austria and 3 680 persons were granted asylum.⁸³

Out of the total number of foreigners, there were 504 900 men and 499 300 women, thus the proportion of women and men in the group of foreigners being nearly equal. If we were, however, to look into the persons with a migration background, we would find out that women slightly prevailed.

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⁸² As of 1 January 2013, unless stated otherwise. Due to the fact that the given figures refer in particular to the year 2012, and for a better understanding and comparison with other countries, the year 2012 is mentioned throughout the text. The main data source is the Austrian Statistical Office and the publication: *Statistik Austria (2013). Migration und Integration. Zahlen, Daten, Indikatoren 2013*. Wien: Statistik Austria, other statistics come from the Austrian Statistical Office, the exception being statistics concerning asylum which are provided by the Austrian Ministry of the Interior.

⁸³ In this respect, the sources slightly differ regarding precise numbers, some web pages (e.g. <http://www.asylum-europe.org/reports/country/austria/statistics>, accessed on 14 July 2014) present a slightly higher number of asylums granted in Austria in 2012, and furthermore they present additional information that nearly two thousand people received the so-called subsidiary protection.

Among legally residing persons with a migration background, there is a clear dominance of those in the productive age (the age group 0-19 years comprises 21.6 % of persons, 20-39 years: 33.8 % of persons, 40-64 years: 34.2 % persons and over 65 years: 10.5 % of persons).

Out of all legally residing foreigners with a migration background, 552 600 people were the citizens of other EU countries⁸⁴: i.e., EU citizens form 35 % of all the foreigners who legally reside in Austria. Those who do not have Austrian nationality are most frequently Germans (157 800 persons), who are also the most numerous group of foreigners in Austria, and then come Romanians (53 300), after which follow Poles (45 900) and Hungarians (37 000).

The number of legally residing persons with a migration background from outside the EU⁸⁵ was 1 052 million, i.e. 65 % of all legally residing foreigners. When it comes to the nationalities of citizens from outside the EU, the most numerous groups in Austria are the following: Turks (113 700), Serbs (111 300), the citizens of Bosnia and Herzegovina (89 900), Croats⁸⁶ (58 600) and Russians (27 000). During the year 2012, 7 043 persons were naturalized.

The employment rate among persons with a migration background lies around the level of 66 % (as compared with the 74 % in the majority of the society): this is mainly caused by lower employment rates among female migrants. This difference is not as pronounced among female migrants from the EU countries, EEA and Switzerland and the former Yugoslavia, it is rather seen in Turkish migrant women, who have an employment rate of 43 % only.

Regarding the position in employment, nearly 9.7 % of persons with a migration background were self-employed, in comparison with the majority of the population where, according to the data from the year 2012, 14.1 % of Austrians were self-employed. Roughly 14.9 % of EU citizens were self-employed, in all instances thus what clearly prevails is the position of employees.

A brief overview of the characteristics of the Austrian migration policy

The problem area of integration and migration in Austria falls within the remit of the **Federal Ministry of the Interior** (*Bundesministerium für Inneres*, BMI,⁸⁷ responsible for

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⁸⁴ EU citizens, EEA and Switzerland

⁸⁵ EU citizens, EEA and Switzerland

⁸⁶ The data refer to the year 2012. Please note that as of 1 July 2013, Croatia acceded to the EU.

⁸⁷ More details on the web pages of BMI: http://www.bmi.gv.at/cms/bmi/_news/bmi.aspx.

regulating migration flows, residencies and short-term visas. Since 2003, this ministry has also proposed annual quotas regarding the settlement of third-country nationals in Austria for non-economic purposes. The issuing of visas and the development of policy falls under the remit of the **Federal Ministry for European and International Affairs** (BMEIA).⁸⁸ At the beginning of 2014, a new office was established, subordinate to the Ministry of the Interior: the **Federal Office for Immigration and Asylum** (BFA) which newly decides on applications for international protection and on residential permits granted for exceptional reasons.⁸⁹

In Austria, it is the **Federal Ministry of Labour, Social Affairs and Consumer Protection** (*Bundesministerium für Arbeit, Soziales und Konsumentenschutz*, BMASK)⁹⁰ which is responsible for employment policy, including the conditions for the issuing of labour permits to foreigners and the decision-making on annual work permit quotas. **Labour offices** (*Arbeitsmarktservice*, AMS)⁹¹ are subject to this ministry. It is through these offices that the local-level authorities run administrative proceedings on work permits for foreigners; these offices are also responsible for the provision of information, services and counselling to citizens.

When it comes to migration policy, the federal structure of the state is reflected in the competencies of the individual **federal-state governments** (*Landesregierungen*), it is predominantly these which set the maximum annual limits for the issuing of residence permits in their respective territory and they have a say when it comes to the quotas for seasonal workers, too. *Landeshauptmann*, the **governor of the federal state**, then holds the position of initial authority in the granting of authorizations to stay. The governors, however, usually delegate their powers to respective **state administrations** (*Bezirksverwaltungsbehörde*). They can also adopt specific measures in the field of social integration of foreigners, for example regarding housing and education. State (land) governments also decide on meeting the criteria for naturalization in the foreigners' applications for the Austrian citizenship.⁹² At the federal level, the agenda of the policy for the integration of foreigners is managed by a body of the Ministry of the Interior, the **Secretariat for integration** (*Staatssekretariat für integration*, SSI). Furthermore, the **Austrian Integration** ...

⁸⁸ More details on the web pages of BMEIA: <http://www.bmeia.gv.at/>.

⁸⁹ For more details see the web page of BFA: <http://www.bfa.gv.at/files/broschueren/bfa-folder-englisch-druck.pdf>.

⁹⁰ For more information see the web page of BMASK: <http://www.sozialministerium.at/site/>.

⁹¹ For more information see the web page of AMS, in the section About us: www.AMS.AT/ueber_ams.html

⁹² European Migration Network (2009), Organisation of Asylum and Migration Policies in the EU Member States, 2009, available at: <http://www.emn.at/en/studies/> (accessed on 11 July 2012).

Fund (*Österreichischer Integrations Fonds*, ÖIF) manages the implementation of the so-called Integration agreement (see below) and redistributes the means from European funds.⁹³

The Austrian policy is based on a tripartite policy model – a system of social partnership (*Sozialpartnerschaft*) between the government, trade unions⁹⁴ and employer associations.⁹⁵ In Austria, social partnership exerts a significant influence over the wage, economic and social policy of the labour market - it does so through seeking compromises and closing political deals. Until today, the strong position of social partnership in the field of labour migration is derived from the so-called Raab-Olah agreement⁹⁶, concluded in December 1961, based on which the Austrian labour market had been opened up to foreign workers - *Gastarbeiters*.⁹⁷ In the present moment, trade unions must be consulted when it comes to determining the quotas for the issuing of labour permits.⁹⁸

Austrian migration policy has been developing for more than fifty years and during that time it has undergone several fundamental changes - in relation to the needs of the domestic labour market or due to changed migration flows. In the 1960s, Austria was rather unsuccessful with its planned circular migration of foreign workers. Later, in the 1970s, for the first time, Austria had to deal with the fact that offer exceeded demand in its labour market. It resulted in the adoption of the Act on the Employment of Foreigners from 1975, which gave priority to the employment of domestic workers before foreigners.⁹⁹ Following a further immigration wave at the turn of the 1980s/1990s, together with the fall of the Iron Curtain and the disintegration of the neighbouring Federal Republic of Yugoslavia, the number of foreigners in the country increased in such a way (from 4 to 8 % of the total population) that the Austrian government responded by determining quotas on the number of work permits

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⁹³ More on that on the web pages of SSI and ÖIF: www.integration.at, www.integrationsfonds.at.

⁹⁴ Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund*, ÖGB) and the Federal chamber of employees (*Kammer für Arbeiter und Angestellte*, AK).

⁹⁵ Austrian Federal Economic Chambers (*Wirtschaftskammer Österreich*, WKÖ), Agricultural Chamber (*Landwirtschaftskammer Österreich*, LKO) and an Industry Union (*Vereinigung der Österreichischen Industrie*, IV).

⁹⁶ In 1961, the Chancellor of Austria was Julius Raab and the leader of the Trade Union Federation was Franz Olah.

⁹⁷ Fassmann, H. – Reeger, U. *Austria: From guest worker migration to a country of immigration*. IDEA Working Papers, No. 1, December 2008, available at http://www.idea6fp.uw.edu.pl/pliki/WP1_Austria.pdf (accessed on 18 July 2012).

⁹⁸ European Migration Network (2009), *Organisation of Asylum and Migration Policies in the EU Member States*, 2009, available at: <http://www.emn.at/en/studies/> (accessed on 11 July 2012).

⁹⁹ Fassmann, H. – Reeger, U. *Austria: From guest worker migration to a country of immigration*. IDEA Working Papers, No. 1, December 2008, available at: http://www.idea6fp.uw.edu.pl/pliki/WP1_Austria.pdf (accessed on 18 July 2012).

(the so-called *federal limit – Bundeshöchstzahl*),¹⁰⁰ defined as a specific maximum percentage of foreigners in the total Austrian labour force in one year - usually between 8 % and 10 %. The quotas were applied from 1990 to 2013. In that year, a quota was given, setting the number of labour migrants at 260 579 persons.¹⁰¹ After this figure was exceeded, it was possible to reduce the issuing of work permits. For the year 2014, however, no federal quota was set.¹⁰²

More fundamental changes in the Austrian migration policy as well as in its political discourse occurred as late as in 2004 when nationals from new EU-member-states started to work in Austria as seasonal workers. Although Austria made use of the then applicable transitional period to the greatest possible extent, and for the period of seven years, the admission of workers from these countries to the Austrian labour market was restricted (i.e. until the 1st of May 2011), internal migration flows inside the EU have provided the highest proportion of migration to Austria in the recent years.¹⁰³ What accounts for this trend is the fact that in a time of economic crisis, Austria continues to be a country with vacant jobs and high wages.¹⁰⁴ In 2014, the country expects a further increase in migrants from Bulgaria and Romania, for which the Austrian labour market has just opened up after another seven-year long transitional period. Specific rules of employment for EU citizens now apply to Croatian nationals only.

The contemporary Austrian policy for the control of economic migration, though, depends on how the needs of the labour market are assessed and interpreted. Firstly, it focuses on luring highly qualified foreigners from third countries. Besides the European Blue cards, in 2011, Austria has introduced two new types of dual authorisations to stay in the form of the Red-White-Red Card and Red-White-Red Card Plus (see below), issued within a point-based system¹⁰⁵. The new system regulates migration to Austria and access to the labour market for three groups of foreign workers: 1) very highly quali-

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¹⁰⁰ The quotas concern foreigners in dependent profit-making activities and they concern unemployed persons.

¹⁰¹ *Bundeshöchstzahl: Kundmachung des Bundesministers für Arbeit, Soziales und Konsumentenschutz über die Bundeshöchstzahl 2013*, StF: BGBl. II Nr. 502/2012, available at: http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_II_502/BGBLA_2012_II_502.pdf

¹⁰² <https://www.help.gv.at/Portal.Node/hlpd/public/content/340/Seite.34060802.html>

¹⁰³ A surprisingly large part of migrants in the country is formed by the citizens of old EU Member States, mostly Germans, who in 2009 comprised up to 15 % of the total population of foreigners born abroad (OECD 2012).

¹⁰⁴ Fassmann, H. – Reeger, U. *Austria: From guest worker migration to a country of immigration*. IDEA Working Papers, No. 1, December 2008, available at: http://www.idea6fp.uw.edu.pl/pliki/WP1_Austria.pdf (accessed on 18 July 2012).

¹⁰⁵ The point-based system consists mainly of an assessment of the following: qualification, work experience, language knowledge, age, studies in Austria (mainly in highly qualified professions). Knowledge of the German language is not a prerequisite, but more points can be obtained thanks to it. The Red-White-Red Card (*Rot-Weiß-Rot-Karte*) has a limited duration of 12 months and makes it possible to work with the employer for whom it was

fied workers, 2) professionals working in inadequately filled sectors,¹⁰⁶ and 3) other crucially important staff.¹⁰⁷ Besides this, the Austrian migration policy is favourable to self-employed crucial workers, foreign graduates and family members of the above-mentioned categories of foreign workers. For example, given the aim to keep students and researchers in the country, third-country nationals who obtained a Masters title in Austria are allowed to stay in the country for the period of six months, during which they can be looking for work. To promote the mobility of these migrants, in April 2012, the Austrian Parliament adopted a decision on the simplification of the system of qualification recognition for foreigners with university education. Thanks to this decision, the waiting times were shortened and a service of diploma recognition for unregulated professions was introduced.¹⁰⁸ These changes were launched with the aim to support legal migration to the country, based on various personal or job criteria, and thus encourage the development of Austria as a country of trade. In addition to that, in line with the harmonization of the national law with EU regulations, from January 2014 on, Austria has extended the issuing of single stay permits to other groups of third-country nationals (artists or employees eligible to unlimited access to the labour market).

3.4 The United Kingdom

Basic information¹⁰⁹

In the year 2012, according to official statistics, 63 million people lived in Great Britain. Out of these, 4.8 million were foreigners with residential permit, thus

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requested. After one year, it is possible to apply for a Red-White-Red Card Plus), which makes its holder eligible to free access to the labour market.

¹⁰⁶ Based on the Regulation on the Professional workers in inadequately filled sectors, foreigners who passed a re-training course may be employed in one of the 26 listed disciplines (BGB II. No. 207/2012).

¹⁰⁷ European Migration Network, Country Factsheet: Austria, 2012, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/, accessed on 14 July 2014.

¹⁰⁸ European Migration Network, Country Factsheet: Austria, 2012, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/, accessed on 14 July 2014.

¹⁰⁹ Unless stated otherwise, the reported statistics come from the Office for National Statistics (see www.ons.gov.uk). In several cases, the data are supplemented with data from the Migration Observatory at the University of Oxford, (see <http://migrationobservatory.ox.ac.uk/>). When the year 2011 is indicated, this means that no other data were available and the data from the population census of 2011 were used.

representing about 7.8 % of the overall population. In the United Kingdom, a significant portion of the statistics uses the term "foreign-born", which includes both foreigners (from the perspective of nationality) and the already naturalized persons who were born outside the territory of the United Kingdom. Regarding foreign-born residents, this group comprised 7 679 000 people, i.e. 12.4 % of the total population.

In the year 2012,¹¹⁰ 21 700 asylum applications were submitted in the United Kingdom. Asylum was granted to 5 100 persons and 926 persons were awarded/given other types of authorisation to stay for the reasons of protection.

Out of the total number of foreign-born people, 3.6 million were men and 4 million were women, which means that the number of females slightly exceeded fifty per cent. Among foreigners those in the productive age¹¹¹ predominate (age group 0-19 years comprises 20.7 % of people, 20-39 years: 40.7 % of people, 40-64 years: 32.6 % of people, and above 60 years: 5.9 % of people).

When looking at migrants (persons without British nationality who are legally residing in Britain), roughly one half (2 509 000 people) were from outside the EU and the other half (2 343 000 people) came from EU countries. Looking at all legally residing foreign-born people, roughly 2.6 million were citizens of other EU countries, the citizens of the EU thus represent about one third of all legally residing foreign-born persons in Britain. Among EU citizens are most frequently found persons born in Poland (646 000), at the same time representing the second-largest group of foreign-born persons. Coming next are persons born in Ireland (403 000) and Germany (304 000).

The number of legally residing foreign-born people from third countries was 5 million, making up two thirds of all legally residing foreign-born people. Among them persons born in India were most frequently found (729 000), forming the largest group of foreign-born residents; after them follow persons born in Pakistan (646 000), and after a greater gap then follow persons born in Bangladesh, Nigeria, Republic of South Africa, the USA and Jamaica.

During the year 2012, 194 300 persons were naturalized, in particular the (former) citizens of India (15 %), Pakistan (9 %), Nigeria (5 %) and the Philippines (4 %).

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¹¹⁰ Source: Refugee Council, see: http://www.refugeecouncil.org.uk/assets/0002/7887/Asylum_Statistics_May_2013.pdf, accessed on 14 July 2014.

¹¹¹ Figures for the year 2011, according to the population census.

In 2012, the employment rate among foreigners was at the level of 68.6 %, compared with the overall employment of Britons which was at the level of 71.9 %¹¹². It is an interesting fact that in foreign-born men, the employment rate was even slightly higher than the employment rate in men born in Britain, yet in foreign-born women, the employment rate was markedly (roughly about 12 %) lower than in British-born females.

When looking at the position in employment, there is no significant difference between the persons born in and outside Britain. In the year 2012, less than 16 % foreign-born subjects were self-employed and 84 % of people born abroad worked in the position of employees. On average, only 14 % of people are self-employed in Britain and the remaining 86 % work as employees.

A brief overview of the characteristics of the British migration policy

In Great Britain, the field of migration has until recently been under the remit of the UK Border Agency (UKBA), an executive body of the Home Office (HO). In 2013, this body was abolished and replaced by the UK Visa and Immigration (UKVI) department, which at the moment manages all decision-making on visas and permits for entry and stay.¹¹³ In addition to the visa agenda, UKVI is also responsible for granting citizenship, for the implementation of the asylum policy, decisions on the registration of employers and schools on the list of sponsors/supporters concerning migrants (see below); it holds the function of an appeal authority in the above-mentioned matters as well. When carrying out its tasks, UKVI puts great emphasis on securing the priorities of the Home Office in the area of migration, in particular on the securing of state borders and on limiting migration, combating crime and protecting the citizens from terrorism.¹¹⁴

Apart from UKVI, Home Office receives support from other independent and specialized government bodies. Among them, the Office of the Immigration Services Commissioner (OISC) is responsible for the regulation of consultants in the area of migration. Furthermore, the Migration Advisory Committee (MAC) provides consultations and monitoring of various issues concerning migration. In areas falling within

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¹¹² The data come from the publication *Employment and Occupational Skill Levels Among UK and Foreign Nationals*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/282503/occ108.pdf, accessed on 14 July 2014.

¹¹³ See: <https://www.gov.uk/government/organisations/uk-border-agency>, accessed on 14 July 2014.

¹¹⁴ See: <https://www.gov.uk/government/organisations/uk-visas-and-immigration>, accessed on 14 July 2014.

the remit of their resorts, certain other ministerial departments (e.g. the Department for Communities and Local Government (DCLG), the Department for Business Innovation & Skills, the Department for Education) or the national governments in Scotland and Wales are partly competent also.

Since the establishment of the United Kingdom of Great Britain and Northern Ireland in 1922, a significant immigration flow could be seen, in particular from Ireland and the former colonies of the British empire.¹¹⁵ After the Second World War, most immigrants came from the countries of the Commonwealth who could enter the country and remain in the United Kingdom without any restrictions and who gradually filled up any vacancies in unskilled jobs in the British labour market. In 1962, the overall situation finally made the UK government adopt the Commonwealth Immigrants Act¹¹⁶, which restricted the right of movement from other parts of the Commonwealth by immigration controls. From 1972 on, then, only the holders of work permits or persons with ancestors born in the United Kingdom could apply to enter the country.¹¹⁷ A further increase in migration was later possible only on the basis of the Single European Act of 1986. Thanks to this act, the citizens of individual Member States can travel freely in the territory of the former European Community. Since the EU enlargement in May 2004, the United Kingdom has accepted migrants from the new member states in Central and Eastern Europe, Malta and Cyprus. These migrants, except for the citizens of Malta and Cyprus, however, were subject to restrictions regarding the eligibility for certain benefits, contained in the so-called Worker Registration Scheme (WRS).¹¹⁸ During the accession of Romania and Bulgaria to the EU in January 2007, restrictions were introduced for the nationals of these countries regarding the number of migrants - students, self-employed workers, highly qualified migrants and workers in agriculture.¹¹⁹ Currently, similar rules apply to the na-

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¹¹⁵ In particular India, Bangladesh, Pakistan, certain areas in the Carribeans, South Africa, Kenya and Hong Kong.

¹¹⁶ Commonwealth Immigrants Act 1962, available at: http://en.wikipedia.org/wiki/Commonwealth_Immigrants_Act_1962

¹¹⁷ Besides this, the Nationality Act (see The British Nationality Act 1981 available at: www.legislationline.org/legislation.php?tid=11&lid=3866) was adopted in 1983. It established the differentiation between the British nationality and the nationality of British foreign territories. Only the Irish Republic was recognised as having an exceptional status under the Act on Ireland from 1949 which stipulated that Irish nationals are not foreigners, albeit Ireland was not allowed to be a member of the Commonwealth back then, see the Ireland Act of 1949, available at: http://en.wikipedia.org/wiki/Ireland_act_1949.

¹¹⁸ The Worker Registration Scheme Home Office, http://en.wikipedia.org/wiki/Worker_Registration_Scheme

¹¹⁹ Regarding the seasonal workers, there was a limit of about 21 thousand workers a year from these countries - see the European Commission, EMN Inform: The application of quotas in EU Member States as a measure for manag-

tionals of the latest member of the EU - Croatia, who must apply for registration in the territory of the United Kingdom for any stay longer than three months and in the case of employment they are obliged to have a financial sponsor (see below).¹²⁰

The aim of the British migration policy is to reduce economic migration from outside the territory of the European Union, as well as to ensure that temporarily residing foreigners really leave the territory after the expiration of their authorisations to stay.¹²¹ When regulating labour migration, what is reflected first and foremost are the benefits of migrants for the British labour market, while the effort is attracting the best qualified and most capable foreign workers.¹²² The government follows evaluations carried out every three years by a government advisory body, the Migration Advisory Committee (MAC),¹²³ as well as a regularly carried out analysis of employer needs. On the basis of these, then, a list of inadequately filled professions is created and quotas for labour migrants from third countries are set in such a way that the market needs are not exceeded.¹²⁴

The British migration policy is based on the so-called point system.¹²⁵ Within the framework of the point-based system, the majority of migrants from third countries who want to stay in the country for a longer period of time need to pass a point assess-

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ing labour migration from third countries, 2014, available at: http://emn.ie/files/p_201403281253032014_emn_inform_application_of_quotas_en_version_final.pdf

¹²⁰ <https://www.gov.uk/croatian-national>

¹²¹ See e.g. the definition of the British government's mission in the field of the protection of state borders: "The government is responsible for securing the UK's borders. We will deliver an improved migration system that commands public confidence and serves our economic interests. We believe that improving migration processes to reduce abuse and limiting non-EU economic migrancy will better serve Britain's interests and deliver a fair system." Available at: <https://www.gov.uk/government/topics/borders-and-immigration>

¹²² Pendry, E., Dowling, S., Thorpe, K. "Managing migration through visa policy", Home Office UK, 2012, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/visa-policy/index_en.htm

¹²³ <https://www.gov.uk/government/collections/immigration-rules>

¹²⁴ The European Commission, EMN Inform: The Application of Quotas in EU Member States as a measure for managing labour migration from third countries, 2014.

¹²⁵ Points are awarded for example for: age, qualifications, previous amount of earnings, experience gained in Great Britain, knowledge of English (and possibly other languages), financial situation, etc. The failure to meet certain criteria (e.g. knowledge of English for selected tiers) may constitute a clear reason for a refusal of the application. Within different tiers, points are awarded in a different way. Furthermore, individual tiers (and sub-tiers) differ as to the allowed length of stay, whether the stay can be extended or not, whether one can switch to another type of authorization to stay, etc.

ment¹²⁶ before receiving a work permit. In the present moment, British law enables entry to the United Kingdom for the purpose of profit-making activities to the following five tiers of migrants (the term "tier" used in Britain is similar to the term "categories" used in other countries, editorial note): Tier 1: High value workers; Tier 2: skilled workers with a job offer; Tier 3: low-skilled workers; Tier 4: students; and Tier 5: temporary workers and youth mobility (for greater detail see Chapter 4.4).

The point-based system has been in place since 2008 and was meant to eliminate the issuing of special employment authorizations. The new mechanism was also meant to replace the previous quota system: The plan was to regulate the numbers of newly incoming foreigners by increasing or decreasing the number of points necessary to obtain visas. In 2013, the system was partly waived, however, only for the preferred highly-skilled workers. What continues to hold is the limit of 2 000 persons per year for entrepreneurs who are graduates of a British university, 1 000 persons per year for exceptional talents (both in Tier 1 of the point-based system) and furthermore 20 700 persons for the category of skilled workers with an annual income of up to 152 100 pounds (Tier 2).¹²⁷ Moreover, with regard to the fact that the citizens of EU Member States have fully met the needs of the British market for low-skilled positions at the moment, low-skilled third-country nationals (Tier 3) are not eligible to apply, although the Immigrants Act encompasses this option in the enumeration of work visas.¹²⁸ Annual limits for seasonal workers from Romania and Bulgaria continue to be in place, too.

In practice, British labour migration control usually occurs through a partial modification of the criteria for individual visa categories within the point-based system. For example, in 2012, the level of qualifications needed by skilled workers has increased and conditions for the long-term settlement of foreign workers have become even more strict: the condition of the minimum annual income was

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¹²⁶ Commonwealth citizens with British forefathers are eligible to special conditions for entering the country. Special conditions apply also to the citizens of Turkey, domestic workers, health and birth nurses, etc. Special conditions of entry - not the point-based system - apply to the following cases: family reunification with persons from third countries, retired persons and those who apply for stay on the basis of medical reasons.

¹²⁷ The European Commission, EMN Inform: The Application of Quotas in EU Member States as a measure for managing labour migration from third countries, 2014.

¹²⁸ Pendry, E., Dowling, S., Thorpe, K. "Managing migration through visa policy", Home Office UK, 2012, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/visa-policy/index_en.htm

set to the amount of at least 35 000 pounds.¹²⁹ Towards highly skilled workers, though, the British migration policy is gradually becoming less and less strict. For example, the resident labour market test for those whose annual income reaches at least 70 000 pounds per year and who hold positions requiring a postgraduate education (a PhD.) has become more lenient. More positive changes from the year 2012 have also influenced the categories of investors and entrepreneurs with exceptional benefit for the country, and that comes in the form of mitigating the requirements for their knowledge of English.¹³⁰ For the intra-corporate transfer of employees, since autumn 2013, language tests have been completely dropped. Also the options for entering the territory for so-called “exceptional talents” (e.g. for artists) have become less stringent.¹³¹ Britain continues to extend the programme of cooperation with partners/third countries in the field of economic migration; besides other options, it runs a “Youth Mobility Scheme”. The YMS is designed for exchange stays of young people in the United Kingdom and selected third countries, its aim being to gain experience abroad, including experience in the labour market.¹³²

Given the aspect of worker protection and the position of workers in general, the United Kingdom deals with the issues of forced labour and labour exploitation quite extensively. In this respect, the recently adopted legislative proposal, Draft Modern Slavery Bill¹³³, is of great importance. It was published by the government in December 2013. According to the new legislation, a new position of anti-slavery commissioner is to be created who will work closely with the government and law enforcement authorities. The draft bill increases the maximum sentence available for trafficking in human beings to life imprisonment and introduces measures for preventing slavery and trafficking, as well as civil orders to restrict the activity of offenders or those who

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¹²⁹ European Commission, Country Factsheet: UK 2012, European Migration Network, Brusel 2013, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/united-kingdom-emn-country-factsheet_en.pdf.

¹³⁰ European Commission, Country Factsheet: UK 2012, European Migration Network, Brussels 2013.

¹³¹ Evropská komise, EMN Bulletin, Edition 5, European Migration Network, Brussels 1.10.2013, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/news/index_en.htm.

¹³² At the moment, the countries which participate in the Youth Mobility Scheme are Australia, Canada, Japan, Monaco and New Zealand. In 2013, South Korea and Taiwan joined the programme. More on this: Pendry, E., Dowling, S., Thorpe, K. “Managing migration through visa policy”, Home Office UK, 2012.

¹³³ The European Commission, EMN Bulletin Edition 6, European Migration Network, Brussels 06.01.2014, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/news/index_en.htm; <http://www.parliament.uk/business/publications/research/briefing-papers/sno6792/draft-modern-slavery-bill>

pose a risk. It establishes a legal duty to report potential victims of trafficking to the National Reference Mechanism (NRM).

3.5 Final overview

Among the analyzed countries, the numbers of foreigners as well as their position in the labour market differ not only due to the historic development, but also due to the extent to which individual countries allow admission of foreigners into their territory and under what conditions. Although in Germany the largest group of people with a migration background comes from Turkey, when compared to the other analyzed countries, in general, most migrants are EU nationals.

The employment rate among foreigners then very clearly reflects the purpose for which the foreigners most frequently come to the given state, what competencies they have and what conditions are set regarding their integration in the labour market.

However, the overall data indicate that in neither of the analyzed countries is there a fundamental difference between the employment rate of the domestic population and that of foreigners, or rather of persons with a migration background. An exception from this rule is the Czech Republic, where the employment rate of foreigners significantly exceeds the employment rate¹³⁴ of the domestic population. A further exception is the case of Austrian women with a migration background and British women born outside the EU, where their employment rate is markedly lower than that it is among women in the majority of the population.

Seen from the perspective of this publication, what can be considered an alarming situation is the position of foreigners in the Czech labour market in particular. In the case of EU nationals, their position is usually similar to that of the majority of the Czech society. Yet in the case of third-country nationals, the number of self-employed persons is significantly (up to four times) higher compared to the majority. This has not been encountered in any of the other investigated countries. This fact indicates the markedly different position of foreigners in the labour market, which is the consequence of policies meant to push foreigners out of employment relationships. Although official documents speak of

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¹³⁴ Judging from the experience of other countries, it can be assumed that if the Czech Republic investigated the category of persons with a migration background, which is used in the case of Germany and Austria, the identified difference would not be as profound.

the opposite objective of Czech migration policy (i.e. of the majority of foreigners in employment relationships)¹³⁵, the data on foreigners leaving the positions of employees clearly show that such an anomaly is not happening in any other of the investigated countries. This fact certainly does not bring any advantage to either the position of foreigners in the Czech Republic, or their integration into the Czech society¹³⁶.

| Country | The Czech Republic | Germany | Austria | The United Kingdom |
|---|----------------------------|----------------|------------------|-------------------------------|
| The proportion of foreigners in the population | 4.2 % | 8.9 % | 11.9 % | 7.8 % |
| The proportion of persons born abroad (UK), persons with migration background (Austr. + Ger.) | unmonitored ¹³⁷ | 20 % | 18.9 % | 12.4 % |
| EU citizens counted among foreigners | 37 % | 79 % | 35 % | 50 % |
| two largest groups of foreigners | Ukrainians Slovaks | Turks Poles | Germans Turks | Indians from India* Poles* |
| Employment rate *** of the majority of the population | 55 % | 50 % | 74 % | 72 % |
| Employment rate of foreigners ¹³⁸ | 71 % | 45 %** | 66 %** | 67 % |
| The proportion of self-employed workers in the majority of the working population | 12.5 % | 11 % | 14.1 % | 14 % |
| The proportion of self-employed workers among working foreigners: | 30 % ¹³⁹ | 10.4 % | 9.7 %** | 16 %* |

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¹³⁵ See e.g. Government Resolution of the Czech Republic, dated 19 January 2011, No. 48 on Measures for the control of economic migration, protection of the rights of work migrants and the implementation of returns, annex No. 1: The new system of economic migration, p. 6. There, it is clearly declared that in foreigners: "employment is the preferred purpose of stay" (p. 6).

¹³⁶ Even a publication by the OECD, Indicators of Immigrant Integration 2012, which operated with data from the years 2009-2010, when the difference was even smaller, drew attention to this problematic discrepancy in the position in the labour market when comparing the foreigners and the majority of the population.

¹³⁷ Probably, the proportion will not be that much higher (with the exception of Slovaks), because citizenship is granted to about 1 to 2 persons annually.

¹³⁸ As we have shown in the above text, the definition of employment may differ in individual countries.

¹³⁹ Out of this percentage, EU citizens: 11%, third-country national: 53 %.

Table No. 1: An overview of the number of migrants and their characteristics in the Czech Republic, Germany, Austria and the United Kingdom, data concerning the year 2012 in particular.¹⁴⁰

Annotation: (1* data relating to persons born abroad,** data relating to persons with a migration background according to the definition of the given country,*** employment is defined differently in different states, the data are presented particularly when comparing the different groups; (2) data relating to the years 2012 or 2013 - for more details see the above text.

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¹⁴⁰ The data are based on the same resources as used for the individual countries in the above text of this chapter, i.e. they come mainly from the statistical offices of the given countries. Data concerning the year 2012, if the above text does not specify otherwise (e.g. the data on employment in the CR are available for the year 2011 at the latest).

4. Admission of labour migrants to a host country and to the labour market in the countries compared

4.1 Admission requirements for migrants to enter the territory and the labour market of the Czech Republic

4.1.1 Admission to the territory of the Czech Republic

The issues connected to migration and integration in the Czech Republic fall under the remit of the Ministry of the Interior of the Czech Republic, alternatively the Ministry of Foreign Affairs of the Czech Republic.¹⁴¹

The entry and residence of migrants in the Czech Republic, as well as their leaving the territory is primarily governed by Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic and amendments to certain other acts, as amended (hereinafter “Residence Act”) and by directly applicable EU regulations, for example by Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

In the context of the Residence Act, it is necessary to distinguish between EU nationals;¹⁴² family members of EU citizens¹⁴³ and of Czech citizens; third-country nationals without a visa requirement;¹⁴⁴ and nationals of¹⁴⁵ third countries who are required to have a visa.

EU citizens as well as the citizens of Iceland, Liechtenstein, Norway and Switzerland (as these have similar rights as EU citizens) must meet the least demanding conditions for entering and residence in the territory of the Czech Republic. They can come and stay in the Czech Republic on a temporary basis without visas,¹⁴⁶ having only a travel document or an identification card, and they have completely unlimited access to the labour market. The only duty they have is to report to the authorities, if the period of their expected stay in the Czech Republic is longer than 30 days. In such a case, within 30 days upon entering the Czech Republic, they are obliged to report their presence to the appropriate department of Foreign Police according to

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¹⁴¹ The Ministry of Foreign Affairs is competent to make decisions regarding granting or denying short-stay visas.

¹⁴² EU citizens are the nationals of Belgium, Bulgaria, Czech Republic, Croatia, Denmark, Estonia, Finland, France, Ireland, Italy, Cyprus, Lithuania, Latvia, Luxembourg, Hungary, Malta, Germany, the Netherlands, Poland, Portugal, Austria, Romania, Greece, Slovakia, Slovenia, the United Kingdom of Great Britain and Northern Ireland, Spain and Sweden.

¹⁴³ See Section 15a of Act No. 326/1999 Coll.

¹⁴⁴ Determined by bilateral visa waiver agreements or treaties entered before 21 December 2007.

¹⁴⁵ Non-EU nationals

¹⁴⁶ See the provisions of Section 18 Letter c) of Act No. 326/1999 Coll.

their place of residence.¹⁴⁷ In case of a stay longer than 30 days, the above-mentioned group of foreigners has the right to apply for a certificate of temporary residence.¹⁴⁸ This certificate then serves as a "proof" for documenting the length of a temporary stay in the territory for other purposes (for example when applying for a permanent residence permit, when claiming social benefits, etc.). Also family members of the above-mentioned group of migrants, including family members of Czech nationals, are subject to simplified conditions of entry and stay.

People from those countries whose nationals do not need to be in possession of a visa are allowed to stay in the Czech Republic, or, to be more precise, in the whole Schengen area, for a period of up to 90 days in any 180-day period. Also nationals of countries with a bilateral treaty on visa-free travel with the Czech Republic (entered before 21 December 2007) are allowed to stay in the Czech Republic, however, in the Czech Republic only. In case they would want to perform any type of profit-making activity in the territory of the Czech Republic, they need to apply for a residence permit (i.e. at least a short-term visa).

Third-country nationals who are not also family members of a citizen of the EU or of the Czech Republic may stay in the Czech Republic primarily on the basis of a short-stay or long-stay visa, long-term residence permit (with special options: Employee Card and Blue Card), permanent residence permit¹⁴⁹ or granted international protection.¹⁵⁰

Except for permanent residence permit holders, foreigners have to meet the conditions stipulated in relation to the specific purpose¹⁵¹ of their stay in the territory¹⁵² throughout the whole period of their stay.

Visa or residence permit applications can be filed at an embassy in the country of origin.¹⁵³ Long-stay visa or permanent residence permits can be applied for – in addition to the embassy of the Czech Republic in the country of origin of the foreigner – also directly in the Czech Republic at the Department for Asylum and Migration Policy of the Ministry of the Interior.

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¹⁴⁷ See the provisions of Section 93 paragraph 2 of Act No. 326/1999 Coll.

¹⁴⁸ See the provisions of Section 87a Paragraph 1 of Act No. 326/1999 Coll.

¹⁴⁹ Mostly after five years of long-term residence in the Czech Republic.

¹⁵⁰ Asylum or subsidiary protection (see Act No. 325/1999 Coll. on Asylum).

¹⁵¹ Employment, business, studies, family reunion, leave to remain or a so-called "other purpose".

¹⁵² For more details about types of stays, see Čížinský, Pavel et al. *Cizinecké právo* [Foreigner Law], Prague: Linde, 2012

¹⁵³ Decree No. 429/2010 Coll. of 21 October 2010 specifies, the nationals of which countries can apply for a visa at any embassy, i.e. outside their home country.

Visa proceedings, except for the visa proceedings of family members of EU citizens or of the citizens of the Czech Republic, are not subject to the provisions of the Code of Administrative Procedure and they do not constitute a legal claim. In case a visa application is turned down, the foreigner has an option to file, within 15 days from having received the information about not being granted the visa, a request for a new assessment of his or her application¹⁵⁴ to the Ministry of Foreign Affairs (regarding short-stay visas),¹⁵⁵ or to the Ministry of the Interior (regarding long-stay visas).¹⁵⁶ Only when a visa is denied to a family member of an EU or Czech national is a judicial review possible: i.e. if the administrative body rejects the application a second time, when the applicant is requesting a new assessment, then the applicant can go to court.

Proceedings on individual types of residence follow the Code of Administrative Procedure. Better protection and stronger position for the applicant is thus ensured throughout the whole administrative proceedings. The applicant has the right to appeal a negative decision of the competent administrative body within 15 days from the delivery of the decision, the appeal is made to a superior administrative body.¹⁵⁷ If the superior administrative authority does not deem the request for a specific residence status valid, the applicant always has the right to appeal to a court of justice.

Although the Residence Act defines deadlines regarding the decisions of the relevant administrative authorities on granting or rejecting applications for specific visas or residence permits, these deadlines are very often, especially in the case of residence permits, not respected. In such a case, the applicant has the right to turn to a superior administrative authority and file a request to take measures against inaction.¹⁵⁸ If the administrative authority continues to fail to issue a decision, the applicant can go to court requesting an enforcement of measures against inaction.

4.1.2 Admission of migrants to the labour market

The primary aspects determining the possibility of entering the labour market are: the nationality of the foreigner, his family relationships to EU or Czech citizens and finally the residence permit type.

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¹⁵⁴ See provisions of Section 180e of the Residence Act.

¹⁵⁵ The Ministry of Foreign Affairs informs foreigners on the outcome of the new assessment within 30 days from filing (and delivering) the request (see provisions of Section 180e Paragraph 9 of the Residence Act).

¹⁵⁶ The Ministry of the Interior informs foreigners on the outcome of the new assessment within 60 days from the delivery of the request.

¹⁵⁷ Commission for decision-making in matters of residence of foreigners

¹⁵⁸ See provisions of Section 80 of the Act No. 500/2004 Coll., Code of Administrative Procedure

The corner stone of legislation concerning the possibility of the admission of migrants to the Czech labour market is the Act No. 435/2004 Coll., on Employment (hereinafter the "Employment Act"). This Act differentiates between:

- ▶ foreigners who have the same status as Czech citizens, and
- ▶ foreigners whose admission to the labour market is restricted.

In case of the first category, it is a taxative list of foreigners, as specified in Section 3 Paragraph 2 and 3 of the Employment Act.¹⁵⁹ This group of foreigners must provide their employer with documents proving that they belong to the respective category of migrants. The employer is obliged to notify the competent labour office in writing not later than on the given foreigner's first workday,¹⁶⁰ and to keep records of EU nationals, their family members and family members of the citizens of the Czech Republic.¹⁶¹ Foreigners listed in Section 98 of the Employment Act can be included in this category. They do not need a permit to be employed. Such foreigners are for example foreigners with a permanent residence permit; foreigners granted international protection; foreigners whose stay in the Czech Republic is based on a permit for long-term residence for the purpose of family reunification;¹⁶² foreigners who are systematically preparing for their future profession in the territory of the Czech Republic; foreigners who are clerics of a church or a religious organization registered in the Czech Republic; foreigners who have been posted to the Czech Republic by their foreign employer based on an agreement concluded with a Czech legal or natural person, exclusively for the purpose of increasing the skills and qualification required for work performance with this employer outside the territory of the Czech Republic, etc.

Foreigners who are not listed in the provisions of Section 3 Paragraph 2 and 3 of the Employment Act and whose access to the labour market is restricted need an Employee or Blue Card to be employed, or they need a valid work permit issued by a regional labour office branch and a valid residence permit for the Czech territory. In the case of foreigners with restricted access to the labour market, it is necessary to distinguish

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¹⁵⁹ For the purposes of the Employment Act (see the provisions of Section 85 of the Employment Act), these foreigners are not considered foreigners.

¹⁶⁰ See the provisions of Section 87 of the Employment Act.

¹⁶¹ See the provisions of Section 102 Paragraph 2 of the Employment Act.

¹⁶² Amendment No.101/2014 Coll. The scope of this group of migrants was extended; according to the earlier legislation, this applied only to migrants staying in the Czech Republic on the basis of a permit for long-term residence for the purpose of family reunification with a foreigner who was granted permanent residence, asylum or subsidiary protection.

between two basic categories. Those, whose applications are assessed with regard to the situation in the labour market, and foreigners whose entry to the labour market does not depend on this condition.¹⁶³

4.1.2.1 Employee Card

What is understood about an Employee Card (hereinafter the "EC") is that it acts as a permit for a long-term stay granting the foreigner temporary residence in the territory, exceeding 3 months and allowing work performance on the position for which the EC was issued, or on a position, for which the Ministry of the Interior has granted consent.¹⁶⁴ Those foreigners who need a work permit according to the Employment Act, as well as those who do not need a work permit for performing work (see the provisions of Section 98 of the Employment Act) are granted a residence permit for the purpose of employment through the EC.¹⁶⁵

From the above-mentioned definition of the EC, we can deduce its two modi – it is **either dual** (in the case that it combines a work-permit and a residence permit)¹⁶⁶ or **non-dual** (in the case that it grants the foreigner only residence in the territory)¹⁶⁷ and three reasons for its issuance.

In the case of a dual-type Employee Card, the foreigner must apply for a position listed in the Central Evidence of Job Vacancies available for EC holders (hereinafter the "CEJV").¹⁶⁸ How the system works: The employer has to report a vacant job to the regional branch of the labour office and along with that declare his or her consent that the Ministry of Labour and Social Affairs (MLSA) may list this position in the CEJV if it is not filled within 30 days. The MLSA does not have to list the position in the CEJV, and also, it can remove the vacancy from the Evidence in case the employer had received a final (legally binding!!) fine for enabling unauthorized labour within the last 12 months. The MLSA also does not have to list the position if it is possible to fill it otherwise considering the required qualification and the availability of labour force.¹⁶⁹ Due

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¹⁶³ See the provisions of Section 97 of Act No. 435/2004 Coll., on Employment.

¹⁶⁴ In case of a change of employer, change of the job position of the holder of the EC, employment in a different position or employment with another employer.

¹⁶⁵ Provisions of Section 42g Paragraph 1 of the Act No. 326/1999 Coll.

¹⁶⁶ See the provisions of Section 42g Paragraph 2 of Act No. 326/1999 Coll.

¹⁶⁷ See the provisions of Section 42g Paragraph 3 and 4 of Act No. 326/1999 Coll.

¹⁶⁸ See provisions of Section 37a of the Employment Act, the list of vacant positions can be seen here: http://portal.mpsv.cz/sz/zahr_zam

¹⁶⁹ See the provisions of Section 37a Paragraph 6 of the Employment Act. Most likely it will address such cases when the vacancy is filled after being included into the CEJV.

to the fact that it is not absolutely clear how exactly a decision regarding the listing of a vacant position in the CEJV or its removal from it will be taken, there is the threat of a certain lack of transparency of such action.¹⁷⁰

The dual Employee Card can be issued by the Ministry of the Interior also to foreigners residing in the territory of the Czech Republic on the basis of a visa for a stay longer than 90 days, and who are employed in the territory and granted an employment permit. In such a case, when a foreigner applies for the issuance of an Employee Card with the same employer and for the same position s/he is at, it is not a requirement stipulated by the Employment Act. In these cases it is not required that this position is in the CEJV.

A foreigner who has been granted a work permit for a certain position can apply for an Employee Card of the non-dual type if it is required by the Employment Act, and so can a foreigner who has unlimited access to the labour market according to the Employment Act. In such cases the job position in question is not listed in the CEJV and the Ministry of the Interior does not look into the professional competence of the applicant: it is monitored either by the labour office as a part of the proceedings for granting an employment permit, or it is up to the employer whether it is required or not.

In both types of cards, it is required that a form of labour-law relation exists between the foreigner and the employer which the applicant for the EC must prove by submitting a contract of employment, an agreement on work performance ("dohoda o pracovní činnosti" in Czech, ed. note) or a contract for a future contract.¹⁷¹ In all cases, the weekly working hours must cover at least 15 hours¹⁷² and the monthly wage, salary or remuneration may not be lower than the basic monthly rate of the minimum wage.¹⁷³

In the case of the dual-type EC, the foreigner must, with the exception of the above mentioned cases, demonstrate his or her professional competence. This is to be done either through having a **required education** (in justified cases, especially when there is

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¹⁷⁰ See Čížinský P., 2014, *Nová úprava pracovní migrace cizinců v ČR* [New regulation of labour migration of foreigners in the Czech Republic], available at <http://migraceonline.cz/cz/e-knihovna/analyza-nova-uprava-pracovni-migrace-cizincu-do-cr>

¹⁷¹ The parties agree to conclude a contract of employment or an agreement on work performance (DPČ??) within a certain deadline.

¹⁷² See the provisions of Section 42g Paragraph 2 Letter b) of Act No. 326/1999 Coll.

¹⁷³ See the provisions of Section 42g Paragraph 2 Letter b) Act No. 326/1999 Coll. For the year 2014, the established lowest rate of the minimum wage is 8 500 Czech Crowns (CZK) per month or 50.60 CZK per hour, see the Government Decree No. 210/2013 Coll.

reasonable doubt whether the foreigner has the required education or whether this education corresponds to the character of the given employment, the foreigner is obliged to prove—at the request of the Ministry of the Interior—that his education was recognized by a competent authority of the Czech Republic, in the so-called "nostrification" process).¹⁷⁴ It is a formulation which sets certain limits to the abuse of proofs of education¹⁷⁵ or of **professional training** required by special legislation¹⁷⁶ or of the **meeting of conditions for the execution of regulated professions** as anti-immigration repression measures.¹⁷⁷

A foreigner who has unlimited access to the labour market according to the Employment Act, apart from the above mentioned requirements, must provide also proof documenting this fact.

In the case of foreigners who are required to obtain an employment permit and whose application for an employee card was submitted simultaneously, the employment permit application must be decided upon first. It is a preliminary question according to the provisions of Section 64 Paragraph 1 Letter c) of the Code of Administrative Procedure: i.e. the Ministry of the Interior suspends the proceedings on the EC until the administrative proceedings on granting employment permit are finalized.

The Employee Card can be applied for at the Czech embassy in the country of origin or in the case of residence in the Czech Republic, when holding a visa for a stay exceeding 90 days or a long-term residence permit issued for another purpose, it can be applied for at the Department for Asylum and Migration Policy of the Ministry of the Interior.¹⁷⁸ The Ministry is obliged by law to decide on the granting or denying of the EC in an administrative proceeding within 60 days of the submission of the application. In particularly complex cases, or in cases where a regional branch of the labour office must be consulted for a binding opinion, the decision must be made within 90 days of the application submission.¹⁷⁹

The Employee Card applicant can work from the moment the certificate on the fulfilment of conditions for receiving the Employee Card is issued.

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¹⁷⁴ See the provisions of Section 42g Paragraph 2 Letter c) of Act No. 326/1999 Coll.

¹⁷⁵ See Čížinský P., 2014 *Nová úprava pracovní migrace cizinců v ČR* [New regulation of labour migration of foreigners in the Czech Republic], available at <http://migraceonline.cz/cz/e-knihovna/analyza-nova-uprava-pracovni-migrace-cizincu-do-cr>

¹⁷⁶ See the provisions of Section 42g Paragraph 2 Letter c) of Act No. 326/1999 Coll.

¹⁷⁷ http://uok.msmt.cz/uok/ru_list.php?lang=en&dl=en

¹⁷⁸ See the provisions of Section 42g Paragraph 5 of Act No. 326/1999 Coll.

¹⁷⁹ See the provisions of Section 169 Paragraph 1 Letter h) of the Residence Act.

4.1.2.2 Employment permit

The employment permit is designed for foreigners from third countries who want to be employed in the Czech Republic and the law stipulates that they may be employed.¹⁸⁰

They are foreigners who want to work in the Czech Republic and who are holders of short-stay or long-stay visas or long-term residence permits for the purpose of business, including those who are in the position of an associate or partner, member of a statutory body or some other body of a commercial company or in the position of a member of a cooperative or in the position of a member of a statutory body or some other body of a cooperative, and who perform tasks arising from the type of activity of the respective legal entity. This permit cannot be issued to the dual-type EC holder.

The employment permit is issued by a regional branch of the Labour Office under similar rules as those which take effect under Act No. 101/2014 Coll., implementing the single permit directive; i.e. that it is a job vacancy listed in the Evidence that cannot be filled otherwise with regard to the required qualifications or the lack of available workforce. The amendment exempted the employers from the obligation to notify the regional branch of the labour office about the intention to employ foreigners in advance.¹⁸¹ An exception are posted workers, in which case the duty to consult the intention remains.¹⁸² In their case, however, the labour market test – i.e. the requirement of a job vacancy – is newly not required.¹⁸³ Furthermore, the labour market test is not required for example in the case of applicants for international protection after 12 months in the proceedings on granting international protection, holders of visas or long-term residence permits for the purpose of leave to remain, trainees or interns, etc.¹⁸⁴ Concerning the lastly mentioned interns, there is a change in comparison with the previous legislation. The term of employment for the purpose of increasing qualification was shortened from one year to 6 months (with the possibility of extending this period).¹⁸⁵

For the time being, no changes were carried out regarding the employment permits of seasonal workers, these remain unchanged.¹⁸⁶ They are granted an employ-

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¹⁸⁰ See the provisions of Sections 92, 95, 96, 97, 98 of the Employment Act.

¹⁸¹ See the provisions of Section 92 Paragraph 1 of Act No. 435/2004 Coll.

¹⁸² See the provisions of Section 95 Paragraph 2 of Act No. 435/2004 Coll.

¹⁸³ At the moment, what is discussed is the Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of service.

¹⁸⁴ See the provisions of Section 97 of Act No. 435/2004 Coll.

¹⁸⁵ See the provisions of Section 97 Paragraph 1 Letter a) of Act No. 435/2004 Coll.

¹⁸⁶ See the provisions of Section 92 Paragraph 1 Letter b) of Act No. 435/2004 Coll. At the moment, a Proposal for a Directive of the European Parliament and of the Council on seasonal employment is being discussed.

ment permit for the maximum of 6 months in a calendar year, with an obligatory gap of at least 6 months between the individual employments in the territory of the Czech Republic. The labour market test takes place in this case not only during the first time the permit is granted, but also during its possible extension.

In the context of the amendment, we should take notice of the provision of Section 98a of the Employment Act, which is newly included in the Employment Act. In line with this provision, the foreigners who are posted in the Czech Republic by their employer from abroad, based on a contract with a Czech legal or natural person, exclusively for the purpose of boosting the skills and qualification required for the execution of their work with their employers outside the territory of the CR, are not required to obtain an employment permit, Employee Card or Blue Card.¹⁸⁷ This provision has to be applied together with provision 178b Paragraph 4 of the¹⁸⁸ Residence Act and its implementation is decided upon by the government. The length of stay of the foreigner in such a case must not exceed 6 months.

4.1.2.3 Blue Card¹⁸⁹

The introduction of Blue Cards in the Czech legislation occurred through the implementation of *Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment* (“EU Blue Card”).

It is a special type of permit for long-term residence for the purpose of highly qualified employment,¹⁹⁰ combining both a residence permit and an employment permit (has a dual character). The position always has to be included in the register of job vacancies which can be taken by Blue Card holders.¹⁹¹ The employer reports a vacant position to the regional branch of the labour office and at the same time declares consent with the fact that in case this vacancy will not be filled within 30 days, it can be included into the central database of vacancies available for Blue Card holders.¹⁹² According to the provisions of Section 37a Paragraph 6 of the Employment Act, the Ministry of Labour

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¹⁸⁷ See the provisions of Section 98a of Act No. 326/1999 Coll.

¹⁸⁸ In case the foreigner is posted in the territory of the Czech Republic by his or her foreign employer on the basis of a contract with a Czech legal or natural person, exclusively for the purpose of boosting the skills and qualification required for the execution of his or her work with this foreign employer outside the territory of the CR, for the purposes of this Act, it is not considered employment.

¹⁸⁹ For details see Čížinský, Pavel et al. *Cizinecké právo* [Foreigner Law], Praha: Linde, 2012.

¹⁹⁰ High qualification is deemed to be a completed university education or higher vocational education, the duration of which was at least 3 years.

¹⁹¹ https://portal.mpsv.cz/sz/zahr_zam/modka/vm

¹⁹² See the provisions of Section 37a Paragraph 3 of Act No. 435/2004 Coll. of the Employment Act

and Social Affairs (MLSA) will not include the vacant job into the Blue Card database of vacancies, or possibly removes the job from it, if the employer has in the last 12 months received a fine for making unauthorized labour possible or if the vacant job can be filled otherwise, given the qualification required or the availability of workforce.

The Blue Card applicant must conclude an employment contract with the employer with a duration of at least one year and with a gross monthly or annual salary amounting to at least a 1.5 multiple of the gross annual salary in the Czech Republic, as stipulated in a Communication by the Ministry of Labour and Social Affairs (as of the date of the finalization of this study, the amount is 37 692 CZK).¹⁹³ At the same time, a weekly working time of 40 hours must be agreed upon.

The Blue Card application can be filed with a Czech embassy in the country of origin or, in the case of residence in the Czech Republic based on a visa for a stay longer than 90 days or on a long-term residence permit issued for another purpose,¹⁹⁴ the application can be filed also with the Department for Asylum and Migration Policy of the Ministry of the Interior. This is possible also in the case of the holders of Blue Cards issued by another EU member state.¹⁹⁵

4.2 Admission requirements for migrants to enter the territory and the labour market of Germany

4.2.1 Entry and residence in the territory of the Federal Republic of Germany

The absolutely fundamental piece of legislation, regulating the issues connected with the entry and stay of third-country nationals in the territory of Germany, is the German Residence Act¹⁹⁶ (hereinafter also "AufenthG"). The residence of EU

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¹⁹³ The Ministry of Labour and Social Affairs, according to the provisions of Section 182a Paragraph 3 of Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic and amendments to certain other acts, as amended by the Act No. 427/2010 Coll., announces that based on the average gross monthly salary in the Czech Republic in 2013 in the amount of 25 128 CZK, the average gross salary in the Czech Republic for the period from 1 May 2014 to 30 April 2015 amounts to 301 536 CZK. (https://portal.mpsv.cz/sz/obecne/prav_predpisy/akt_zneni/sdeleni_phm)

¹⁹⁴ It is necessary to file the application within 1 month of entry into the territory

¹⁹⁵ See the provisions of Section 42i Paragraph 3 of Act No. 326/1999 Coll., the Residence Act.

¹⁹⁶ Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (*Aufenthaltsgesetz/AufenthG*) from 30 July 2004 (BGBl. No. 41, p. 1952), which came into effect on 1st of January 2005, hereinafter the *Residence Act* and/or *AufenthG*.

citizens and their family members is regulated by the Freedom of Movement for EU Citizens Act¹⁹⁷ (hereinafter also "Freizüg/EU"). However, apart from the regulations adopted at the EU level, various regulations adopted at the national level, such as the so-called Ordinance Governing Residence¹⁹⁸ (hereinafter also "AufenthV") or the Employment Regulation of Foreigners¹⁹⁹ (hereinafter also "BeschV") also play an important role.

For their entry and residence in the territory of Germany, **third-country nationals** need specific migration authorizations. The citizens of the so-called **privileged states** represent a specific group of foreigners within this category.²⁰⁰ They have the right of visa-free travel and have the option of a short-term stay of up to 90 days in the period of 180 consecutive days without the necessity to apply for an entrance visa. However, even these foreigners are obliged to apply for a residence title (see below) for stays exceeding the period of 3 months. On the other hand they are allowed to apply for it after entering the territory of Germany, at a locally competent immigration office. Within this group, we distinguish between foreigners who can apply for all types of residence in the territory and²⁰¹ the nationals of such states who may apply only for residence, without employment authorization (with possible exceptions).²⁰²

A **visa**,²⁰³ as a specific residence title according to the Residence Act (*AufenthG*),²⁰⁴ may be issued as a visa belonging to one of the following types: **Airport transit** – type A, **short-stay (so-called Schengen)** – type C, issued for a period of stay shorter than 3 months within a period of six months, and as **long-stay (national)** – type D. According to the Residence Act (*AufenthG*), visa holders are authorized to stay in the territory of Germany as long as their visa is valid.

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¹⁹⁷ Gesetz über die allgemeine Freizügigkeit von Unionsbürgern *Freizügigkeitsgesetz/EU – FreizügG/EU* from 30 July 2004 (BGBl. No. 41, p. 1986), which came into effect on 1 January 2005, hereinafter *Act on the Freedom of Movement for EU Citizens* and/or *Freizüg/EU*.

¹⁹⁸ Aufenthaltverordnung (*AufenthV*) of 25 November 2005 (BGBl., No. 62, p. 2945).

¹⁹⁹ Verordnung über die Beschäftigung von Ausländerinnen und Ausländern (*Beschäftigungsverordnung/BeschV*) of 22 November 2004 (BGBl. No. 62, p. 2937).

²⁰⁰ The nationals in question are e.g. the citizens of Andorra, Albania, Bosnia and Herzegovina, Australia, Israel, Japan, Canada, Monaco, Moldova, New Zealand, South Korea, San Marino, and the USA. See Section 41 *AufenthV*

²⁰¹ This applies to the citizens of Australia, Israel, Japan, Canada, New Zealand, South Korea, and the USA.

²⁰² This applies e.g. to the citizens of Andorra, Honduras, Monaco, and San Marino.

²⁰³ Section 6 of the Residence Act (*AufenthG*).

²⁰⁴ Section 4 Paragraph 1 of the Residence Act (*AufenthG*) stipulates a visa has the nature of an independent residence title. See also http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Zuwanderungsrecht_node.html.

According to the German law,²⁰⁵ the responsibility for accepting and issuing visas rests with the embassies and consulates general. Essentially it is true that the Federal Foreign Office does not take part in handling individual visa applications. Local jurisdiction is determined by the applicants' usual place of residence. Generally it is true that the visa application must be submitted outside Germany, before the planned entry to the country. Processing a visa application usually takes 2–10 workdays. However, this concerns only the proceedings on issuing **short-stay (so-called Schengen) visas**²⁰⁶ according to the so-called Visa Code.²⁰⁷ The conditions for granting these visas are standardized within the states of the Schengen area and their setting is therefore the same as in the Czech Republic.

As far as the proceedings on issuing **long-stay (national visas) with a duration longer than 90 days of stay** are concerned,²⁰⁸ basically the same rules apply here as in the case of the residence proceedings.²⁰⁹ The only difference is that the visas are issued before entering the territory. The conditions for issuing a visa are set relatively strictly and differ in relation to the purpose for which the visa is requested. Issuing a long-stay visa is subject to the approval by the competent authorities – especially by the relevant immigration office (*Ausländeramt* or *Ausländerbehörde*) in a federal state (according to the intended place of stay), or in the case of visas for the purpose of employment, the approval of the Federal Employment Agency (*Bundesagentur für Arbeit*).²¹⁰ Immigration offices which approve the granting of long-stay visas, are not subordinate to the Federal Foreign Office. Instead, they are subject to the professional supervision of the Federal Ministry of the Interior and the respective ministers of the federal states. The duration of the proceedings on granting a long-term visa usually ranges around several weeks or even months.²¹¹ The decision on denying a visa, in ad-

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²⁰⁵ Section 71 Paragraph 2 of the Residence Act (*AufenthG*).

²⁰⁶ Section 6 Paragraph 1 and 2 of the Residence Act (*AufenthG*).

²⁰⁷ Regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas.

²⁰⁸ Section 6 Paragraph 3 of the Residence Act (*AufenthG*).

²⁰⁹ Section 6 Paragraph 3 of the Residence Act (*AufenthG*).

²¹⁰ However, in many cases (especially with specific visas issued for the purpose of employment), the approval of the competent office is not required (see *BeschV*).

²¹¹ Compare http://www.auswaertigesamt.de/EN/EinreiseUndAufenthalt/Visabestimmungen_node.html#doc480844bodyText3 and http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen_node.html. However, the attempts to boost the efficiency of the visa proceedings are to be observed in practice. One of the simplifications of the proceedings on granting visas is the option to download and fill-in the application on-line, which enables bringing a filled-in and printed out application to the visa interview, where it can be scanned. Furthermore, many embassies have implemented an electronic registration system, leading to a more efficient handling of the applications

dition to the cases specified by the law,²¹² can be appealed by filing an administrative action to the Administrative Court (*Verwaltungsgericht*) in Berlin. Generally, following the admission to the German territory, the holder of a valid national visa can apply for an extension of his or her stay, or to be more precise for issuing one of the residence titles specified below.

Except for a visa, which is, as mentioned above, considered a specific type of a residence title, further **types of residence – residence titles**²¹³ can be distinguished as follows:

1) Residence permit (*Aufenthaltsurlaubnis*)

2) Permanent residence (permit) (*Niederlassungserlaubnis and Erlaubnis zum Daueraufenthalt – EU*)

3) EU Blue Card (*Blaue Karte EU*)

It is the immigration office who decides on granting a residence title, with the jurisdiction determined by the place of residence or place of employment. Before filing an application for a residence permit, one must register at the appropriate registration office (*Einwohnermeldeamt*). The length of handling an application is varied. Similar to the visa procedure, the proceedings of matters connected to residency are time-consuming and administratively pretentious. Despite certain efforts to boost its effectiveness, it requires a considerable degree of paperwork.²¹⁴ The conditions leading to obtaining any of the residency titles according to the Residence Act (*AufenthG*) are relatively strict, the general requirement in particular is proving that the applicant meets the given purpose of stay (in an effort to prevent abusing the system). There is a lot of emphasis on the requirement to prove financial independence and a certain degree of integration.²¹⁵ Information on the options of stay in Germany and conditions

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and a shortened time span spent at the office. What is also on the rise is the number of multiple-visas issued: these entitle their holders to repeated entry to the territory without the need to apply for a new visa. Compare also http://www.pressburg.diplo.de/contentblob/3296994/Daten/2991536/Visum_fr_Drittstaater.pdf (DIVNÝ JAZYK).

²¹² Section 83 Paragraph 1 of the Residence Act (*AufenthG*).

²¹³ To be precise, it is necessary to add that besides the mentioned types of stay, several special residency regimes are also in place. Asylum seekers in particular have a specific position. They remain in the territory during the proceedings on the basis of the so-called *Aufenthalts-gestattung*, which is a residency status laden with a number of restrictions (e.g. concerning the movement and residence in the territory). Another specific category of foreigners are persons who do not have residence permits and are obliged by the law to leave the country, however, they cannot do so for various reasons (e.g. because of a threat of the infringement of their human rights in case they return to their country of origin). In such cases, these persons receive a special permit to remain in the country, the so-called *Duldung*. Just like in the case of asylum seekers, their position is very uncertain and the title brings with it a series of strict restrictions.

²¹⁴ See <http://www.justlanded.com/english/germany/germany-guide/visas-permits/requirements>.

²¹⁵ It is proved especially by the participation in an integration course, which is compulsory for a number of persons.

for obtaining individual residency titles are relatively easily available through various public information portals run by the authorities, and government authorities often provide the option of free consultations.²¹⁶

As regards **the performance of profit-making activities (employment or business)**, pursuant to Section 4 Paragraph 2 of the Residence Act (*AufenthG*), any residence permit (or a visa) must include information on whether the performance of profit-making activities is authorized or not, and possibly also what type of profit-making activities can be performed. The authorization to perform profit-making activities may be established directly by the provisions stipulated in the legal regulation,²¹⁷ or it can be issued on the basis of an individual administrative act of the foreign office.²¹⁸

Ad 1. Residence Permit (*Aufenthaltserlaubnis*)²¹⁹

A residence permit is always temporary and it is issued for a certain purpose (e.g. studies, profit-making activities, family reunification or for humanitarian reasons). The extent of the rights connected to a given residency title (e.g. the right to work in the territory of the FRG) and the length of stay depend on the purpose for which the residency authorization is issued.

A residence permit is granted in the following cases:

- ▶ vocational training / an educational course in the FRG – Section 16-17 of the Residence Act (*AufenthG*)
- ▶ for the purpose of economic activity – Section 18-31 of the Residence Act (*AufenthG*)
- ▶ on humanitarian or political grounds or for reasons of international law – Section 22–26 of the Residence Act (*AufenthG*)

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²¹⁶ See <http://www.make-it-in-germany.com/en/>, <http://www.fachkraefte-offensive.de/de/startseite/start.html>, http://www.auswaertiges-amt.de/en/einreiseundaufenthalt/uebersicht_node.html, <http://ec.europa.eu/eures>, <http://www.bamf.de/en/willkommen/aufenthalt/wichtigeinformationen/wichtigeinformationen-node.html>, <http://www.auswaertiges-amt.de/en/infoservice/faq/arbeitenlebendutschland/uebersicht.html?nn=480834>.

²¹⁷ E.g. Section 9 Paragraph 1 of the Residence Act (*AufenthG*) stipulates that the permanent residence permit authorizes the performance of (any) profit-making activity. The same provision can be found e.g. in Section 28 Paragraph 5 of the Residence Act (*AufenthG*) on the authorization to stay for the purpose of cohabitation/living together with a German national, for more see Section 4.2.1.2 of ?? VwV.

²¹⁸ In this case, issuing an authorization to perform profit-making activities (either with a specific employer or in general) may be the so-called side provision of the residence permit according to Section 12 of the Residence Act (*AufenthG*), in German "Nebenbestimmung". Such an authorization can be integrated within the biometric identification card or residence permit, yet it also needs to be included in the documents annexing the authorization to stay (the so-called Zusatzblatt, see e.g. Annexes to *AufenthV*).

²¹⁹ Section 7 and 8 of the Residence Act (*AufenthG*).

- ▶ for the purpose of family reunification (Section 27-36 of the Residence Act)
- ▶ for former German citizens who want to return to the territory of Germany (the so-called *Aussiedler*) – Section 37, 38 of the Residence Act (*AufenthG*)
- ▶ for persons who possess the status of long-term residents in other member states of the European Union – Section 38a of the Residence Act (*AufenthG*)

As regards a residence permit issued directly for the purpose of employment, high-skilled foreigners (especially researchers with special technical knowledge, teaching or scientific personnel in prominent positions, etc.) may directly obtain the permanent residence **permit for highly qualified foreigners**, pursuant to Section 19 of the Residence Act (for example: exceptional scientists or university staff).

Another residency title is a **residence permit for research purposes**, pursuant to Section 20 of the Residence Act, implementing the respective EU Directive.²²⁰ The condition for granting this title is the conclusion of a hosting agreement with a research institution recognized as such²²¹ by the Federal Office for Migration and Refugees, which assesses the efficiency of the planned cooperation. This type of residence permit is issued for a period of one year at minimum. Issuing the permit for a shorter period of time is possible only provided it is sufficient with regard to the duration of the research. Pursuing economic activity is possible only in the same area to which belongs the conducted research, assuming that this possibility ensues from the agreement on hosting the researcher. Approval by the Federal Employment Agency is not required.²²²

A residence permit for the purpose of employment, pursuant to Section 18 of the Residence Act, can be granted only (with certain exceptions) on the condition that the given type of work is listed in the regulation on the employment of foreigners (*BeschV*). This regulation stipulates whether granting a residence permit requires the approval of the Federal Employment Agency or whether the competent foreign office may also issue the given residence permit without the consent of the Federal Employment Agency. This approval is not necessary for example in the case of senior staff, including statutory representatives of legal persons (§ 3 *BeschV*), volunteers and charitable or religious workers (§ 14 *BeschV*), posted workers of foreign employers who come to Germany to work under

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²²⁰ Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

²²¹ A list of recognized research institutions is available at www.bamf.de/forschungsaufenthalte.

²²² § 5 *BeschV*

specified conditions for the maximum period of 3 months during a year (§ 19 BeschV) or foreigners whose stay was authorized on humanitarian grounds (§ 31 BeschV).

In case the Federal Employment Agency needs to issue its approval, it is then necessary to distinguish whether this approval can be issued only after the labour market test has been carried out or without this test. The labour market test (*Vorrangprüfung*) pursuant to Section 39 Paragraph 2 of the Residence Act (*AufenthG*) examines: 1) whether the employment of a foreigner may bring with it negative implications for the labour market, and 2) whether there are any German employees or foreign employees who have a preference available (including the cases when these staff are only available with the support of Federal Employment Agency). A further condition for gaining the approval of the Federal Employment Agency work is the fact that the foreigner will not be employed under less favourable conditions than comparable German workers.

Without testing the labour market, the Federal Employment Agency can give approval for employment in the following cases for example

- ▶ intra-company transfer, up to the period of 3 years (Section 10 BeschV)
- ▶ foreign language teachers (not teachers of German) at schools within the remit of the embassies and consulates general of foreign states, up to the period of 5 years (Section 11 BeschV)
- ▶ au-pair employees (up to 27 years of age, with at least basic knowledge German), up to the period of 1 year (Section 12 BeschV)
- ▶ household workers in the households of temporarily posted persons or diplomats, if these workers have for at least one year prior to entering Germany taken care of a child under 16 years of age or of another member of the household in need of care; the authorization may be granted for the period of stay of the person for which the household worker is working, however the longest period is 5 years (Section 13 BeschV)
- ▶ posted workers for the period of up to 3 years (Section 19 Paragraph 2 BeschV) The labour market test must be carried out by the Federal Employment Agency in these cases:
- ▶ seasonal workers for a maximum period of 6 months (with the weekly working hours of at least 30 hours), and if these persons enter Germany under the agreement of the German Employment Agency and the respective office in the country of origin of these persons (Section 15a BeschV)²²³

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²²³ For individual employers, the possibility of employment of these seasonal workers is restricted to 8 months in each calendar year, which however does not apply to the sector of wine- or fruit-growing and production.

- ▶ Workers in households and caregivers for a period of the maximum duration of 3 years (in case of full-time work), and if these persons enter Germany under the agreement of the German Federal Employment Agency and the respective office in the country of origin of these persons (Section 15c BeschV)
- ▶ Citizens of privileged countries (Section 26 BeschV)
- ▶ Nationals of the countries with whom there are international agreements, including agreements with Turkey or with the former Republic of Yugoslavia (§ 28 BeschV), can stay in some cases for the maximum period of 18 months or 4 years.

From 1 August 2012 on, foreign graduates with a German university degree or another recognized and comparable foreign university education, have the possibility to apply for a special visa **for jobseekers** (*Visum zur Arbeitsplatzsuche, permit to find a job*) which may be granted for a period of up to 6 months for the purpose of finding suitable employment. The prerequisite for granting the relevant visas is providing a proof of education and the ability to cover the costs of their stay. For the period of the validity of the visa, the performance of any profit-making activity is not allowed, including doing business.²²⁴

Foreign graduates from German universities who find themselves in the territory of the FRG, may have their residence permit prolonged to up to 18 months **for the purpose of the search for suitable employment**, provided that the foreigner is able to cover the costs of his or her stay.²²⁵ During his or her stay, these foreigners have free access to the labour market.

Also foreigners who successfully graduated from vocational/professional education and find themselves in the territory of the FRG, can obtain a residence permit for the period of up to 1 year, providing they fulfill the conditions stipulated by law.²²⁶ For the period of stay, they are authorized to perform profit-making activities.

In Germany, receiving an **authorization to stay for the purpose of independent economic activities** is possible pursuant to Section 21 Paragraph 1 of the Residence Act, but it is usually provided only on the condition of an initial investment in the amount of at least 250 000 EUR and of the creation of at least five jobs or on the condition of receiving the support of the local chamber of trade or a similar institution

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²²⁴ Section 18c of the Residence Act (*AufenthG*), see also: <http://www.bamf.de/en/migration/arbeiten/buergerdrittstaat/arbeitsplatzsuche/arbeitsplatzsuche.html?nn=3838630>

²²⁵ Section 16 Paragraph 4 of the Residence Act (*AufenthG*).

²²⁶ Section 16 Paragraph 5b and 17 Paragraph 3 of the Residence Act (*AufenthG*).

which would confirm the socio-economic contribution of the business plan to the given region.²²⁷ The assessment of the application as a rule takes several months and the maximum duration of the permit, according to law, amounts to three years.

As regards **other types of residence permits** whose **main purpose is not the performance of economic** activities but the holders of which may operate in the **labour market**, one can mention e.g. the residence permit for the purpose of the completion of qualifications through vocational training pursuant to Section 16 Paragraph 5a of the Residence Act, in the framework of which the holder is allowed to work for a maximum amount of ten hours per week, regardless of whether the job is related to the vocational training. The Residence Act further enables issuing a residence permit for the purpose of industrial or professional training (dual education), pursuant to Section 17 Paragraph 1 of the Residence Act, in the framework of which, any economic activity – with certain exceptions – is possible only on the basis of the approval by the Federal Employment Agency. As regards foreigners studying in Germany at a state-recognized university or a similar educational establishment, they may stay in the territory of Germany on the basis of a residence permit pursuant to Section 16 Paragraph 1 of the Residence Act. The authorization is issued for a period of one year, the maximum period being two years. It may be extended up to the time of the completion of the studies, yet its duration must be of adequate length. Students have a limited access to the labour market and the period of their employment may not exceed, with negligible exceptions, 120 days or 240 half-days a year.²²⁸

In order to enable third-country nationals the **reunification with their family members**,²²⁹ they must be in possession of one of the respective residency titles (ad 1-3), and they have to have a place to stay and adequate means for ensuring the stay of the family. In addition to the other requisites stipulated by the law,²³⁰ the spouse applying for a residence permit for the purpose of the family unit living together,²³¹ with certain exceptions, must prove the knowledge of the German language at A1 level.²³² Uniting with children is possible only up to the age of sixteen years. Adolescents aged

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²²⁷ See also Section 21.1.4. vvv.

²²⁸ See Section 16 Paragraph 3 of the Residence Act (*AufenthG*).

²²⁹ Section 27 and following of the Residence Act (*AufenthG*). See <http://www.bamf.de/en/migration/arbeiten/familiennachzug/familiennachzug-node.html>.

²³⁰ Belonging among other conditions is for example the condition of minimum age, which in both spouses must not be lower than 18 years.

²³¹ Section 29 Paragraph 1 point 1 of the Residence Act (*AufenthG*).

²³² The condition of the knowledge of the German language is not applied in the case of uniting the families of EU Blue Card holders, holders of a residence permit for qualified workers, or of self-employed persons and researchers.

16-18 years of age can obtain a residence permit in exceptional cases or provided that there is a good chance of their successful integration in Germany. The holders of an authorization for the purpose of uniting the family unit are authorized to work:

- ▶ In the case of uniting a family with a German national (Section 28 Paragraph 5 of the Residence Act – *AufenthG*) or
- ▶ If the foreigner, with whom the holder of the residence permit for the purpose of family reunification was united, has unrestricted access to the labour market, is a Blue Card holder or has a residence permit for the purpose of scientific research, and/or after two years of the duration of the marriage in the territory of Germany (see Section 29 Paragraph 5 of the Residence Act – *AufenthG*).

Ad 3. EU Blue Card (*Blaue Karte EU*)²³³

It is a specific type of a temporary authorization to stay, introduced into the German legislation on 1 August 2012 in connection with the transposition of the EU Directive on Blue Cards.²³⁴ As a rule, it is issued for the period of 4 years, and it is designed for third-country nationals with university education or a comparable education for the purpose of suitable employment according to their qualifications. One of the essential conditions which an applicant for this type of stay must meet, is – except for the required education – also the guaranteed minimum level of annual income, reaching the amount of 47 600 EUR at least (2014). Working conditions in the positions taken by Blue Card holders are not monitored. The knowledge of German is not tested in Blue Card applicants. Blue Card advantages consist in the possibility of more easily obtaining permanent residence, but also in obtaining the right to free movement in the labour market after 2 years. As regards the family members of Blue Card holders, they do not need to prove their knowledge of German and after entering the territory, they have free access to the labour market without any restrictions.

In the case of highly qualified foreigners in the so-called shortage occupations (i.e. in the areas of mathematics, IT, natural sciences or technologies, and also medical doctors) the conditions for obtaining a Blue Card hold, assuming that what is guaranteed are conditions comparable to those of German employees. The minimum gross annual income of 37 128 EUR is required (2014). In these cases, for granting the residency title, previous approval of the Federal Employment Agency is necessary.

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²³³ Section 19a of the Residence Act (*AufenthG*).

²³⁴ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment.

4.3 Conditions of entry into the territory and the labour market of Austria

In Austria, the area of migration and asylum is regulated by five pieces of legislation: 1) the Settlement and Residence Act (*Niederlassungs und Aufenthaltsgesetz*, NAG),²³⁵ 2) the Aliens Police Act (*Fremdenpolizeigesetz*, FPG),²³⁶ 3) the Act governing the employment of foreign nationals (*Ausländerbeschäftigungsgesetz*, AuslBG),²³⁷ 4) the Asylum Act (*Asylgesetz*),²³⁸ and 5) the Citizenship Act (*Staatsbürgerschaftsgesetz*).²³⁹ In this form, foreigner legislation comprises the legal basis for the contemporary migration policy in Austria.²⁴⁰

In the area of visa policy, Austria follows the rules defined by the Treaty on the Functioning of the European Union, according to which issues concerning short-stay visas (the so-called Schengen visas) with the validity of up to three months are regulated by a directly applicable Visa Code (in Austria with the validity from 5 April 2010),²⁴¹ while regimes of long-term stays are governed by the national legislation. In accordance with the Visa Code there are the following visa categories in Austria: A (**airport transit visas**), C (**short-stay visas for up to three months**) and D (**national visas**). Austrian national visas justify the holders to stay in the country for the period of 91 days or up to six months and to enjoy free movement within the Schengen area during three months. The visa obligation applies to third-country nationals whose countries do not have a visa waiver with Austria.

In accordance with EU law, **the citizens of EU member states, EEA and Switzerland** as well as their **family members coming from these countries** enjoy unlimited access to the territory of Austria and can stay there without a residence permit. During a stay longer than three months, registration with the competent Austrian

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²³⁵ Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich, BGBl. I Nr. 100/2005

²³⁶ Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreiseteil, BGBl. I Nr. 100/2005

²³⁷ Bundesgesetz vom 20. März 1975, mit dem die Beschäftigung von Ausländern geregelt wird, BGBl. Nr. 218/1975

²³⁸ Bundesgesetz über die Gewährung von Asyl, BGBl. I Nr. 100/2005

²³⁹ Bundesgesetz über die österreichische Staatsbürgerschaft (Staatsbürgerschaftsgesetz 1985 – StbG), BGBl. Nr. 311/1985

²⁴⁰ A more detailed list of legislation is available at: <http://www.migration.gv.at/en/service-and-links/laws-and-provisions.html>

²⁴¹ Regulation of the European Parliament and Council No. 810/2009 (EC) of 13 July 2009 on the Community code on Visas (Visa Code).

immigration authority is required, within four months after entering the country. According to Section 51 of NAG, in Austria, those EU citizens are entitled to a stay longer than three months who: 1) are in an employment relationship or who are self-employed, 2) are able to secure the means for subsistence and have sufficient health insurance both for themselves and their family, 3) go to an Austrian school or recognized educational establishment, and at the same time possess sufficient means for subsistence and have sufficient health insurance. After five years of uninterrupted stay in the territory of Austria, it is then possible to obtain a permanent residence authorization in the form of a certificate. The freedom of movement and stay applies also to Croatian nationals, having acceded the EU as of 1 July 2013. However, Croats have a more limited access to the Austrian labour market in the sense of specific conditions stipulated in the transitional measures for a period of seven years (Section 32 of NAG).²⁴² For Romanian and Bulgarian citizens, unlimited access to the Austrian labour market is in place from 1 January 2014.

As regards **family members of EU citizens, as well as family members of EEA, Swiss and Austrian nationals who come from third countries** and who made use of their right to free movement, they may apply for an Austrian residence card during a stay longer than three months; after five years of uninterrupted stay, they are entitled to one (Section 54 and Section 54a of the NAG). A list of the necessities required for the submission of an application to stay is given in the implementing regulation to the Act on the Settlement and Residence of Foreigners (NAG).²⁴³ The authorities responsible for managing residence issues for the above-mentioned groups of foreigners are the administrative authorities of individual Austrian states put in charge by the state governors, or competent regional or district administrative authorities, magistrates of statutory cities or in Vienna, city department 35 (MA 35).²⁴⁴

Austrian foreigner law strictly differentiates between 1) **short-term stays of up to six months**, regulated by the Alien Police Act (FPG, Section 20 and the following), incl. seasonal work, and 2) **stays longer than six months, which fall within** the regime of the Settlement and Residence Act (NAG).

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²⁴² See also the web portal: http://www.migration.gv.at/fileadmin/downloads/infoblaetter/transitional_period_for_croatia.pdf

²⁴³ Section 6 and the following *Niederlassungs- und Aufenthaltsgesetz-Durchführungsverordnung – NAG-DV*

²⁴⁴ In detail see the web portal of the Austrian Government on the issues of migration to Austria: <http://www.migration.gv.at/en/types-of-immigration/mobility-of-union-citizens-and-their-family-members-within-the-eu.html>

4.3.1 Short-stay visas for up to 6 months

National short-term visas are usually issued for the purpose of study or internship, and also to those foreigners who obtained a residence permit in Austria which they are to pick up in its territory. A short-stay visa, however, usually does not authorize the holder to work in Austria. Only in specific cases, this visa can be issued for the purpose of the search for work in Austria or for a temporary job.

1) Jobseeker visas (Section 24a, FPG) concern only highly qualified foreign workers who, after proving to be in possession of the required qualification or education, may be in search of work in Austria for six months. If they succeed in that, they can obtain a residence permit in the regime of the Red-White- Red Card (see below). This card entitles its holder to the stay in the country for a period of one year for the respective employment, and furthermore it makes its holder eligible to obtain a long-stay permit in the form of the Red-White-Red Card Plus (see below), enabling unlimited economic activity in Austria. However, there is a rule that if the competent authorities do not issue a decision to grant the permit while the short-stay visa is still valid, the foreigner must leave Austria and wait for the completion of the proceedings in the country of origin (Section 21 Paragraph 2 point 7, NAG). Otherwise, issuing a jobseeker visa is also subject to the point-based evaluation and to the discretion of the Public Employment Service Austria, AMS (Arbeitsmarktser-service) (Section 12 of the AuslBG).²⁴⁵

2) Visas for short-term work (Section 24 Paragraph 1 of the FPG). These visas are issued for short-term work economically dependent on an employer, independent work, or seasonal work. Following the expiration of a national visa, it is possible to remain in the country for another six months, if a relevant work permit was issued for the work in question (Section 31 Paragraph 1 point 6 of the FPG). In addition to the general requisites (Section 21 of the FPG, see below), applicants for work visas must submit a preliminary confirmation (*Sicherungsbescheinigung*) from the AMS which serves as a so-called promise of employment.

In general, however short-term visas are not meant as a tool of labour migration to Austria. For that purpose, it is necessary to first obtain a specific residence permit for a period longer than six months when still in one's country of origin (see below).²⁴⁶

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²⁴⁵ See <http://www.internations.org/austria-expats/guide/moving-to-austria-15578/austria-visas-residence-work-permits-2>

²⁴⁶ European Migration Network, *Austria – Annual Policy Report 2012*, IOM Country Office Vienna, April 2013, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/

4.3.2 Proceedings on the issuing of Austrian visas²⁴⁷

Austrian legislation does not give a detailed description of the proceedings on awarding national visas, yet according to the constant jurisprudence of the Supreme Administrative Court, the principles applicable to the administrative proceedings under the General Administrative Procedure Act must apply also to the procedures at Austrian embassies and consulates general.²⁴⁸ Overall, the rules for the proceedings on issuing national visas were adapted to the proceedings set in the Visa Code and in the EU guide to it.

Visa applications are filed before entry, i.e. the nationals of countries who do not have a visa waiver with Austria must apply for their first visa or residence permit at an Austrian embassy or consulate general in the country of origin or in the nearest country with diplomatic representation from Austria. Only persons from countries with visa waivers or foreign graduates of Austrian schools may file their applications from within the Austrian territory. In contrast to the Czech Republic, Austria does not utilize any special registration system for filing visa applications. On the contrary, some Austrian embassies and consulates hire external suppliers of services (call centres or services for handling visas) in order to become more applicant-friendly. These external services then accept visa applications and send them to the diplomatic or other office authorized to represent Austria in visa matters. This does not hold for national visas, though: an application for these must be filed directly with an Austrian office.

In order to be granted a national visa, it is necessary to meet several general conditions pursuant to Section 21 of the FPG: to submit all that is required (a valid travel document, a proof of possessing sufficient means of subsistence, medical report and other documents); and to demonstrate that the applicant will really leave after the termination of the validity of the visa (the so-called guaranteed return);²⁴⁹ and demonstrate that the granting of the visa will not defy public interest and that there are no reasons for refusing the visa.

Visa applications are looked into in particular by consular offices, but in case of need they may be assisted by specially trained workers of the Ministry of the Interior. The AMS then investigates in particular the visas of those seeking employment, for ex-

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²⁴⁷ Temesvári, M. *Visa policy as migration channel in Austria*, Study of National Contact Point Austria in the European Migration Network, 2012, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/migration-channel/at_20120613_visapolicy_final_en.pdf.

²⁴⁸ See e.g. Austrian Supreme Administrative Court, decision No. 88/01/0140 of 5 October 1988 (EMN Annual Report Austria 2012).

²⁴⁹ According to the Austrian Supreme Administrative Court (Decision No. 2007/21/0169 dated 19 June 2008), the relevant authorities are to assume the guaranteed return if there is no contrary evidence (EMS Annual Report Austria 2012).

ample the fact of whether they meet the qualifications required for granting the Red-White-Red Card (see below). The assessment of submitted applications is carried out in different ways, among others by interviewing the applicants in person or by consulting third parties. Moreover, Austrian authorities make use of the Schengen Visa Operation System (VIS), fulfilling the purpose of an automated visa application control.

If a visa application is refused, the applicant is informed about this fact in writing only if this was explicitly asked for in his or her application. Otherwise, the decisions are communicated orally only (Section 11a of the FPG).²⁵⁰ In case the consular authority does not issue a decision on the application within six months of its submission or within two months of filing a request for the delivery of the decision on the application in writing, the foreigner is entitled to resubmit his or her application to the Ministry of the Interior directly, which will then issue the decision. Austrian law provides for a visa withdrawal option, in case new circumstances emerge after it is issued or in case a significant change occurs, providing grounds for a refusal to grant the visa (Section 27 of the FPG) or in case a decision on expulsion is finalized (i.e. can be carried out). Visas can be extended only in the case that their holder could not leave Austria due to circumstances independent of his or her will or of humanitarian and other serious personal reasons (Article 33 of the visa Code).

4.3.3 Long-term authorizations to stay for the purpose of employment

The Austrian Settlement and Residence Act (NAC) sets in the provisions of Section 8 several types of residence permits in Austria, which can be issued to third-country nationals when their stay exceeds six months, given the specific purpose of stay in the country. Specifically the following permits can be issued:

- 1) permit for long-term stay on the basis of the "Red-White-Red Card" (*Aufenthaltstitel "Rot-Weiß-Rot Karte"*),
- 2) permit for long-term stay on the basis of the "Red-White-Red Card Plus" (*Aufenthaltstitel "Rot-Weiß-Rot plus"*),
- 3) permit for long-term stay on the basis of the "EU Blue Card" (*Aufenthaltstitel "Blaue Karte EU"*),
- 4) residence permit for a limited period of one year with the possibility of its renewal (*Niederlassungsbewilligung*) and with the possibility of receiving subsequent permanent residence,

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²⁵⁰ See also the decision of the Austrian Supreme Administrative Court No. 2009/21/0173 dated 8 September 2009 (www.ris.bka.gv.at or EMN Annual Report Austria 2012).

- 5) residence permit for a limited period of one year with the possibility of its renewal – without authorization for profit-making activities (*Niederlassungsbewilligung – ausgenommen Erwerbstätigkeit*),
- 6) residence permit for a limited period of one year with the possibility of its renewal – close person (*Niederlassungsbewilligung – Angehöriger*),
- 7) permits for permanent residence – third-country nationals (*Daueraufenthalt – EG*), which can be obtained after five years of uninterrupted stay in Austria and on having met the conditions of integration
- 8) residence permit with time limitations and with the possibility of obtaining permanent residence – family member (*Aufenthaltstitel "Familienangehöriger"*),
- 9) permits for permanent stay – family member (*Daueraufenthalt – Familienangehöriger*),
- 10) permit for a temporary stay for the purpose set in Sections 58-69 of the NAC (*Aufenthaltsbewilligung*) – compared to the Czech Republic, this is equivalent to long-term residence permits for such purposes as studies or research).

However if a foreigner intends to work in Austria, s/he must hold one of the authorizations for long-term stay, enabling employment or profit-making activities. The basic regime is obtaining a **residence permit for the period of one year** with the possibility of an extension (see *Niederlassungsbewilligung* in point 4 above) along with obtaining the relevant labour permit.

4.3.4 Single permits to reside and work

The introduction of two dual authorizations entitling long-term stay for the purpose of economic activity for qualified employees through an amendment to the Settlement and Residence Act which took effect on 1 July 2011 presents a significant change among the existing types of authorizations for stay issued to foreign workers. The former "residence permit – key work force" was integrated into the newly introduced dual authorizations to stay called: "Red-White-Red Card" and "Red-White-Red Card Plus", each of them joining residence permits and work permits, similarly as the former Czech Green Cards or European Blue Cards. The applicants for this type of permits are assessed according to a new point-based system and the quota system does not apply to them any longer.²⁵¹ In connection with the transposition of the EU **single per-**

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²⁵¹ European Migration Network. "Austria National Report." In: Annual Policy Report. 2011. Available at: <http://emn.intrasoft-intl.com/downloads/prepareshowfiles.do?entrytitle=1.%20annual%20policy%20reports>.

mit directive,²⁵² another amendment of the NAG took effect beginning 1 January 2014. It introduced unified proceedings for issuing individual residence permits for certain groups of foreigners from third countries which had not had this option so far.²⁵³

1) The Red-White-Red Card (RWRC) is the main residence authorization for third-country nationals who want to work in Austria and simultaneously fall into one of the specified categories of workers (Section 41, NAG):²⁵⁴ 1) very highly qualified workers, 2) skilled workers in shortage occupations,²⁵⁵ 3) other key workers, 4) graduates of Austrian universities and colleges of higher education, and 5) self-employed key workers. The applicant receives points for the fulfillment of certain criteria and qualification prerequisites, the maximum being one hundred points. The most important criteria include age, professional qualifications and experience, language knowledge and the amount of wages corresponding to the given qualifications (Section 12 and the following, Annexes A to C of the AuslBG). Admission criteria are different given which requirements are relevant for the given work force. Each category differs as to the requirements that are necessary to apply and as to the minimum number of points needed to pass.²⁵⁶ The RWRC provides limited access to the Austrian labour market: the authorization holder can be employed only with a specific employer who has to confirm the job offer before the application is filed, or the employer files the RWRC application himself or herself on behalf of the foreigner. The RWRC application is filed with a foreign office, which sends it further to the employment agency (Section 20d Paragraph 2, AuslBG). The RWRC is issued for one year. After having been employed

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²⁵² Council Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (the so-called single permit directive).

²⁵³ See Das Bundesgesetzblatt I Nr. 72/2013, available at www.RIS.bka.gv.at. An overview of the changes associated with the residence and employment of foreigners in Austria from 1 January 2014 is available at: <https://www.help.gv.at/portal/node/hlpd/public/obsah/340/seite.34060802.html>. A draft of the law implementing the directive 2011/98/EU see: http://www.parlament.gv.at/pakt/vhg/xxiv/i/i_02163/index.shtml.

²⁵⁴ An overview of all categories and criteria, including an on-line points calculator, can be found on the official Austrian migration web portal <http://www.migration.gov.at>.

²⁵⁵ Each year, the Federal Ministry of Labour, according to Section 13 of the AuslBG, specifies the category of necessary professional and qualified workers through the Regulation on qualified work (*Fachkräfteverordnung*). For the year 2013, government Regulation of 13 July 2012 BGBl II 2012/207 was in effect and it listed a total of twenty six categories of qualified professions, including for example: plumbers, electricians, floor fitters or qualified nurses. For the year 2014, Regulation BGBl. II 328/2013 of 31 October 2013 is in place, available at http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBlA_2013_II_328/BGBlA_2013_II_328.pdf.

²⁵⁶ In particular in highly qualified positions, it is necessary to achieve at least seventy points out of one hundred; workers in shortage occupations and other workers must obtain at least fifty points.

for at least one year under the RWRC authorization, then the worker can apply for the so-called RWRC Plus, or for a residence permit for another purpose.

2) The Red-White-Red Card Plus (RWRC Plus) is another dual authorization to stay (Section 41a of the NAG), serving several functions at once. First and foremost, it can be issued as a follow-up authorization to stay for those who were RWRC holders for a period of at least ten out of the last twelve months, and it authorizes unlimited access to the labour market (Section 3 Paragraph 1 and 2 of the AuslBG and Section 8 Paragraph 1 point 1 of the NAG). Furthermore, the RWRC Plus can be applied for by family members of third-country nationals who already have a residence permit, RWRC or Blue Card (Section 46, NAG). The granting of an RWRC Plus to family members means that they receive immediate and unlimited access to the labour market, which is a huge change compared with the previous legislation which required a one-year waiting period. Nevertheless, the applicants must still meet the general requirements for granting an authorization to stay. Yet they may, during the validity of the RWRC Plus, change employers according to their will, without any effect on time limits. The RWRC Plus is valid for one year in the whole territory of Austria.

3) The Blue Card is a dual permit to reside and work for highly qualified workers from third countries (Section 42 of the NAG), transposed to the Austrian law on the basis of the EU Directive on Blue Cards.²⁵⁷ The granting of a Blue Card is linked to a confirmed job offer from an employer, and the implementation of the labour market test carried out by the Austrian Employment Service (AMS). Blue Cards authorize the holder to stay and work in the territory of Austria for a maximum period of two years. In case that the labour agreement is concluded for a time period shorter than two years, the Blue Card must be valid for three months past the end of the agreement, thus constituting a protected period to allow the search for new work (Section 42 Paragraph 3 of the NAG). The conditions for granting a Blue Card are a university education in the length of at least three years, qualification corresponding to the offered job position and remuneration in the amount of 1.5 times the average annual wages in Austria for full-time work (this figure is regularly published by the Austrian Statistical Office). Another condition is that there are no unemployed persons with the same qualification registered with the employment service. Blue Card holders may subsequently apply for the RWRC Plus, entitling them to unlimited access to the labour market. The condition

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²⁵⁷ Directive 2009/50/EC on the conditions of the entry and residence of third-country nationals for the purposes of highly qualified employment (the so-called Blue Card Directive), Official Journal L 155/17, 18 July 2009.

for that is having worked for at least 21 months during the last 24 months in a job corresponding to their qualifications (Section 20e of the AuslBG). Also family members of Blue Card holders may apply for the RWRC Plus (Section 46 of the NAG).²⁵⁸

4) Residence permit for artists (*Aufenthaltsbewilligung – Künstler*) – from January 2014 on, artists who reside and work in Austria for a period longer than six months may newly obtain a dual residence permit, entitling them to work in the country for a specific employer. The conditions for granting residence authorization remain preserved according to the former provisions. In the case that the employer changes, it is necessary to apply for a new residence permit. In case of performing artist working for a period of less than six months, it is necessary to obtain both the relevant visa (C or D visa) and the work permit (Section 61 of the NAG and Section 14 and 20d of the AuslBG).²⁵⁹

5) Residence permit entitling the holder to unlimited access to the labour market for persons complying with integration requirements – long-stay permit holders with the possibility of an extension (*Niederlassungsbewilligung*), who fulfil certain integration criteria (Section 43 of the NAG) can (since 1 January 2014) obtain a residence permit with unlimited access to the labour market (RWRC Plus), without the obligation to simultaneously receive the so-called exceptional work permit (*Befreiungsschein*, see below).

6) Residence permit Plus (*Aufenthaltsberechtigung plus*) – pursuant to Section 81 Paragraph 31 of the NAG, from January 2014 on, this newly established single permit substitutes the RWRC Plus, granted on humanitarian grounds to unaccompanied minors not deprived of liberty (see Section 55 Paragraph 1 and Section 56 Paragraph 1 of the AsylG 2005).

4.3.5 The conditions of the employment of foreigners in Austria

Based on the AuslBG and in line with European legislation, only **EU citizens** who enjoy freedom of movement of workers within the EU have free access to the Austrian labour market. Austria however limits the admission to its labour market also when it comes to citizens from the newly acceded EU member states, always for the maximum possible period of seven years. For this reason, the employment of Romanian and Bulgarian nationals became unlimited only from 1 January 2014 on.

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²⁵⁸ See also https://www.bmask.gv.at/cms/site/attachments/6/8/6/ch2126/cms135722147405/fact_sheet_-_rwr_card.pdf

²⁵⁹ See also <https://www.help.gv.at/portal/node/hlpd/public/content/340/seite.34060802.html>

From 1 July 2013, specific conditions of transitional arrangements apply to **the citizens of Croatia** – the latest member of the EU, also for the maximum period of seven years. Although Croats enjoy freedom of movement within the EU, when working in Austria, it is necessary that their employers ask the AMS for a work permit, while the Croatian workers, since they are EU citizens, will have preference over candidates for work from third countries (the so-called Community preference). However, a work permit is not needed by those workers who had worked in the country already before the accession of Croatia to the EU and who have an authorization to stay there with an unlimited access to the labour market, i.e. a permanent residence permit or an RWRC Plus. These foreigners will, upon request, receive a confirmation of free movement (*Freizügigkeitsbestätigung*) from the AMS. Simplified conditions are in place for highly qualified employees (key staff), qualified employees in inadequately filled sectors, qualified health personnel and seasonal workers in tourism (hotel and dining services).²⁶⁰

On the other hand, when **third-country nationals** want to work in Austria, pursuant to Section 3 Paragraph 1 and 2 of the AuslBG, their employment is possible only if:

- ▶ the employer has received an employment permit (*Beschäftigungsbewilligung*) or permission for posting (*Entsendebewilligung*) for them;²⁶¹
- ▶ in case of short-term jobs, their employer issued them a confirmation of notification (*Anzeigebestätigung*); or
- ▶ they are holders of a valid RWRC, Blue Card, residence permit for artists, RWRC Plus, residence permit Plus, exceptional work permit, residence permit for a family member or permanent residence permit for a citizen of the EU.

Within the regime of single permits, pursuant to Section 17 of the AuslBG, the following have completely unlimited access to the labour market in the whole territory of the country: holders of the RWRC Plus (Section 41a of the NAG), holders of a residence permit for family members (Section 47 of the NAG), holders of a permanent residence permit for EU citizens (Section 45 of the NAG) and holders of a residence permit Plus

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²⁶⁰ More details for example at: http://www.migration.gv.at/fileadmin/downloads/infoblaetter/transitional_period_for_croatia.pdf

²⁶¹ Pursuant to Section 3 Paragraph 4 of the AuslBG, a work permit shall not be required in the case of short-term art activities performed within groups of artists, and furthermore, it is not required for summer internships or unpaid internships throughout the year; their total duration within one year may not exceed the period of three months, though.

(Section 54 Paragraph 1 Point 1 of the AsylG 2005). The holders of other dual permits are tied to a specific employer and job position (see Section 20d).

Separate work permits are now issued only to those foreign workers who do not fall into any of the categories of foreigners eligible to apply for one of the single permits (see above). Pursuant to Article 4 Paragraph 3 of the AuslBG, this concerns in particular seasonal workers, posted workers, workers with circular migration schedules, specific family members, students and au pairs.²⁶²

The AuslBG Act differentiates four types of work permit:

- 1) work permit (*Arbeitserlaubnis*) which was issued up to the end of 2013;
- 2) exceptional work permit (*Befreiungsschein*), which was issued up to the end of 2013;
- 3) work permit for seasonal work (*Kontingentbewilligung*); and
- 4) employment permit (*Beschäftigungsbewilligung*).

Work permit applications are filed with the competent employment service office (AMS) by the employers (Section 4 Paragraph 1, AuslBG), while the application for a dual permit to reside and work is filed by the foreigners themselves (or by the employers on their behalf) with the competent Austrian immigration authority according to the NAG (Section 20d of the AuslBG). Foreigners without a dual permit must obtain, in addition to a labour permit, the corresponding residence permit in the territory of Austria.²⁶³ Apart from obtaining an authorization to stay intended for economic activity, according to Section 4 of the AuslBG, applicants for asylum after three months from the submission of their application, those who were granted asylum and persons with subsidiary protection or persons whose stay in Austria is based on an exceptional residence authorization (*Duldung*) can also work in Austria on the basis of a labour permit.

Moreover, the AuslBG Act stipulates, in line with EU legislation, the preference principle for domestic workers. In its present form, this means that the employment of third-country nationals is possible only when it can be plausibly demonstrated that the given position cannot be taken by a citizen of Austria, an EU citizen, an unemployed foreigner authorized to stay and drawing unemployment benefits, or the citizens of Turkey or Switzerland who take precedence over other foreigners from third

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²⁶² See e.g., <https://www.help.gv.at/portal/node/hlpd/public/content/340/seite.34060802.html>

²⁶³ See e.g. <http://www.bmeia.gv.at/en/embassy/tokyo/practical-advice/travelling-to-austria/employment-in-austria.html>

countries.²⁶⁴ Besides that, foreigners may be employed only when it is made possible by the situation in the Austrian labour market and by economic and public interests. This so-called labour market test is provided by the Public Employment Service Austria (Section 4b, AuslBG).

1) Employment permit (*Beschäftigungsbewilligung*)

An employment permit (Section 4 and following of the AuslBG) is granted by the AMS only at the request of the employer and before it is issued, the labour market test must be performed first. This work permit is issued for one year, and it is tied to the given employment relationship; with the end of this employment, the permit expires too. An employment permit is granted only to those foreigners who have a residence permit. There is the possibility of extending the permit, whereby the submission of an application extends the hitherto valid authorization. In case of rejection, the employment relationship of the foreigner will end only upon the expiration of the period set by the legal regulations on the termination of an employment relationship (Section 7 Paragraph 8 of the AuslBG).

Pursuant to Section 4 Paragraph 7 of the AuslBG, there are exceptional cases, in which the AMS does not need to perform the labour market test. It is e.g. in the cases of:

1. persons close to²⁶⁵ foreigners with a permanent residence permit, who are employed; after twelve months of stay;
2. pupils and students (Section 63 and 64 of the NAG) whose employment does not exceed ten working hours per week and upon the completion of the first period of studies for obtaining a diploma or after obtaining the Bachelor degree, it does not exceed twenty working hours per week
3. university graduates (Section 12b Point 2 of the AuslBG);
4. qualified employees in inadequately filled sectors, as defined by a regulation on implementation (Section 13 of the AuslBG);
5. foreigners under Special Protection (Section 4 Paragraph 3 Point 9 of the AuslBG);²⁶⁶

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²⁶⁴ Originally, the AuslBG Act only stipulated the preference of Austrian workers over foreigners. Since the accession of Austria to the EU/EEA from 1 January 1993, such a preference is applicable also to the citizens of EU/EEA countries and their family members.

²⁶⁵ In the Austrian legislation, "close person" or "person close to someone" as a term is defined in the Criminal Act (Section 11).

²⁶⁶ The definition of persons who enjoy Special Protection is included in Section 69a of the NAG.

6. persons from the enlarged EU – this applies only for occupations in health care and caregiver services;
7. short-term seasonal work with a duration from six weeks up to six months (Section 5 Paragraph 1 of the AuslBG).

2) Work permit (*Arbeitserlaubnis*)

The work permit was abolished in the process of the implementation of the Directive on a single permit as of 1 January 2014, yet the already-issued permits continue to be valid (Section 32 Paragraph 11 of the AuslBG). An issued work permit is valid only for the federal state in which it was issued. It applies to all categories of professions and to persons legally residing in Austria, with a maximum validity of 2 years. The condition for granting a work permit is a valid authorization to stay. Also, in the last fourteen months, it is necessary to have worked for twelve months in the framework of an employment permit (*Beschäftigungsbewilligung*, see above bullet point 1). When a person holds a work permit, the employer does not need to apply for an employment permit. In case the employment is of a longer nature, the foreigner can extend the work permit provided that s/he had worked for eighteen months out of the last twenty four months. A work permit is granted also to close persons – in this case only a partner/spouse and persons younger than 15 years who have been residing in the country for more than 12 months. Since 1 January 2014, some work permit holders are eligible for an RWRC Plus, pursuant to Section 15 of the AuslBG (see above).

3) Exceptional work permit (Exemption certificate) (*Befreiungsschein*)

Effective from 1 January 2014, exceptional work permits were abolished too and integrated into a single permit in the form of the RWRC Plus (see above). Until then, it could be granted in such cases where the foreign applicant had not yet reached unlimited access to the labour market, i.e. had not been granted the RWRC Plus, or permanent residence. This permit used to be granted for a period of five years for the whole territory of Austria and it entitled the holder to unlimited access to the Austrian labour market. The employer thus did not need AMS consent for the respective employee, as described above in point 1). This type of work permit could be made use of for example by a citizen in Romania, legally residing and working in the territory of Austria before the accession of Romania to the EU and during the transitional period of limited access to the Austrian labour market. Alternatively, foreigners could apply for permanent residence permits which then replaced both the exceptional work permit and the long-term residence permit.

4) Work permit for seasonal work (*Kontingentbewilligung*)

The types of seasonal work where foreigners can search for employment are defined by a regulation issued by the Federal Minister of Labour, Social Affairs and Consumer Protection. Work permits for seasonal work are governed by Section 5 of the AuslBG and visas are issued pursuant to Section 24 of the FPG; (see above). The number of work permits of this type is limited by precisely set quotas (*kotingent*). Short-term permits for seasonal work are granted for example in tourism, forestry, or agriculture. The permits are granted for a maximum period of six months with a possible extension for yet other six months. Then, the seasonal worker must leave the country for two months, because s/he is not entitled to any other work or stay permit. This provision is meant to prevent the settlement of foreigners under the pretext of seasonal work.

4.4. The conditions of entry in the territory and the labour market of the United Kingdom²⁶⁷

The legal basis for the conditions of entry, stay, work and return of migrants in the United Kingdom is formed by the Immigration Act 1971, which went into effect on 1 January 1973,²⁶⁸ and the so-called Immigration Rules, created on its basis. The Immigration Act has until today undergone a total of twelve amendments,²⁶⁹ the last one in May 2014.²⁷⁰ Concerning the stay of EU citizens, a special regulation is in place.²⁷¹

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²⁶⁷ In line with the rest of the publication, we continue using the term "residence permit" and "permanent residence permit". The corresponding terms in the UK are "leave to remain" and "indefinite leave to remain", respectively. - editorial note.

²⁶⁸ <http://www.legislation.gov.uk/ukpga/1971/77/contents>

²⁶⁹ The most significant amendments were the following: Immigration and Asylum Act 1999; Nationality, Immigration and Asylum Act 2002; Asylum and Immigration (Treatment of Claimants, etc.) Act 2004; Immigration and Nationality Act 2006; UK Borders Act 2007; the Borders, Citizenship and Immigration Act 2009; Immigration Act 2014.

²⁷⁰ Concerning Immigration Act 2014, see: http://www.legislation.gov.uk/ukpga/2014/22/pdfs/ukpga_20140022_en.pdf The amendment was focused e.g. on strengthening the rights of foreigners in relation to public services (e.g. the introduction of the obligation to contribute to the public health insurance system for foreigners applying for visas with a limited duration), the involvement of different public and private entities (banks, real estate owners, bodies issuing driving licenses, etc.) in the carrying out of systematic controls of the foreigners' residence status, of their adherence to the law while in the United Kingdom and other.

²⁷¹ The so-called Immigration (European Economic Area) Regulations 2006, see www.legislation.gov.uk or www.eearegulations.co.uk.

Immigration Rules (hereinafter also "IR")²⁷² are regulations regarding the implementation of the Immigration Act, giving a detailed specification of various procedures for the competent authorities when addressing the issues of entry and residence of foreigners in the British territory. The regulation is created and also frequently amended by the Home Office.²⁷³

4.4.1 General principles of British visas

Since the United Kingdom, though in the EU, did not join the Schengen area, it does not take part in the common visa policy of the EU either. Therefore, the rules for the issuing of British visas are governed exclusively by the national law and apply in particular to the citizens of approximately 160 third countries which need visas to enter Britain. The citizens of the EU member states and EEA countries may enter the British territories freely on the basis of visa waivers and the principle of free movement within the EU. They can also work there, no quotas or other limitations apply to them.²⁷⁴ Their family members from third countries may then use various flexible forms of proceedings for the issuing of visas, entry and residence in the territory, which are not subject to the legislation laid down in Sections 77 and 79 of the Treaty on the functioning of the EU. During a stay longer than six months, every third-country national (regardless of the non/existence of visa requirements for entering the United Kingdom or regardless of family ties with EU citizens) is obliged to have a visa for entry into the United Kingdom.

Visas are issued and their granting is decided upon by a UK ministerial department on Visa and Immigration, UKVI). The UKVI annually accepts approximately three million applications for entry visas, eighty per cent of which are usually granted. In the vast majority of cases, according to the purpose of stay, tourist visas are issued. After them, follow visas for the purpose of studies, work (especially for high-skilled employees) and family reunification. Great Britain did not implement the EU Blue Card Directive.

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²⁷² The whole content of the immigration rules is available at: <https://www.gov.uk/government/collections/immigration-rules>

²⁷³ See e.g. Pendry, E., Dowling, S., Thorpe, K. "Managing migration through visa policy", Home Office UK, 2012, EMN Studies – Visa policy, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/migration-channel/uk_20120824_visapolicy_finalversion_en.pdf

²⁷⁴ For example, work migration programmes for low-skilled migrants to engage in seasonal and agricultural work (SAWS) and to be issued visas according to various sectors (Sectors-Based Scheme, SBS) were in recent years earmarked for Bulgarians, Romanians and Croats only. With Romanians and Bulgarians gaining free entry to the British labour market, these programmes are over.

4.4.2 Work visas within a points-based system

Since 2008, for stays for the purpose of labour and studies in particular, the so-called Points-Based System (PBS)²⁷⁵ has been in place, comprising five specific tiers (categories):

- 1) **high-value workers** (in the past known as "highly qualified employees") – this tier covers especially entrepreneurs, investors and persons with "exceptional talent";
- 2) **skilled workers with a job offer** – this category covers qualified employees in sectors where there is a labour shortage, intra-company transfers, ministers of religion and sportspeople.
- 3) **low-skilled workers** – a limited number of places for foreign workers who are to temporarily meet the needs of the labour market (no visas have ever been allocated under this tier since its introduction to the system).
- 4) **students** and
- 5) **temporary workers and youth mobility** – these visas are intended for the performance of work for non-economic purposes (for example sportspeople and artists, charity workers, religious ministers, government-authorized exchange programmes – especially the Youth Mobility Scheme, etc.).²⁷⁶

The conditions for obtaining a residence permit within the framework of the so-called points-based system consist in particular of the following: a specific job offer or admission to studies, the age of the applicants, qualifications, previous amount of earnings, experience from Great Britain, knowledge of English (and possibly of other languages), sufficient financial means (min. 945 GBP for 90 days of stay of), etc. The different tiers (and their subtiers) mutually differ as to the allowed length of stay, whether the type of stay can be extended or not, whether switching to another type of residence permit is possible, etc.

All visa applicants in the framework of the points-based system (except for Tier 1) must have a so-called sponsor, i.e. they must have a supporter and dispose of a Certificate of support (for Tier 2 and 5); a sponsor must have a license from the UKVI. A sponsor is an organisation with a seat in the United Kingdom which intends to employ the migrant or to provide education to him or her. Only within the

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²⁷⁵ The rules of the Points-Based system are contained in particular in part 6a and in Annex A of the Immigration Rules. It is however necessary to mention that in many cases, it is not a points-based system in the usual sense of the word, but a simple (though mostly very complicated) list of conditions to be met for granting a residence permit. Thus, lacking points in one category usually cannot be compensated for by gaining points elsewhere.

²⁷⁶ More on these tiers at: <https://www.gov.uk/browse/visas-immigration/work-visas> or Pendry, E., Dowling, S., Thorpe, K. "Managing migration through visa policy", Home Office UK, 2012; or <https://www.gov.uk/browse/visas-immigration/sponsoring-workers-students>

Youth Mobility Scheme, it is the government of the country of origin that fulfills the function of the sponsor. In principle, the duties of the sponsor lie in ensuring that the migrant meets the conditions for migration, in controlling all necessary documents and informing about possible changes. Failure to fulfill the notification obligation may result in the loss of licence or in some cases other penalties.

Within the category Tier 1 – high value workers – there are the following subtiers:

"Tier 1 – (Exceptional Talent) Migrant" is characterized by Section 245b of the IR as belonging to such individuals who are internationally recognised at the highest level as world leaders in their particular field, or who have already demonstrated exceptional promise and are likely to become world leaders in their particular area. The applicant must possess a confirmation from an appropriate institution,²⁷⁷ while these confirmations are subject to a quota.²⁷⁸ A residence permit is granted for a period of three years and four months or for two years (in the case of an extension), while there are only minimal restrictions regarding the access of the migrant to the labour market.²⁷⁹

"Tier 1 (General) Migrant"; the migrant must obtain a pre-set amount of points in a total of four areas: 1) degree of education, 2) previous earnings, 3) out of this amount, the income earned in the United Kingdom, and 4) age.²⁸⁰ A residence permit will be granted for a period of two years (in some cases with an extension)²⁸¹ or for three years, see Section 245c and following of the IR).

"Tier 1 (Entrepreneur) Migrant" can, pursuant to Section 245d of the IR, work as a self-employed person (a sole trader), in partnership or through a legal entity. An entrepreneur migrant must prove the ability to further develop the business and take it over (or become its director) within the period of six months, and s/he must dispose with fifty thousand or two hundred thousand British pounds for investment.²⁸² Furthermore, there must be a "real intention" to invest these means (while the condition

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²⁷⁷ See Appendix L of the IR.

²⁷⁸ Section 4 Appendix A of the IR. There is a quota of 1000 Tier 1 (Exceptional Talent) visas issued per year. Each of the designated educational bodies (<http://www.depreyconsulting.com/uk-visas/tier-1-visas/tier-1-exceptional-talent/>) may issue an appropriate number of confirmations that the foreigner is an exceptional talent.

²⁷⁹ See Section 245be Letter b) point iii.) of the IR.

²⁸⁰ Section 11 Appendix A to the IR. In this case, too, access to the labour market is essentially unlimited.

²⁸¹ Section 245cb Letter a) of the IR.

²⁸² See Section 40 and Table 4 Appendix A of the IR. These funds must be allocated in an institution meeting the criteria defined.

of investment is not deemed met if these finances were used as remuneration for the applicant or if they were used to buy up a company and the previous owner used them for himself or herself and did not invest them in the company²⁸³). A residence permit is issued for three years and four months, while the migrant is not entitled to be employed elsewhere other than in their own business.²⁸⁴ If the holder of this residence permit ceases to have the amount determined for investment available, the residence permit can be revoked or its length can be shortened.²⁸⁵

"Tier 1 (Investor) Migrant", pursuant to Section 245e of the IR, is a migrant with a capital of at least one million British pounds.²⁸⁶ A residence permit is issued for a period of three years and four months. In case the migrant has not invested²⁸⁷ an amount of at least 750 thousand GBP within three months of his or her entry to the United Kingdom or does not maintain the investment in this level throughout the validity of the residence permit, it may be curtailed or revoked.

"Tier 1 (Graduate Entrepreneur) Migrant". Pursuant to Section 245f, this subtier is intended for UK graduates who have – according to recommendations issued by certain recognized subjects – genuine and exceptional business ideas, and who want to start up their business in the United Kingdom. It is logical that this subtier means an extension of the stay in Britain (though it does not necessarily need to immediately follow the initial stay). These migrants do not need to have the financial means, but they are limited in number to two thousand visas a year, pursuant to Section 69 Appendix A, where it is laid out as to how the recommendations are divided between the recognized institutions. A residence permit is issued for a period of one year only, then it probably must be extended within another subtier.

"Tier 1 (Post-Study Work) Migrant", discontinued as of 6 April 2012.

Within Tier 2 – skilled workers with a job offer – there are the following subtiers:

"Tier 2 (Intra-Company Transfer) Migrant" pursuant to Section 245g of the IR, is transferred to Britain either for training purposes or to fill a specific vacancy that cannot be filled by a British or EEA worker. The IR distinguishes four types:

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²⁸³ Section 245d Letter c) Point ii) of the IR.

²⁸⁴ Section 245dc Letter a) Point iii) of the IR.

²⁸⁵ Section 245de Letter c) of the IR.

²⁸⁶ Section 54 to 65 Appendix A of the IR. Had the migrant really invested these or otherwise specified means, s/he may under certain conditions be granted directly a permanent residence permit.

²⁸⁷ The investment needs to comply with certain limitations, one is not allowed to invest only into entities engaged solely in investing, see Section 245ee of the IR.

- a. Short-term staff for a maximum period of 12 months
- b. Long-term staff for a period exceeding twelve months, with a maximum duration of the residence permit of five years and one month²⁸⁸
- c. Graduate trainees, who are prepared towards a managerial or specialist role (residence permits can be awarded for a maximum of five months), and
- d. Skills transfer: Foreign workers are either being trained themselves or they impart their specialist skills to the UK workforce (residence permits can be awarded for a maximum period of twelve months).

Besides a sponsor, workers transferred within the company also need to have²⁸⁹ an adequate income.²⁹⁰ In the case of short term and long term staff (a) and (b), the IR further requires the migrant to have sponsor worker for a minimum period of twelve months, and as a rule, also in the time immediately preceding the application submission.²⁹¹ As proof of employment, it is often necessary to submit a confirmation of income (or of income compensation in case of illness) during the whole twelve-month period. Regarding the training of graduates, the number of migrants which the same sponsor can support is limited to five trainees. It is also important that the applicant must not have had entry clearance (as a Tier 2 Migrant at any time during the twelve months immediately before the date of the application.²⁹² Migrants can work for the sponsor only, and even then they are subject to any notification of a change to the details of that employment (in some cases, the migrants can change employers, however, in short-term or long-term staff visas they cannot receive an extension of the residence permit because of such a change).

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²⁸⁸ Section 245gc of the IR

²⁸⁹ Section 73 Appendix A. In most cases, the sponsor must have an A rating and also a job vacancy and a level 6 in National Qualifications Framework. Under certain conditions, the sponsor can have a level 4, too (the pre-requisites for falling into a certain level are specified in Appendix J).

²⁹⁰ The income must be provided by the sponsor and has to reach the minimum of 41 000 GBP (in case of long-term staff) or 24 500 GBP (in other cases) annually, whereby pursuant to Section 74 Appendix A of the IR, this income may not result from overtime work (the maximum working hours are 48 hours per week, see Section 75d). Compensation paid by the employer may be subsumed into the overall income only under certain conditions.

²⁹¹ Section 73c of the IR. As a rule, the migrant should have worked for the sponsor outside the territory of the United Kingdom. In case the work took place in the United Kingdom, it counts only if the migrant was the holder of certain residence permits.

²⁹² Section 75gb of the IR. This condition is not applicable, however, for example in the case of a migrant with annual wages exceeding 153 500 GBP.

“Tier 2 (General) Migrant“. These migrants may apply for a residence permit

- ▶ only for the purpose of a job²⁹³ which has passed the labour market test. The labour market test consists mainly in proper publication of the relevant job vacancy,²⁹⁴ whereby the sponsor is obliged to prove that the job cannot be taken by settled workers (this condition however does not apply to jobs at the level of PhD), and
- ▶ If their income is to be of at least 20 500 GBP annually.²⁹⁵

The labour market test is not necessary if the job vacancy belongs among the list of shortage occupations according to Appendix K of the IR,²⁹⁶ or if the income of the foreigner is to be higher than 153 500 GBP annually. The labour market test is in some instances also not necessary when the foreigner continues to work for the same employer and at the same position for which s/he has been issued the previous residence permit. Residence permits according to subcategory Tier 2 (General) however, are issued (with certain exceptions²⁹⁷) only until a yearly quota is reached, see Section 80 and the following Appendix A of the IR. Currently, the quota makes 1725 applications in a month.²⁹⁸ The sponsors – employers – compete for places in the framework of this quota in particular by offering the migrant a higher salary (the higher the salary, the more points the employer receives).²⁹⁹

The required knowledge of English is at a B1 level, only in some cases this condition is reduced to the level of A1.³⁰⁰

Another limiting condition is that the applicant for this subcategory must not have been granted a residence permit in the UK³⁰¹ as an applicant in the same category at

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²⁹³ The Sponsorship Certificate requires a strict adherence to time limits: it is valid when issued not later than three months after the sponsor was included in the list and not earlier than three months before the residence permit is applied for.

²⁹⁴ See Section 78 and Charts 11b a 11c Appendix A of the IR. The minimum period for which these jobs must be advertised is usually twenty eight days. Appendix A of the IR often lays out specific websites at which the vacancy must be advertised or how frequently a certain media outlet needs to be published for the job publication to be valid.

²⁹⁵ Section 79 Appendix A. In addition to the stipulated income level, other criteria regarding income must be met – e.g. it can not be lower than the designated Appropriate Salary Rates, pursuant to Appendix J of the IR.

²⁹⁶ At the moment, this applies e.g. to IT specialists, health nurses at neonatological intensive care units, social workers with children and families and others. The working hours must be at least thirty hours per week.

²⁹⁷ The quota does not apply for example to jobs with a salary exceeding 153 500 GBP annually.

²⁹⁸ The monthly quota is sometimes reduced by the number of Croatian nationals who were granted residence permits in the previous month.

²⁹⁹ See Table 11D Appendix A of the IR.

³⁰⁰ See Section 5 Appendix B of the IR.

³⁰¹ Section 245hb Letter g) of the IR

any time during the twelve months immediately before the date of the application. Furthermore, the applicant may not possess more than ten per cent of the company sponsoring him or her.³⁰²

A residence permit is issued for five years and one month.³⁰³ The residence permit holder may not be employed anywhere else than with the sponsor and s/he is subject to any notification of a change to the details of that employment.

“Tier 2 (Minister of Religion) Migrant”. The work of a minister of religion may not consist mostly of activities of “non-pastoral” nature, such as teaching, and media or administrative work.³⁰⁴ In this case, no conditions regarding the salary are determined, yet the sponsor must maintain the foreigner, provide him or her with housing and the migrant must dispose with the specified means for the stay.³⁰⁵

“Tier 2 (Sportsperson) Migrant”. Section 100 Appendix A of the IR characterizes the sportsperson migrant as a player or trainer at the highest international level. The permit is issued for three years.

Within the Tier 4 category – students, there are the following subcategories:

“Tier 4 (General) Student”: the migrant must be older than 16 years and must present a confirmation of the admission to studies, while

the number of residence permit applications under this visa type is subject to quotas pursuant to Section 115b Appendix A of the IR and

sponsors – educational establishments must pass specific control and audits; also regarding the educational establishments, there is a certain rating hierarchy.³⁰⁶

A residence permit is issued for the duration of the educational course extended by two or four months.³⁰⁷ Permit holders may only work in the holidays and during the school year part-time;³⁰⁸ it is also possible to be employed within the educational course if the period of work does not exceed one third or one half of the total length of the course.

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³⁰² Section 245hb Letter l) of the IR

³⁰³ Section 245hc of the IR.

³⁰⁴ Section 92 Appendix A of the IR.

³⁰⁵ Section 92 Letter g) Appendix A of the IR

³⁰⁶ See e.g., Section 116 Appendix A of the IR.

³⁰⁷ According to Section 245zv Letter g) and ga), in the case of certain levels of studies, the overall stay of the student in the United Kingdom may not exceed three years or five years.

³⁰⁸ Based on the type of studies, the student may work either up to twenty or ten hours a week, see Section 245zw Paragraph c) Point iii) of the IR.

“Tier 4 (Child) Student” must be a person between the ages of 4 to 18 years, supposed to be brought up in the United Kingdom.³⁰⁹ The sponsor must be a person with a special license for the sponsorship of this type of stay. Residence permits are issued for a period of up to six years (if the foreigner is older than sixteen years of age, then only for a maximum period of three years). The permit holder can work only if s/he is older than sixteen years and works during the time of holidays, or a part-time job of ten hours per week at maximum, or if employment is part of the educational course, and it does not exceed one half of the total length of the course.³¹⁰

Within the Tier 5 category – temporary workers and youth mobility, there are the following subcategories:

“Tier 5 (Youth Mobility) Temporary Migrant” is intended only for the citizens of selected countries, and each of these selected countries has its own quota;³¹¹ foreigners must be aged between 18 and 31 years and childless or without childcare obligations.³¹² Every migrant can enter Britain via this route once only, while the residence permit is issued for two years and the foreigner is entitled to work and – with constraints – also to do business.

“Tier 5 (Temporary Worker) Migrant” is pursuant to Section 245zm of the IR a subcategory meant for foreigners who work towards such aims as: culture, charity, religion, or internationally acknowledged aims such as volunteering.³¹³ This category, nevertheless, comprises also private servants in diplomatic households and workers of international organizations³¹⁴, and certain supplier relationships³¹⁵.

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³⁰⁹ Section 245zz of the IR.

³¹⁰ Section 245zzb

³¹¹ Section 245zi and Appendix G of the IR. It is the following countries and the following quotas: Australia (38,500 places), Canada (5 500 places), Japan (1 000 places), New Zealand (9 500 places), Monaco (1 000 places), and Taiwan, South Korea and Hong Kong (each being granted one thousand places). The citizens of the three last-mentioned countries must have a sponsor, while in the other countries, the role of the sponsor is fulfilled by the country itself.

³¹² Section 245zk Letter b) of the IR.

³¹³ Individual subgroups of this type of authorization are listed in Section 111 Appendix A of the IR, for example: creative worker (in this case, the sponsor must observe certain specified standards), charity worker (this work must be unpaid and it cannot be a permanent position), religious worker, youth exchange in order to obtain work experience (Government Authorised Exchange subcategory for a Work Experience Programme – Section 111 Letter e) Appendix A of the IR), etc.

³¹⁴ Section 245zo Letter f) of the IR. Section 245zp Letter f) Point iv) stipulates that these foreigners are authorized to work only in the household of the sponsor, i.e. they cannot, even for the sponsor, work elsewhere.

³¹⁵ Section 111 Letter f) Appendix A of the IR; in this case the foreigner needs a university education.

A residence permit is issued for the period set in Section 245zp of the IR, the longest period being for two years; the right to be employed is usually restricted to occupation with the sponsor.

4.4.3 Work visas outside the points-based system

Apart from the above mentioned points-based system, for the purpose of employment, it is possible to issue the following types of visas:

for domestic workers in private households.³¹⁶ This is the case when an individual (a family) comes to the United Kingdom together with their domestic worker. These workers may take one of the following positions: cleaner, chauffeur, cook, nanny, those providing personal care for the employer and their family (according to <https://www.gov.uk/domestic-workers-in-a-private-household-visa/overview>). Domestic workers are eligible to enter the British territory if: 1) the person has worked for the employer for a period of at least one year, 2) the person is at the age of 18 to 65 years. After obtaining a residence permit, domestic workers can stay in the British territory for a period of 6 months or less, in case their employer should permanently leave the country earlier (short-term trips of the employer or of the worker abroad are possible); an extension of the time of stay above the total of six months is possible only for domestic workers who came to Britain before 6 April 2012.^{317, 318}

for representatives of foreign companies who have no other representation in Britain, and the foreigner should be their only representative for the United Kingdom.³¹⁹ This category may be used by representatives of foreign media, too.³²⁰ A residence permit is issued for the period of up to three years, while the foreigner can work only for the company s/he represents.

Regarding persons with British ancestors: they must be citizens of the Commonwealth, with one grandparent born in the territory of the United Kingdom,

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³¹⁶ See Section 159a of the IR.

³¹⁷ Section 159ea of the IR, further see also <https://www.gov.uk/domestic-workers-in-a-private-household-visa> or <http://www.kalayaan.org.uk/>

³¹⁸ The employer can be a British or EU national or s/he can visit the United Kingdom on the basis of a tourist visa, see Section 159a Point iii) of the IR.

³¹⁹ Section 144 of the IR. Yet the foreigner may not be a majority owner of the respective company.

³²⁰ Section 144 Point ii) of the IR.

who are able to work³²¹ and maintain themselves without the help of public funds. A residence permit is issued for a period of up to five years, without restrictions in the labour market.

Turkish citizens can enter the British labour market (as well as the labour market of other EU member states) on the basis of the agreement creating an association between the European Economic Community and Turkey and on the basis of the Decision of the Association Council EEA/Turkey,³²² either as entrepreneurs, or under more strict conditions as employees.³²³

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³²¹ Section 186 of the IR. This also applies to the descendants of the people born in the territory of today's Irish Republic up to 31 March 1922.

³²² This concerns particularly the Decision No. 1/1980 of 19 September 1980 (on the right to employment of certain groups of Turkish workers in the EU), the Decision No. 3/1980 of 19 September 1980 (on the social rights of Turkish workers)

³²³ <https://www.gov.uk/browse/visas-immigration/work-visas>

5. The stay of labour migrants in the territory of the countries compared

An authorization to reside and work entitles labour migrants to stay in the territory of the given country and to perform a (specific) employment. Individual residence permits, however, differ in what rights are linked to such an authorization, in particular:

- Whether, and under what conditions is the residence permit subject to an extension
 - Under what conditions can this authorization be revoked
 - What rights are linked to the authorization for the labour market; whether and how easily the foreigner can change employers or add another job to the original one (i.e. realize the freedom of movement in the labour market); or whether s/he can reside in the host country also when unemployed
 - What social rights does the foreigner enjoy, in particular as regards unemployment benefits, health insurance or the support of families, and
 - Whether and under what conditions can a foreigner get permanent residence permit.
- Some of these issues are discussed further in this Chapter.

5.1 Residence of labour migrants and their freedom of movement in the labour market.

5.1.1 The Czech Republic

According to the Czech Act on the Residence of Foreigners (hereinafter the Residence Act), one of the primary means of migration control is the requirement that foreigners (in particular third-country nationals who do not have permanent residence yet) shall reside in the Czech Republic only for a specific purpose. When the purpose disappears, the authorities usually have the right and/or obligation to revoke the foreigner's residence permit. The fact that the permit to stay is interconnected with the purpose of the stay is especially thoroughly developed in the area of labour migration. Here, it is in part by law and in part by the application practice that sets what is understood as the fulfilment of the purpose to stay:

- in case of employment, it is the duration of the (legal) employment relationship, and
- in case of doing business, it is the existence of a formal authorization to pursue business and at the same time the actual exercise of business activities (lately, what is required in practice, too, is the physical presence of the foreigner for an unspecified part of the duration of the authorized stay).

When the authorities find out that a migrant authorized for a long-term stay for the purpose of employment has not been in a legal labour relationship for a certain period of time, they launch an action to revoke the migrant's residence permit. They refer either to Section 37 Paragraph 1 Letter b) of the Residence Act (in case the foreigner continues to be unemployed) or with reference to Section 56 Paragraph 1 Paragraph j) of the Residence Act (if the unemployment is a thing of the past and the foreigner is now employed again). An exception to this is an earlier provision in Section 46 Paragraph 8 of the Residence Act and the simultaneously valid provision in Section 46e. Letters b) to d) of the same act, under which the alien shall in certain cases³²⁴ be entitled to a three-month long period to search for a new job. Blue card holders are entitled to one period of unemployment up to three months long, regardless of the reason for the termination of employment.³²⁵

The law is interpreted in principle in such a way that the foreigner is obliged to fulfill the purpose of stay throughout the whole period of long-term residence. Thus, to have an authorization removed, it is sufficient to be out of employment for a single day. In the case of short-term unemployment, though, the principle of proportionality (meaning finding a fair balance between the breach of law on one side and factors like length of previous stay, level of integration, situation in the country of origin etc. on the other side – editorial note) pursuant to Section 37 Paragraph 2 at the end of the Residence Act was utilized. According to the last amendment to the Residence Act No. 101/2014 Coll., however, the legal wording has become somewhat stricter. Now, pursuant to Section 46e of the Act, what newly constitutes grounds to revoke the residence permit (or employee cards) is only the fact that the "employment relationship of the foreigner has been terminated", without any examination of the principle of proportional action. Receiving authorization for another employment (i.e. the change of employer) is once again dependent on permission issued by the Ministry of the Interior. It can be expected, thus, that this amendment will strengthen the interconnectedness of the migrants' residence and work permit (legal stay is tied to an authorized job).

As regards the freedom of movement of third-country nationals without permanent residence³²⁶ in the labor market; two basic groups can be distinguished:

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³²⁴ This may include the termination of an employment relationship for reasons of restructuring or because of the nonpayment of wages by the employer.

³²⁵ See Section 46f Paragraph 1 Letter f) of the Alien Act.

³²⁶ EU nationals and their family members, as well as foreigners with permanent residence: when compared to the Czech nationals, these have an essentially equal status in the labour market.

- 1) Foreigners with free access to the labor market: In order to perform work, they need only a valid residence permit, not a special permit authorizing specifically for a job position. This group of foreigners is listed in Section 98 of the Employment Act and it comprises students and graduates of Czech schools, holders of certain types of authorization (e.g. long-term residence permit holders for the purpose of family reunification), some posted workers and foreigners performing certain types of labour (e.g. scientists, religious ministers).
- 2) Other foreigners, whose employment is subject to authorization by the labour office or by the Ministry of the Interior. This permit is issued for a specific job with a specific employer for a specified period of time, while this work must be – with the exception of business trips – performed on a specified place.

Concerning the second group of migrants, each change of job position, i.e. the change of employer, taking up new work alongside the existing job, but also a change in the work position within the same employer, requires a new authorization. This situation does not change until the foreigner obtains permanent residence. An exception is again concerning Blue Card holders only: after two years of residence, given any change in their job position, they are subject to a notification obligation with the Ministry of the Interior, but nothing else.³²⁷

5.1.2 Germany

The German Residence Act defines residence permit under Section 7 as such an authorization to stay which is issued for a limited time period and for a specific purpose of the stay (the purpose may be mentioned in the law but does not need to be). In the event of exercising a profit-making activity, the purpose of the stay is then employment, for which the foreigner was granted consent by the Foreign Office.³²⁸ Should the respective job be over, German legislation recognizes two legal responses reacting to the loss of a job by a foreigner, namely:

- ▶ an automatic revocation of the validity of the residence permit. This is stipulated directly by the law³²⁹ in the event that the residence permit contained (even addition-

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³²⁷ Section 42i Paragraph 8 of the Residence Act.

³²⁸ This consent by the Foreign Office is in most cases consent granted under the condition that the Federal Employment Agency grants its consent, too.

³²⁹ See Section 12 and 51 Paragraph 1 Line 1 of the AufenthaltG, under which a residence permit may contain resolute conditions, upon the meeting of which the residence permit shall be revoked.

ally) such a resolutive condition that with the termination of a specific employment relationship, the validity of the residence permit is revoked as well,³³⁰ or

- ▶ subsequent time limit (*nachträgliche Befristung*), or rather shortening the validity of the residence permit on the grounds that the conditions on which the authorization was granted are no longer met.³³¹

In both cases, the competent Foreign Office has room for administrative discretion. It is only on the basis of an assessment of the individual situation that it is decided whether the resolutive condition be applied (under *VwV*, it should be considered whether there is a danger of fraudulent conduct) or not. In case of a job loss, the Foreign Office reconsiders whether or not to shorten the period of the residence permit validity, or under what conditions, e.g.

- ▶ the Office may grant the foreigner a specific time period to find a new job
- ▶ the Office may take into account whether the foreigner has means of subsistence, and whether the foreigner is e.g. receiving unemployment benefits (the Office may e.g. reduce the validity period of the residence permit to the period during which the foreigner shall be entitled to unemployment benefits).

Administrative discretion of the Foreign Office is based also on the question of whether and to what extent foreigners will be allowed or restricted access to the labour market. Concerning access to the labour market, labour migrants from outside the EU who do not have permanent residence may find themselves in the following types of situations:

- a) free access to the labour market follows directly from the law:³³² this concerns e.g. residence permit for the purpose of the search for suitable employment after graduating from German universities or from vocational/professional education;³³³ certain residence permits granted on humanitarian grounds including recognized asylum seekers;³³⁴ residence permits for certain family members (this concerns family mem-

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³³⁰ It is, however, important to be aware of the fact that the provision on an automatic revocation of residence permit validity on the day of termination of an employment relationship does not need to result in the foreigner losing his or her authorization to stay. In such cases where a foreigner files an application for a new permit before the termination of the previous authorization (e.g. during the period of notice), the existing permit is valid until the Foreign Office shall decide (the so-called fiction). And even in the case of late submission of the application for a residence permit, the authorities may decide to grant fiction on the grounds of redressing the hardship of the law. See Section 81 of the *AufenthG*.

³³¹ See Section 47 Paragraph 2 of the *AufenthG*. Regarding this provision, the *VwV* states that, as a general rule, the decision on additional time restrictions on the validity of the residence permit should be applied only if the initial duration of the residence permit of the given foreigner exceeds six months.

³³² In this case, too, the residence permit must contain a provision that the foreigner is permitted to exercise a profit-making activity. This provision is, however, only declaratory.

³³³ Section 16 Paragraph 4 and Paragraph 5b and Section 17 Paragraph 3 of the *AufenthG*

³³⁴ Section 22, 23 and 25 of the *AufenthG*

bers of German citizens; family members of those foreigners who themselves have free access to the labour market,³³⁵ as well as certain family members of foreigners, if these family members have been staying in Germany for more than two³³⁶ or three years³³⁷); and the residents of other EU member states under Directive 2003/109 /EC

b) free access to the labour market is based on a decision by the Foreign Office: the *BeschV* provides the guidelines which determine in which cases issuing a decision is up to the discretion of the Office and the consent of the Federal Employment Agency is not needed. At the same time, the Foreign Office has room for administrative discretion regarding whether it may allow the foreigner an unlimited access to the labour market, or it may authorize him or her for a specific job only (see more in point c) below). In some cases, free access to the labour market may be permitted for example after two years of employment or after three years of residence³³⁸

c) the access to the labour market is limited, while for each job, the foreigner is required to have a special permit from the Foreign Office. At the same time, one can once again distinguish such situations where the Foreign Office may only issue such a special permit after the approval by the Federal Employment Agency, and those cases when the Foreign Office may issue a permit on its own. In case the approval of the Federal Employment Agency is required, it is also important to distinguish whether the Federal Employment Agency can approve the foreigner's employment without testing the labour market, or whether the option of filling the job with German employees or with foreign workers who have a preference must be tested³³⁹

It can be concluded that the German legal provisions on a foreigner's freedom of movement in the labour market allow for significant decision-making room by the Foreign Offices. These may both grant a foreigner full access to the labour market as well as subject him or her to a very strict and detailed inspection – and that until the day of obtaining permanent residence. The powers of the Foreign Offices (especially

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³³⁵ Section 28 Paragraph 5 and 29 Paragraph 5 of the *AufenthG*

³³⁶ Section 29 Paragraph 5 of the *AufenthG*. The only condition is that the foreigner with whom the holder of an authorization to stay for the purpose of family reunification has reunited and is not excluded from the possibility to extend his or her residence permit.

³³⁷ The three-year time limit applies to those foreigners whose marriage to the sponsor fell apart, see Section 31 of the *AufenthG*.

³³⁸ See Section 9 of the *BeschV*. This does not hold, though, for a foreign employee whose duration of stay and employment is limited in time by a legal regulation, in particular by respective provisions in the *BeschV*. There are also special provisions for students.

³³⁹ See also *Durchführungsanweisungen zur Ausländerbeschäftigung, Beschäftigungsverordnung (BeschV), Durchführungsanweisungen (DA)*, available at www.arbeitsagentur.de.

concerning newly arrived foreigners) are limited by the powers of the Federal Employment Agency whose approval is needed for certain authorizations for employment.³⁴⁰

5.1.3 Austria

In Austria, the residence of third-country nationals is also based on the purpose of the stay concept in two respects:

- ▶ the existence of and meeting the purpose of the stay is one of the conditions for granting a residence permit under the Settlement and Residence Act (NAG), as well as under the Alien Police Act (FPG). If this condition is no longer fulfilled, this gives ground for the withdrawal of authorization to stay pursuant to Section 28 Paragraph 5 of the NAG, and
- ▶ the purpose of the stay concept not only imposes an obligation on foreigners to meet this purpose, but to a certain extent it also prevents them from performing some of the activities for which the residence permit was not issued. Under Section 77 Paragraph 1 line 1 of the NAG, an administrative offense is committed by the person who fails to notify without undue delay about a change in the purpose of the stay or being engaged in an activity which is not included in the permitted purpose of the stay (this applies above all to self-employment, to the performance of which are entitled only those foreigners whose residence permit is issued for this purpose).³⁴¹

In terms of employment, Section 52 Paragraph 4 lines 2 and 3 provide special provisions. According to these, the Austrian Federal Office for Immigration and Asylum shall issue a decision on the return of a foreigner who is a Red-White-Red Card or Red-White-Red Card Plus holder or who is issued a settlement permit, if

- ▶ during his or her first year of residence s/he has not performed dependent profit-making activity for more than four months (and was registered with the Employment Agency as available for work placement), or
- ▶ is staying in Austria for more than one year, but less than five years, and during the period of one year has almost continuously failed to perform a dependent form of profit-making activity.³⁴²

When assessing the Austrian approach, allowing that a foreigner be unemployed for a longer period of time with the growing length of his or her stay, it is, however, important to notice that a stranger continues to be required to be able to prove having

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³⁴⁰ Foreign Offices have, of course, a crucial role in the sense that despite the consent of the Federal Employment Agency, the Office may decide that the foreigner will not be granted employment authorization.

³⁴¹ See Section 32 of the NAG. Despite being issued the respective trade license, this prohibition is in place.

³⁴² The notification procedure is specified e.g. by Section 26 Paragraph 5 of the AuslBG, under which the employer is required by the employment agency to report both the start and end of a foreigner's employment within three days.

sufficient financial means to maintain himself or herself for the duration of the stay, and this in the form of regular income.³⁴³

As far as the freedom of movement of migrants in the Austrian labour market is concerned, the Employment Act (AuslBG) assigns third-country nationals without a permanent residence permit to two groups, these being:

- ▶ foreigners with free access to the labor market, chiefly Red-White-Red Card Plus holders and family members of Austrian nationals, if they have been issued authorization to stay³⁴⁴, and
- ▶ other foreigners who need a special permit for each economic activity (in any of the available forms), while under Section 6 of the AuslBG, a job position is defined by the professional activity itself and an employer (then, the activity may be performed in the whole territory of Austria).³⁴⁵

Those who rank among foreigners listed in the second group are mainly foreigners falling under the regime of the Foreign Police Act, whose stay and work may take six months at the most. Furthermore, it comprises also the holders of residence permits pursuant to Sections 58 to 69 of the NAG (with the exception of researchers—see below). Who else belongs within this group are Red-White-Red Card holders, who may, however, after one year of residence under this authorization and after at least ten months of adequate work, obtain the Red-White-Red Card plus and with it a free access to the labour market (the holders of this card, who, according to Section 41 Paragraph 2 lines 4 of the AuslBG are independent entrepreneurs, must before obtaining the Red-White-Red Card plus obtain also a settlement permit under Section 43 of the NAG and they need to meet the condition of "advanced integration").³⁴⁶ Free access to the labour market as part of the Red-White-Red Card plus may be also obtained by

- ▶ Blue Card holders after two years of residence, if they have been employed for at least twenty one months at an appropriate job position, and
- ▶ the holders of residence permits for the purpose of scientific research, after two years of residence.

Therefore it can be concluded that in Austria, essentially all those labour migrants who are highly qualified have the option to gain free access to the labour market within one to two years. The same holds under Section 46 of the NAG for most family members of these foreigners.

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³⁴³ Section 11 Paragraph 5 of the NAG.

³⁴⁴ See Section 47 Paragraph 2 of the NAG.

³⁴⁵ Pursuant to Section 6 Paragraph 2 of the AuslBG, for a maximum period of one week, a foreigner may perform work in a different position, too, without the need for a new employment permit. In order to work in a different position for a longer period of time, though, the migrant needs a new employment authorization.

³⁴⁶ See Section 15 and 20e of the AuslBG. In this way, entrepreneurs receive the Red-White-Red Card Plus only after two years of residence.

5.1.4 The United Kingdom

Residence permits issued to foreigners staying in the United Kingdom are subject to the duration of those conditions and other circumstances under which the authorization has been granted. If these conditions cease to exist, it gives ground, pursuant to Section 323 Paragraph ii) of the Immigration Rules (IR), that the relevant residence permit may be revoked.

In addition to this general rule, there is a plethora of more specific reasons for the cancellation of an individual residence permit issued in order to perform a profit-making activity.

In the case of holders of authorizations under Tier 2 or Tier 5, a residence permit must be cancelled in the event that the migrant does not commence to exercise, or prematurely ceases to exercise, the activities in respect for which s/he was sponsored (see Section 323a Letter a) Point i) of the IR.) A similar provision applies to migrants under Tier 4 in relation to studies. The revocation of an authorization to stay according to a previous sentence is not compulsory if the migrant is e.g.

- ▶ under 18 years of age or has a child aged under 18
- ▶ if it is possible to apply for another residence permit or for a change to the residence permit.³⁴⁷

In the case of migrants in Tier 2 or Tier 5, other reasons for revoking the permit are e.g. such situations as when for a period longer than one month during a calendar year the migrant was not in employment and did not receive wages (if this has not been due to illness or parental leave),³⁴⁸ or, when the migrant changes employers (an exception being the transfer of a whole company in some cases),³⁴⁹ or when the employment changes in nature so that it no longer matches the sponsorship certificate, under which the residence permit is issued, or when the foreigner's wage falls below the set amount.³⁵⁰ Another reason for revoking the permit occurs when the sponsorship license is removed from the foreigner's sponsor.³⁵¹

In the case of migrants in Tier 1, Exceptional Talent or Graduate Entrepreneur, the reason for the revocation of an authorization to stay is when the relevant institution withdraws its recommendation, on the basis of which the migrant was issued residence permit.

Another important reason for revoking any residence permit is the violation of some of the conditions under which the residence permit was issued, e.g. claiming as-

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³⁴⁷ See Section 323a: Letter b) Point iv) of the IR.

³⁴⁸ Section 323aa Letter a) of the IR

³⁴⁹ Section 323aa Letter b) of the IR

³⁵⁰ An exception to this is a temporary (for the maximum of one year) reduction of working-time for up to 30 %, if it concerns the whole business in which the foreigner is employed. After the end of this measure, the foreigner's wage is to return back at least to the same level as it was before the temporary reduction, see Section 323aa Letter h) of the IR.

³⁵¹ Section 323a: Letter b) of the IR.

sistance from public funds, or exercising unauthorized employment (see Section 323 Paragraph i) in connection to Section 322 Paragraph 3 of the IR.

As regards the free movement of labour migrants in the British labour market, there are very few migrants who have free access to any job from the beginning of their stay (e.g. the descendants of British ancestors pursuant to Section 186 of the IR and furthermore, some Tier 1 categories).³⁵² Most migrants falling under the points-based system are rather strictly linked to a specific job for a specific employer, while any change means a new procedure (new sponsor, often even a different visa category, while the transition between individual categories is relatively strictly regulated). This is true both for relatively rich migrants under Tier 2, and for domestic workers (whose stay is now in addition limited to a maximum of six months).

5.2 Social rights

5.2.1 The Czech Republic

As far as the position of third-country nationals in the system of the social law in the Czech Republic is concerned, simply put, it can be considered a general rule that permanent residence holders enjoy the same rights as Czech citizens. However, even foreigners from countries outside the EU without a permanent residence permit enjoy certain social rights, most importantly:

- ▶ In the area of pension insurance and sickness insurance, where foreigners generally enjoy completely equal rights as Czech citizens (the only exception being the so called "young age disability" under Section 42 of the Act on pension insurance, which includes a condition of permanent residence in the Czech Republic),³⁵³ and
- ▶ in the area of state social support, where rights are granted in general after one year of stay in the Czech Republic, employed foreigners and their families can newly claim them immediately after obtaining a long term residence permit;³⁵⁴ a problem most

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³⁵² Exceptional Talent, Investor or Graduate Entrepreneur have a more or less free access to the labour market, by contrast, however, migrant entrepreneur (although being a relatively rich investor who has brought at least 50 000 GBP to Great Britain) is limited to his or her own business, see Section 245dc Letter a) Point iii) of the IR.

³⁵³ However, the condition of permanent residence does not have to be fulfilled at the moment the disability arises: it can be met later on.

³⁵⁴ See Section 3 of Act No. 117/1995 Coll., on State Social Support as amended by Act No. 101/2014 Coll., implementing the single permit directive 2011/98/EU.

frequently encountered by foreigners in the context of the Act on State Social Support, is a missing residence permit or meeting the condition of residence of the remaining members of the family, the so-called jointly considered/assessed persons. The latter, though, concerns also Czech citizens.

Other social rights are usually granted to foreigners from third countries³⁵⁵ only along with obtaining a permanent residence permit. It is e.g. the assistance in material need or benefits for persons with disabilities. The same applies to being entitled to unemployment benefits and some other related tools of active employment policy (e.g. requalification benefits or the establishment of a socially useful job) according to the Employment Act. This is despite the fact that unemployment benefits and requalification benefits are essentially typical contributory benefits of insurance systems, to which also the employed foreigners (or to be more precise their employers) – just like all the other employees – make obligatory contributions to the state employment policy. The only one group of third-country nationals³⁵⁶ who can become the recipients of unemployment benefits despite the fact that they do not have a permanent residence permit are Blue Card holders (see Section 5 Letter b) Paragraph 4, Section 24 and 25 of the Employment Act).

The Social Services Act (including care allowances) provides specific rules according to which the rights of foreigners usually depend on obtaining permanent residence. However, certain social prevention services, including services of shelters, low-threshold day centres, hostels or outreach programmes, are provided to all persons legally residing in the Czech Republic.³⁵⁷ Newly, also all employees with a long-term residence permit and their family members are entitled to equal rights.³⁵⁸

The Czech system of public health insurance operates under a specific framework³⁵⁹ pertaining to the group of eligible persons. Out of third-country nationals, who do not have permanent residence permits, participants in Czech public health insurance are –

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³⁵⁵ An exception are foreigners benefiting from the EU Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, i.e. foreigners who have the status of a long-term resident in another EU member state and move in the Czech Republic where they have a long-term residence permit, see e.g. Section 5 Paragraph 1 Letter f) of the Act on Assistance in Material Need.

³⁵⁶ If we do not count family members of the citizens of other EU states and family members of the citizens of the Czech Republic, see Section 5 Letter b) Point 2 and Section 3 and 85 of the Employment Act and/or holders of subsidiary protection, see Section 53c of the Asylum Act.

³⁵⁷ Section 4 Paragraph 2 of Act No. 106/2006 Coll., on Social Services.

³⁵⁸ See Section 4 of Act No. 106/2006 Coll., on Social Services as amended by Act No. 101/2014 Coll., which implemented the Directive 2011/98/EU on a single permit.

³⁵⁹ See Section 2 of Act No. 48/1997 Coll., on Public Health Insurance.

with exceptions³⁶⁰ – only those foreigners who are employees or who are considered employees pursuant to Section 6 of the Income Taxes Act.³⁶¹ The participation of these foreigners in the system of public health insurance lasts only for the period of the duration of their employment.³⁶² Czech social legislation makes only relatively small distinctions between Czech citizens and foreigners. What follows out of this are two practical consequences:

- ▶ these employees stop taking part in public health insurance on the day of the termination of their employment, also in the case that this occurs when they are ill, pregnant or on maternity leave, and
- ▶ dependent family members of these employees as well as family members of all other participants in the system of public health insurance can themselves partake in this system only in the case that they themselves meet the conditions of participation in the system (e.g. employment or permanent residence); in the area of public health insurance, Czech legislation does not know the practice of a person paying for a domestic partner or dependents. Economically inactive family members of foreigners (who themselves are insured employees) are thus as a rule not included in the system of public health insurance, which applies also to children, including newborns.

Under the Residence Act, those foreigners who do not partake in the system of public health insurance are obliged to insure themselves privately/commercially, with one of the insurance companies registered as providers of this type of insurance by the Czech National Bank. This private/commercial health insurance, constituting one of the conditions for obtaining a residence permit in the Czech Republic by these foreigners, is, of course, not a public service.

5.2.2 Germany

German social legislation makes only relatively small distinctions between German citizens and foreign nationals. The whole issue can be divided into (a) benefits from insurance systems to which the participants of these systems contribute (mostly by a portion of their earnings) on one hand, and to (b) other benefits, which may be

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³⁶⁰ For example, applicants for asylum/international protection, the holders of subsidiary protection, the holders of certain residence permits for the purpose of suffering and protection and other foreigners listed in Section 48 of the Residence Act, or the holders of a long-term residence permit for the purpose of scientific research pursuant to Section 42f Paragraph 5 of the Residence Act.

³⁶¹ This covers those persons who have an income as members and statutory bodies of legal persons.

³⁶² To be more precise: for the period, for which they are considered employees under Section 6 Paragraph 1 of Act No. 586/1992 Coll., on Income Taxes.

further divided into benefits provided regardless of the level of income and benefits which correspond to the level of income, on the other hand.

Insurance systems in Germany comprise in particular the following: pension insurance (*Rentenversicherung*), accident insurance (*Unfallversicherung*), long-term care insurance (*Pflegeversicherung*), compulsory health insurance (*Krankenversicherung*) and unemployment insurance (*Arbeitslosenversicherung*). Within these systems, foreigners enjoy essentially equal rights as German citizens. There are exceptions, for example:

- ▶ in the area of health insurance:³⁶³ foreigners who have a settlement authorization or a residence permit for a period of at least twelve months and who do not have to prove having sufficient financial means for subsistence to obtain this permit. The insurance of these foreign nationals is covered mandatorily in accordance with the law, pursuant to Section 5 Paragraph 11 of the German Social Code V (*Sozialgesetzbuch V, hereinafter SGB V*);³⁶⁴
- ▶ in the area of unemployment insurance, foreigners residing in Germany on the basis of sufferance (*Duldung*, also called *toleration*) are entitled to support for vocational training after four years of stay and other foreigners only after five or six years of stay and work, or after three years of work of at least one of their parents.³⁶⁵

An example of non-insurance benefits is, among others, that of child allowances (*Kindergeld*) pursuant to Section 62 and the following of the Act on Income Taxes (*Einkommensteuergesetz*)³⁶⁶ and under a special Federal Law on Child Allowances (*Bundeskindergeldgesetz*)³⁶⁷ which regulates also the so-called additional child allowance (*Kindierzuschlag*). Foreigners (i.e. parents of children) have equal rights regarding the entitlement to this allowance, except for the following: foreigners whose residence permit does not allow and did not allow them (albeit temporarily) to perform a profit-making activity, students, foreigners with a residence permit for the purpose of employment, where the consent of the Federal Employment Agency may be grant-

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³⁶³ Equal treatment in the area of health insurance, however, does not necessarily mean that all foreigners were really insured, since there are even some German citizens who do not have health insurance enforced by the law. Employees (Section 5 Paragraph 1 of the SGB V) and their family members (Section 10 of the SGB V) are required to have health insurance by law. Foreigners can join the law-enforced health insurance system voluntarily, just like other German citizens.

³⁶⁴ Another minor exception is the provision of dental substitutions according to Section 27 of the SGB V, to which some groups of foreigners residing in Germany on humanitarian grounds have a more restricted access, i.e. only in the case that the provision of this substitution is not able to be documented or if they were participating in the law-enforced health insurance for at least one year.

³⁶⁵ See Section 59 Paragraph 2 and 3 of the SGB III.

³⁶⁶ Hereinafter *EStG*

³⁶⁷ Hereinafter *BKGG*

ed only for a limited period of time, and foreigners residing in Germany on humanitarian grounds (after three years of stay, however, they are entitled to this allowance under the condition that they work or have worked); also foreigners staying in the country on the basis of sufferance (*Duldung*) are not entitled to this allowance.³⁶⁸ The same conditions apply to the right to the additional child allowance. Similar conditions also apply to the right to parental allowance (*Elterngeld*) and to child-care subsidy (*Betreuungsgeld*)³⁶⁹ under the Federal Parental Allowance and Parental Leave Act (*Gesetz zum Elterngeld und zur Elternzeit*).³⁷⁰ Even those foreigners who obtained a residence permit after eight years of stay on the basis of sufferance (Section 104a of the *AufenthG*) are not entitled to this allowance.

What is more strictly defined are the conditions for providing educational support under the Federal Training Assistance Act,³⁷¹ for which even EU citizens without permanent residence who did not work in Germany or whose education is not related to their previous employment in Germany are not eligible, and neither are the following:

- ▶ foreigners residing in Germany for the purpose of family reunification (with a foreigner), if they had not stayed in Germany for at least four years, nor
- ▶ foreigners who themselves had not been involved in a profit-making activity in Germany for a period of at least five years or whose parents were not economically active in Germany for at least three years during the last six years.
- ▶ foreigners with sufferance who have not so far stayed in Germany for at least four years.

In the case of social assistance under Social Code XII (*Sozialgesetzbuch XII, hereinafter SGB XII*) foreigners enjoy essentially equal rights: Section 23 of this act excludes from the range of eligible persons only those foreigners who immigrated in order to obtain social assistance, foreigners with a stay exclusively for the purpose of a search for employment and receivers of allowances under the Act on Benefits for Asylum Seekers.

Allowances granted within the so-called support in the search for employment (i.e. additional payment to reach the minimum subsistence level) according to Social Code II (*Sozialgesetzbuch II, hereinafter SGB II*)³⁷² cannot be enjoyed also by those foreigners who are not involved in profit-making activities in Germany and who do not have the

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³⁶⁸ Section 62 of the *EStG*, similarly Section 1 of the *BKGG*.

³⁶⁹ Regarding the so-called *Betreuungsgeld*, in the German public debate, it is considered a controversial allowance for the parents of children who are not attending public facilities for preschool care.

³⁷⁰ hereinafter *BEEG*

³⁷¹ Section 8 of the *Bundesausbildungsförderungsgesetz* (hereinafter *BAföG*).

³⁷² Section 7 of *SGB II*.

right of free movement as EU citizens and their family members do. This applies for the first three months of their stay (foreigners with a residence permit granted on humanitarian grounds nevertheless have the right to claim these benefits even in these first three months).

All other foreigners are thus under social legislation entitled to social assistance. Here it is, however, necessary to mention that when a foreigner starts to receive certain benefits, it can have negative consequences from the point of view of foreigner legislation, in particular:

- ▶ in case of receiving social assistance allowances under SGB XII (for himself or herself or for family members, however only if the stay of these members depends on the foreigner in question)³⁷³ the foreigner can be granted expulsion under Section 55 Paragraph 2 Point 6 of the AufenthaltG; nevertheless, the proportionality of such a decision is considered, and
- ▶ In the case that the foreigner receives support in the search for employment according to SGB II, s/he cannot be deported, however, it may give a reason for not extending his or her residence permit (the foreigner then does not meet the condition of financially secured subsistence pursuant to Section 2 Paragraph 3 of the AufenthaltG; in this case, however, the implementation includes a proportionality test: the implementation regulation gives as an example a female student who got pregnant).³⁷⁴

5.2.3 Austria

Austrian social insurance is regulated in particular by the General Social Security Act (Allgemeines Sozialversicherungsgesetz, ASVG), which covers – with the exception of laws regulating the insurance of certain specific professional groups³⁷⁵ – health insurance (including sickness insurance), accident insurance and pension insurance. Under this act (and other related legislation), an overwhelming majority of all economically active persons in Austria must have health insurance, while also dependent family members - spouses or registered partners of the insured person, dependent children of the insured person - if they have residence in Austria and are not insured otherwise, are

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³⁷³ See VwV Point 55.2.6.2.

³⁷⁴ See VwV Point 2.3.1.1.

³⁷⁵ A special regulation applies for example to self-employed persons or entrepreneurs (Gewerbliches Sozialversicherungsgesetz – GSVG), farmers (Bauern-Sozialversicherungsgesetz – BSVG), civil servants (Beamten – Kranken- und Unfallversicherungsgesetz) and notaries (Notarversicherungsgesetz 1972).

entitled to health insurance allowances.³⁷⁶ Some persons who are preparing for a future profession and are not obliged to be insured may enter the statutory health insurance system voluntarily (in this case however they are entitled to the implementation of the insurance only after the expiration of a waiting period which can last for up to three months).³⁷⁷ In the area of general social insurance, foreigners enjoy completely equal rights to Austrian nationals. The only exception are harvest workers, who may, on the basis of a decree of the Ministry of Labour, perform short-term work during their visa-free stay – these foreigners are covered by health and accident insurance only, not by pension insurance.³⁷⁸

In the area of the Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz*), foreigners enjoy equal rights with the exception of not being entitled to certain benefits which are granted on the condition of:³⁷⁹

- ▶ having an authorization to stay allowing for the performance of a dependent activity, or
- ▶ if the performance of a dependent activity is authorized on the basis of an employment permit only (*Beschäftigungsbewilligung*), provided that there are no serious reasons concerning the given foreigner preventing the granting of this permit, such as the performance of illegal work in the last twelve months. Section 7 Paragraph 6 of this act then explicitly excludes those foreigners from those entitled to these allowances who have short-term employment within contingents pursuant to Article 5 of the Act on the Employment of Foreigners (AuslBG).

As regards family benefits,³⁸⁰ some groups of foreigners are not entitled to claiming them, specifically

- ▶ under the Foreign Police Act (FPG), no visa holders (up to 6-months) are eligible for family support (Familienhilfe), an allowance for journeys to schools nor for any of the parental benefits,³⁸¹ and

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³⁷⁶ See Section 123 of the ASVG. Among children, stepchildren and grandchildren who live with the insured person in a common household, and children in foster care are also included. The benefits can be claimed (unless the statutes of the respective health insurance company rule it out) also by some other persons living in a common household with the insured person.

³⁷⁷ See Section 124 of the ASVG.

³⁷⁸ See Article 5 Paragraph 1 line 13 and Section 7 Paragraph 1 Letter f) of the ASVG.

³⁷⁹ See Article 7 Paragraph 3 of the Unemployment Insurance Act.

³⁸⁰ See Familienlastenausgleichsgesetz (Family Burden Equalization Act) 1967 (according to which the benefits are covered from a special Fund for the Support of Families, pursuant to Section 39 of this Act; all employers mandatorily contribute to this fund) and Kinderbetreuungsgeldgesetz (Childcare Allowance Act).

³⁸¹ See Section 3 of the Familienlastenausgleichsgesetz (Family Burden Equalization Act) 1967

► support for small children (*Kleinkindbeihilfe*), a bonus for passing pregnancy and newborn medical examinations (the so-called *Mutter-Kind-Pass-Bonus*³⁸² and certain discretionary benefits such as the contribution for families in a troublesome situation (*Familienhärteausgleich*) cannot be obtained by foreigners who have not been staying in Austria for at least three years immediately before being entitled to the claim;³⁸³ this limitation does not concern the nationals of the European Economic Area member states.³⁸⁴ Foreigners can claim a childcare allowance (*Bundespflegegeldgesetz*) under the same conditions as Austrian nationals if they are at the same time the beneficiaries of pension and/or if they have suffered from an occupational injury or occupational disease.³⁸⁵ In other cases, foreigners enjoy equal rights as Austrian citizens only when they fall under the protection of EU law or international treaties, when they are asylum seekers, foreigners with permanent residence or Blue Card holders or long-term residents who are nationals of another EU member state or a family member of an Austrian citizen; for example, Red-White-Red Card holders are not eligible.

Regulations of the entitlement of foreigners to assistance in material need (as well as to some other benefits) belong to the competencies of individual federal states. Logically, thus, the legislation varies. For example, the Social Assistance Act of the federal state of Salzburg limits the claim for benefits to similar groups of foreigners as those who enjoy equal rights as Austrian citizens in the area of childcare allowance.³⁸⁶ By contrast, the federal state of Burgenland entitles also those foreigners who are authorized for a (longer) stay (*zu einem dauernden Aufenthalt*) in Austria to these benefits.³⁸⁷

5.2.4 The United Kingdom

The United Kingdom makes relatively fundamental distinctions between its citizens on one hand and foreigners on the other hand, as regards social rights. Foreigners who

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³⁸² Mutter-Kind-Pass refers to a document combining both the pregnancy documentation and the vaccination certificate of the newborn baby. Pursuant to Section 38d of the Familienlastenausgleichsgesetz 1967, a bonus in the amount of 145 EUR is granted after passing the specified medical examination.

³⁸³ E.g. Section 33 of the Familienlastenausgleichsgesetz 1967

³⁸⁴ Section 53 Familienlastenausgleichsgesetz 1967

³⁸⁵ Section 3 and Section 3a of the Federal Law on the Childcare Allowance.

³⁸⁶ See Section 6 Paragraph 2 of the Salzburg Act on Social Assistance, see <https://www.ris.bka.gv.at/geltendefassung.wxe?abfrage=Irsbg&gesetzesnummer=10000242>

³⁸⁷ See Section 4 Paragraph 3 of the Burgenland Act on Social Assistance 2000, see <https://www.ris.bka.gv.at/geltendefassung.wxe?abfrage=Irbgld&gesetzesnummer=20000026>

are not protected by EU law nor any other international treaties are disadvantaged in two ways, namely

- direct exclusion from the range of persons eligible to certain social rights, and
- such a foreigner legislation setting which directly or indirectly rules out the emergence (and granting) of a claim to social benefits and other advantages.

British law theoretically distinguishes three types of social rights, these are

- a) Benefits from insurance systems (contributory benefits) which are covered from the national insurance: state pensions, unemployment benefit based on contributions (contribution-based Jobseeker's Allowance), orphan and widow benefits (Bereavement Allowance), support in parenthood (e.g. Maternity Allowance) and benefits for persons with limited working ability based on contributions (contribution-based Employment and Support Allowance); some benefits related to diseases also belong in this group, such as Statutory Sick Pay.
- b) Benefits provided on the basis of income level (means-tested benefits), for example income support, housing benefits or income-based jobseeker's allowance,³⁸⁸ and
- c) Benefits which are based neither on insurance systems nor on the amount of income, for example Child Benefits or Carer's Allowance. Theoretically, the British National Health Service might fall within this category, yet work migrants are not disadvantaged there.

As regards the b) and c) types of benefits, Section 115 of the Immigration and Asylum Act 1999 has for many years stipulated that "persons subject to immigration control" are not entitled to these benefits. The term "person subject to immigration control" is in the same provision defined as a person from a country outside the EU, who 1) does not have a residence permit despite being obliged to have one,³⁸⁹ 2) received a residence permit with the condition of not claiming assistance from public funds³⁹⁰ (no

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³⁸⁸ See Section 123 and the following of the British Social Security Contributions and Benefits Act 1992, see <http://lawvolumes.dwp.gov.uk/docs/a2-2501.pdf>

³⁸⁹ Who falls within this category are also the persons who were issued a deportation order or those persons whose entry to the territory of the United Kingdom was allowed only temporarily, see <http://www.hmrc.gov.uk/manuals/cbtmanual/cbtm10120.htm>

³⁹⁰ The concept of public funds is defined in the Immigration Rules and does not include all the advantages provided by the state or public corporations, see a publication by the British Home Office: "Public Funds", p. 8 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284160/public_funds_v12_oext.pdf

recourse to public funds),³⁹¹ 3) received a residence permit as a result of the guarantee (maintenance undertaking) of a third person that this third person will cover the cost associated with his or her food and housing (the so-called “sponsored immigrants”),³⁹² or 4) has a residence permit as a result of pending appeals proceedings.³⁹³ The exclusion from being entitled to social rights concerns the rights listed in this provision, in particular income-based jobseeker’s allowance, income support, housing allowances, carer’s allowances, child benefits, etc.

Almost simultaneously with the above-mentioned general exclusion from the entitlement to social benefits, a legal regulation was adopted which regulates exceptions from this prohibition.³⁹⁴ This regulation addresses in particular the nationals of states with whom the United Kingdom or the European Union concluded agreements on equal treatment in the area of social security, sponsored migrants who are entitled to children’s allowances and/or who are entitled to some other benefits in the case that their sponsor died or they themselves have resided in the United Kingdom for a period of five years, foreigners whose revenues from abroad have been temporarily suspended, yet there are reasonable expectations that the income will be restored again, and others.

In addition to the general exclusion of those foreigners who are subject to immigration control, it is necessary to mention also the condition of genuine residence (habitual residence test), which is applied in the majority of income-based benefits (including the housing allowance) and also in access to the housing provided for by municipalities. This condition (as well as – in some cases – the condition of the physical presence in the territory of the United Kingdom³⁹⁵) is however used also in British citizens returning from abroad.³⁹⁶ In some instances, however, the exclusion of foreigners from being entitled to an allowance claim is linked (in a technical legislative

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³⁹¹ This frequently used term even gave the name to an organization that brings together in particular municipalities dealing with the situation of persons excluded from aid from public funds, see <http://www.nrpfnetwork.org.uk>

³⁹² This essentially concerns those persons too who have an authorization for permanent stay (“indefinite leave to remain” in British terminology – editorial note); i.e. even some permanent residence holders are not entitled to claim certain social benefits.

³⁹³ See Section 115 Paragraph 9 and 10 Immigration and Asylum Act 1999, see <http://www.legislation.gov.uk/ukpga/1999/33/contents>

³⁹⁴ See The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000: http://www.legislation.gov.uk/uksi/2000/636/pdfs/uksi_20000636_en.pdf or also <http://www.hmrc.gov.uk/manuals/cbtmanual/CBTM10140.htm>

³⁹⁵ E.g. Section 1 Paragraph 6 of the Social Security Administration Act 1992.

³⁹⁶ See also <http://www.parliament.uk/briefing-papers/SN00416/the-habitual-residence-test>

way) with the condition of habitual residence, for example. Section 85 and 85a of the Jobseeker’s Allowance Regulation 1996 uses the term “person from abroad”.³⁹⁷

As regards the allowances from insurance-based systems, there is no general prohibition in place that would prevent migrants from claiming or receiving them. Yet the question is whether it is in practice possible to meet the conditions for claiming these benefits and at the same time continue to meet the conditions for the duration of the residence permit. In addition to that, certain restrictions were introduced by the Welfare Reform Act 2012:³⁹⁸ the entitlement to claim certain benefits from insurance-based systems in Britain will newly apply only to those foreigners whose residence permit was not issued under the condition of no employment;³⁹⁹ these provisions have not taken effect yet.

5.3 Settlement options – the right to obtain permanent residence or citizenship

In the Czech Republic, Germany, Austria and in the United Kingdom, the institute of permanent residence is perceived as granting the highest level of rights to a foreigner: it usually must be anticipated for a longer time period and well-deserved. From the factual point of view, in all the compared countries, permanent residence is characterized mainly by being granted for an unlimited period of time (i.e. without the threat that the state – apart from serious cases stipulated by law – might terminate the permission to stay of its own will). Furthermore, this type of residential status is associated with certain other rights and also with a higher certainty of the migrant’s position. Sometimes, obtaining permanent residence is a compulsory prerequisite for obtaining citizenship.

5.3.1 The Czech Republic

In the Czech Republic, the permanent residence of a foreigner is the most important residency institute and it is associated with a fundamentally better legal status both

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³⁹⁷ See <http://lawvolumes.dwp.gov.uk/docs/a11-4001.pdf>

³⁹⁸ See www.parliament.uk/briefing-papers/sno6847.pdf, p. 5

³⁹⁹ See Section 61, 62 and 63 of the Welfare Reform Act 2012, see http://www.legislation.gov.uk/ukpga/2012/5/pdfs/ukpga_20120005_en.pdf and see the accompanying report to the act, Point 316 and following.

in the area of foreigner rights (greater protection against revoking the permanent residence or against expulsion; the validity period of the permit is usually ten years), as well as in the area of social and other rights. Permanent residence also represents a necessary step which precedes obtaining Czech citizenship – other than receiving it due to being born in the country.⁴⁰⁰

In its greater part, the institute of permanent residence is harmonized with Directive 2003/109/EC on the status of long-term residents and it is usually granted simultaneously with acquiring the so-called status of long-term resident. In this case, the basic prerequisite for obtaining permanent residence is a previous long-term stay of five years. Only long-term stays are counted as this type of stay (long-term visas, or the so-called visas to stay for over ninety days, and long-stay authorizations) and the duration of a stay on the basis of granted international protection (including the previous period of the proceedings on this international protection). What is not counted into this time of stay are short-stay visas and stays on the basis of a departure order. What poses a much greater practical problem, though, is the fact that the term "uninterrupted stay" is in practice interpreted by the authorities in such a way that the individual residence permits must show a precise temporal continuity: i.e. that the foreigner is required to have a valid residence permit even when staying abroad. When a foreigner loses his or her residence permit and goes abroad to get a new one,⁴⁰¹ the authorities do not count the previous period of stay into the period necessary for obtaining permanent residence. As regards the conditions for obtaining permanent residence, Section 70 Paragraph 2 of the Residence Act stipulates the following requirements: in addition to the absence of security threats and knowledge of the Czech language at the level of A1, the foreigner must prove that s/he has an income in the amount of the current housing costs and the minimum subsistence level when counting together the foreigner and his or her family members living in the Czech Republic. The procedure for obtaining permanent residence is often quite difficult and long,⁴⁰² while the Act on

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⁴⁰⁰ A single exception is that of certain cases of obtaining citizenship in connection with the break-up of the Czech and Slovak Federal Republic, by a declaration (e.g. Section 180a of Act No. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic) and some other cases of receiving citizenship by declaration pursuant to Section 31 and the following of Act No. 186/2013 Coll., Act on the State Citizenship of the Czech Republic; in these cases Czech citizenship can be obtained also without previous permanent residence.

⁴⁰¹ The Residence Act contains such provisions that in the case of the loss of a residence permit (for any reason whatsoever), a new application cannot be filed in the Czech Republic, but only at a Czech embassy abroad.

⁴⁰² Holá, E.: Řízení o povolení k pobytu v praxi: pro řadu cizinců náročný běh na dlouhou trať [Proceedings on residence authorization in practice: a highly demanding long run for many foreigners], www.migraceonline.cz, 28 April 2014.

the Residence of Foreigners contains a very long list of reasons for the rejection of the application.⁴⁰³

Apart from the option of obtaining permanent residence on grounds compliant with the Directive 2003/109/EC, Czech foreigner legislation knows the option of permanent residence without simultaneously receiving the position of a long-term resident. This can be granted also before the term of five years is fulfilled, especially to children at least one parent of whom has permanent residence, or on humanitarian grounds or for reasons of special consideration⁴⁰⁴ or reasons of previous asylum proceedings which took a long time.

5.3.2 Germany

In Germany, there are two institutes of permanent residence, namely

- 1) settlement permit (*Niederlassungserlaubnis*) pursuant to Section 9 of the *AufenthG* and
- 2) permanent residence permit – EU (*Daueraufenthalt EG*) pursuant to Section 9a of the *AufenthG*, which implements Directive 2003/109/EC.

The conditions for granting any of these statuses⁴⁰⁵ are in both cases rather demanding, for example, a successful applicant must:

- ▶ stay in Germany without interruption for five years (already after two years, the permit may be obtained by family members of Germans, pursuant to Section 28 of the *AufenthG*, and after 33 months (in some cases after 21 months) by highly qualified employees – EU Blue Cards holders, pursuant to Section 19a Paragraph 6 of the *AufenthG* and the holders of residence permits for the purpose of doing business, who carried out investment pursuant to Section 21 Paragraph 4 of the *AufenthG*)
- ▶ have the so-called secured means of subsistence (compliant with Section 2 Paragraph 3 of the *AufenthG*, this is shown by an arbitrary calculation of whether the foreigner would be entitled to claim certain social benefits),⁴⁰⁶ in the case of applications for

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⁴⁰³ See Section 75 of Act No. 325/1999 Coll., i.e. 13 reasons for rejection, 14 reasons for the revocation of permanent residence.

⁴⁰⁴ Pursuant to this provision, the participants in the so-called pilot project for the Selection of qualified foreign workers in the years 2002 to 2010 received permanent residence.

⁴⁰⁵ In case a foreigner meets the conditions for obtaining both statuses, what has preference is permanent residence pursuant to Directive 2003/109/EC, since it is associated with a higher level of rights (and the settlement permit holder may apply for switching the status to permanent residence); having both statuses simultaneously is not possible, see 9a.o.5 of *VwV*.

⁴⁰⁶ What is looked into is in particular a possible claim to maintenance pursuant to Social Code II and maintenance allowance pursuant to the Social Code XII, see Point 2.3 of the *VwV*.

permanent residence – EU, what is furthermore looked into is the issue of taxes and health insurance paid (see Section 9C of the *AufenthG*)

- ▶ have covered pension insurance contributions for the respective number of months
- ▶ have a knowledge of the German language as well as knowledge of the German legal and social system,
- ▶ have a place to stay, and of course
- ▶ not pose a risk for public safety or law and order.⁴⁰⁷

As regards the legality of the stay, under Section 85 of the *AufenthG*, it is possible to pardon an interruption of the legality of a foreigner's stay (e.g. as a result of filing an application for the extension of a residence permit too late) for the period of up to one year.

The law does not explicitly stipulate what types are taken into account for the purpose of granting permanent residence; in case of permanent residence – EU, the law does not use the term "residence permit" (*Aufenthaltserlaubnis*), but the term "authorization for stay" (*Aufenthaltstitel*), which includes also visas, nevertheless, short-stay visas are obviously not counted according to implementation regulations. Besides that, it is necessary to mention that there are certain categories of foreigners (in particular labour migrants) who are most probably excluded from applying for any type of permanent residence with regard to the possible decision of the Foreign Office on the nonextendability of their residence permit under Section 8 Paragraph 2 of the *AufenthG*. Among these rank, for example, employees posted to Germany within an intra-company transfer who can work there for a maximum of three years (Section 10 of the *BeschV*), specialty chefs who may work in Germany for a maximum of four years (Section 11 of the *BeschV*),⁴⁰⁸ or domestic workers whose stay is limited to a maximum of three years (Section 15c of the *BeschV*). Pursuant to Section 9a Paragraph 3 Point 5 Letter a), these workers are explicitly excluded from the option of obtaining permanent residence – EU, however they probably will not qualify for the settlement permit either.

On its web pages, the German Ministry of the Interior explicitly draws attention to the right of permanent residence – EU holders, who obtained this permit in Germany, to live permanently in another member state of the EU. In the opposite case, when an EU resident would like to move to Germany from another EU member state (Section

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⁴⁰⁷ See <http://www.bamf.de/DE/Willkommen/Aufenthalt/WichtigeInformationen/wichtigeinformationen-node.html>

⁴⁰⁸ A regulation in Section 11 Paragraph 3 even provides for a period of three years which must pass between the end of one stay and the reception of a new permit.

38a of the *AufenthG*), the foreigner must meet essentially all the standard conditions of stay, i.e. have secured maintenance, health and social insurance and have the outlook of an occupation or studies in Germany. Again, what is manifested here is the fully understandable fear of abuse of social benefits by third-country nationals⁴⁰⁹ and also the effort to tie even permanent residence to a specific purpose.

5.3.3 Austria

In Austria, permanent residence (*Daueraufenthalt – EU*) is granted to foreigners under Section 45 of the NAG after 5 years of stay in Austria, which again exactly corresponds to the Directive 2003/109/EC. The requirements necessary to obtain Austrian permanent residence are meeting

- ▶ the general conditions of stay (see Section 11 of the NAG, for example: demonstrate a legal claim to housing of a usual standard, have sufficient health insurance and stable and regular income),⁴¹⁰ and
- ▶ the condition stipulated in the integration treaty, Modul 2, which under Section 14 Paragraph 2 line 2 of the NAG serves to gain knowledge of the German language "for independent use" which is essentially a German language exam at the level of B1.⁴¹¹

Under Section 45 Paragraph 1 of the NAG, only those periods are included in the necessary five-year long stay for obtaining permanent residence, during which the foreigner was "authorized to settle". Settlement is defined in Section 2 Paragraph 2 of the NAG and it must be such a stay during which a foreigner has a domicile in Austria existing for more than six months, a stay during which the foreigner has the center of his or her vital interests in Austria, or during which a non-temporary profit-making activity is performed (i.e. in principle such an occupation which does not last for a period shorter than six months).⁴¹² The length of a foreigner's stay on the basis of a usual residence permit (*Aufenthaltsbewilligung*⁴¹³) is counted only with one half,⁴¹⁴ and only that on the

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⁴⁰⁹ *Deutschlands Wandel zum modernen Einwanderungsland, Jahresgutachten 2014 mit Integrationsbarometer*, Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR), p. 16.

⁴¹⁰ The amount of this income is under Section 11 Paragraph 5 of the NAG determined so that it 1) rules out the need for social assistance and 2) reaches the minimal amount of retirement pension pursuant to Section 293 of the General Social Insurance Act (857.73 EUR for one person, 1 286.03 EUR for a couple and 132.34 EUR for each (and every other) child up to the age of 24 years.

⁴¹¹ www.help.gv.at/Portal.Node/hlpd/public/content/12/Seite.120500.html

⁴¹² Section 2 Paragraph 1 Lines 7 and 8 of the NAG.

⁴¹³ These are the stays under Section 8 Paragraph 1 Line 10 and Section 58-69 of the NAG.

⁴¹⁴ Section 45 Paragraph 2 of the NAG.

condition that the foreigner subsequently receives a "better" residence permit, for example a Red-White-Red Card – Plus. This provision disadvantages not only students but also many foreigners residing in Austria for the purpose of employment or family reunification.

5.3.4 The United Kingdom

The immigration and legal system of Great Britain is fundamentally different from the systems which are in place in Central European countries. In the area of permanent residence, the British approach is reflected in the so-called indefinite leave to remain concept (i.e. the right to remain permanently in the territory of the United Kingdom). This permanent residence can be obtained - depending on the specific provisions related to various types of residence permit - after a period of very different lengths of the foreigner's stay in the territory of Great Britain: from de facto no time of the foreigner's stay in the territory,⁴¹⁵ to a condition of a thirty-year-long stay in the territory which is in place for those applicants for permanent residence who are not staying in the UK legally.⁴¹⁶ For the most usual residence titles intended for profit-making activities, the general five-year-long period as a condition for granting indefinite leave to remain is in place, while Section 245aaa and following of the IR stipulate in particular the following additional conditions:

- ▶ at least once, the foreigner must have been granted authorization to stay within a specified residency category (i.e. what is sufficient is not any stay permit, but only selected types of stay)
- ▶ during these five years, the foreigner was allowed to reside outside the territory of Great Britain for 180 days only within any calendar year
- ▶ all stays outside Great Britain had to be in accordance with the purpose of the foreigner's stay (e.g. vacation; the employer is obliged to issue the foreigner a confirmation certificate), and for the other departures out of the United Kingdom there must be urgent reasons which the foreigner shall demonstrate (e.g. by presenting original medical records or death certificates)
- ▶ during these five years the foreigner had to be constantly employed, only in the case of a change of employer, an interruption of employment to a maximum period of 60 days is allowed

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⁴¹⁵ E.g. the children of British residents or victims of domestic violence (Section 289a of the IR). Parents of minor British residents are entitled to permanent residence after one year of stay, see Section 248d of the IR.

⁴¹⁶ See Section 276ade and 276de of the IR for a residence permit on the grounds of private life.

- ▶ also in the time of the application for permanent residence, a foreigner must satisfy the prerequisites for the granting of the permit to stay, i.e. s/he must e.g. get the necessary number of points under the points-based system
- ▶ meeting integration criteria, i.e. demonstrating a sufficient knowledge of English and passing the "Life in the UK" test.

These general conditions are then with regards to specific residency subcategories further supplemented and modified by the very case-centered IR. For example regarding "Tier 1 (General) Migrant", Section 245cd provides that an application for permanent residence must be submitted no later than by 6 March 2018: the intention of excluding those migrants who are receiving permission to stay in this sub-category now from the possibility of obtaining permanent residence later can be deduced.

At the moment, there exist various sub-categories, such as "Tier 1 (Graduate Entrepreneur) Migrant" or "Tier 5 (Youth Mobility) Temporary Migrant" which are excluded from the option to obtain permanent residence.

6. Conclusions

In an attempt to briefly evaluate the admission policy of labour migrants from countries outside the EU into the four countries compared, we observe that there are **two core features and/or objectives of the respective migration policies**, namely:

- 1) preference of qualified migrants and possibly of wealthy migrants, and
- 2) efforts to subject low-skilled migrants to worse legal treatment, both regarding residence and settlement rights and rights connected to social security and social assistance.

The first objective (which is usually fairly openly declared in the public discourse) is achieved primarily by **legislation settings**. In the case of Germany, Austria and Great Britain, the law usually does not allow the admission of other than well-educated or at least skilled or qualified migrants. This is especially true for the very strict and very case-centered-British legislation, but also for the Austrian AuslBG – Austria enables the entry of low-skilled migrants only under very difficult conditions (points-based system, quotas etc.). Also the German BeschV de jure permits issuing residence and employment authorizations to selected groups of low-skilled migrants, but the administrative practice of the Federal Employment Agency is very restrictive in this respect. Czech legislation is more liberal in this area since it does not rule out the admission of low-skilled migrants. The preference which well-educated migrants enjoy is rooted only in the administrative practice applied in the decision-making processes for long-stay visas or long-term residence permits.⁴¹⁷ Preferring skilled or qualified migrants, however, is not manifested only by preventing the entry of low-skilled migrants, but also by providing various advantages to the former, such as

- ▶ issuing a residence permit for the purpose of the search for a job, as is the case in Germany and Austria; in some cases, even during the validity period of this permit, the holder is authorized to work
- ▶ providing a freer or completely free access to the labour market, which is the case in particular with the Austrian Red-White-Red Card Plus
- ▶ an earlier access to permanent residence in Germany and in the past also in the Czech Republic.⁴¹⁸

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⁴¹⁷ These measures are partly integrated into two so-called projects to support foreign investors: *Welcome* and *Fast Track*. Another case of giving formal preference to qualified or skilled migrants has been the guidelines of the Ministry of Labour and Social Affairs.

⁴¹⁸ See the Pilot project which was, however, discontinued by the government of Petr Nečas. The option of granting permanent residence for reasons of special consideration or for reasons of state interest, however, has been kept by the Czech Ministry of the Interior in Section 66 of the Act on the Residence of Foreigners.

Another specific measure is providing advantages to students. In this respect, the Czech Republic excels: here, all students of a regular daily course of studies and graduates of Czech schools have the right to free access to the labour market. Germany and Great Britain, by contrast, allow students to work only part-time.

The second objective concerning the position of low-skilled migrants is implemented in a somewhat less visible way. Nevertheless, in all the observed countries, at least a certain proportion of the foreigners entering the country represent temporary labour migration from outside the EU. This trend is manifested by creating various categories of labour migrants whose stay is time-limited in advance and who therefore have no prospects of settlement, and who are at a disadvantage regarding certain social rights, too. Even in this respect, the Czech Republic holds an unusual position among the countries compared: in the Czech legislation, so far, there is no legal category of temporary migration which would exceed the horizon of a short stay,⁴¹⁹ and the tendency for temporary labour migration is reflected in part in the administrative practice and in particular in considerations regarding the future legislation. In Great Britain, this issue concerns e.g. the category of domestic workers in the families of diplomats, but also Tier 5 migrants and a number of other groups of migrants. The German regulation on the employment of foreigners (BeschV) makes it clear which groups of foreigners may reside in Germany only for a specified number of years,⁴²⁰ while these are migrants with lower qualification levels. Both in the UK and in Germany, however, foreigners falling into the categories of temporary labour migration receive – from the formal perspective of foreigner legislation – standard residency titles. By contrast, in Austria, there is the effort to separate temporary labour migrants from other foreigners also as regards residence permits: temporary labour migrants are issued only national visas of type D, and they do not fall under the NAG (Act on Settlement and Residence),⁴²¹ but only under FPG (Foreign Police Act).

We can say that the Czech approach to labour migration is in line with the tendencies observed in the other countries compared. When it differs, though, it is then rath-

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⁴¹⁹ The green card, including green card type C under Section 42g Paragraph 3, Section 44 Paragraph 6 and Section 44a Paragraph 10 of the Residence Act, as it stands of 23 July 2014, has been cancelled.

⁴²⁰ The time period for which the residence of a foreigner is restricted in advance may have the duration of six months (seasonal workers) to five years (foreign servants in diplomatic households).

⁴²¹ Even in the NAG, though, we can find a group of migrants without a perspective regarding residence, namely the holders of the so-called *Aufenthaltsbewilligung*.

er because of its lack of clarity and lack of backing in legislation, which, however, can be interpreted also as the remnants of more liberal trends from the pre-2008 period.⁴²²

The aspect in which the Czech Republic stands apart from the other countries is the access of migrants to social rights. In the other countries, in general it is the rule to provide migrants more or less equal treatment regarding benefits from contribution-based insurance systems. What are restricted are mostly their rights to certain family benefits and allowances compensating for low income. (It should be noted here that being excluded from entitlement to the second group of benefits affects primarily the above-mentioned temporary labour migrants. In the UK, however, it is the case with nearly all foreigners.) The Czech Republic on the other hand offers a relatively generous regulation of state social support benefits to which foreigners are usually entitled after one year of stay. However, the Czech regulations regarding access to unemployment benefits and access to public health insurance are connected to permanent stay – despite being typical contribution-based benefits covered from the participants' premiums. In this area, and especially regarding the health insurance of the dependent family members of labour migrants (including children), the Czech legislation shows a certain anomaly.

Having outlined the two main policy objectives regarding labour migration in the European countries compared, we are left to reflect on these objectives as such: are they fair from our point of view, and if not, then what other objectives should the countries follow? To answer this question, it is necessary to be aware of what interests or political views and ideas about society are implied in the above-mentioned objectives of the migration policies of several EU countries.

In the core of the above-described migration policy lies the idea that people can be divided into two groups, namely those who are useful and create economic value, and then those who present more of a burden. A sign of belonging to the first group is then logically education (human capital) or wealth (financial capital). If this is the conviction of those who create migration policies, and if they hold the opinion that the vast amount of foreigners interested in immigration allows them to choose between migrants, then it is only logical that they are trying to choose out of all foreigners and all potential immigrants just the beneficial ones. If there is a shortage in the beneficial foreigners, i.e. in those that are highly

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⁴²² In this sense, the tightening of the Czech migration policy following the beginning of the current economic crisis could be seen not as a mere restriction, but as a second wave of the Europeanization of migration policy.

skilled and wealthy, then the governments are logically ready to compete for these interesting immigrants. How? For instance by providing certain benefits in the area of foreigner legislation (easier to obtain a residence permit, exemption from integration obligations, greater social rights for migrants and their family members, earlier access to permanent residence, in extreme cases even earlier acquisition/purchase of the citizenship in the target country, etc.). For richer migrants – investors – these advantages may be combined with traditional investment incentives, such as tax relief.

Hand in hand with the idea of dividing people into those who are beneficial and those who pose a burden, goes the emphasis on the economic sphere and the neglect of other areas, e.g. family and relationships. The area of labour migration is fully subject to the so-called state economic interests. On the other hand, what remains rather in the background is the second state interest which tends to be associated with foreigners: hope regarding ensuring the demographic balance of the advanced Western societies.

What can be identified as the third relevant idea is a sort of minimization principle with respect to the migrants' rights: it is the opinion that the state should not grant too many rights to migrants as it would be wasteful. At first, foreigners should be provided with rather fewer rights (in particular if the migrants will not stay in the host country anyway). Related to this reasoning is the understanding that an increase in the migrants' rights should be well-deserved. It is connected to the opinion that foreigners should face a stricter treatment than the locals⁴²³ and that the state should keep the option to significantly intervene in the migrants' lives, e.g. by revoking the right of residence, for as long as possible – and discipline the migrants in this way. According to this understanding, migration policy is a kind of zero-sum game between the migrants and the state: the more residency rights and especially legal certainty regarding residency the state gives to migrants, the more the state loses of its own sovereignty.

Finally a fourth idea can be identified: namely that low-skilled work will be carried out by the unemployed workers from among the domestic population, who will thus find their way back to the labour market. Foreigners, on the contrary, should not be hired to perform this type of work – and if there are exceptional cases, then they

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⁴²³ It is e.g. normal that foreigners are required to prove such knowledge in the process of obtaining citizenship which many citizens of that country do not have, or such a level of legal integrity which even most of the citizens do not meet.

should work only for a limited period of time, with a minimum level of rights and without the prospects of settlement.

The above-outlined concepts are of course possible, but they present only one point of view out of a variety of possible perspectives. E.g. the emphasis on the economic side of things is understandable in migration labeled as "labour" migration. Yet on the other hand, not even a "labour" migrant can be reduced to work only: the life of these foreigners has all other dimensions, as well. The criticism of an excessive focus on work performance and ignorance towards spiritual values or the value of relationships and other values which is aimed at the contemporary society in general, certainly applies also to the objectives of migration policies; these policies contribute to the fact that these sides of the modern civilization become even more pronounced.

More specifically, it can be argued that even if it was true that some people are somehow more beneficial to society than the others or simply economically more beneficial than the rest, it is virtually impossible to draw conclusions regarding the level of being beneficial only from the level of education and migrant's wealth at the time of entry into the host country. From the medium- or long-term perspective, there is a wide array of various factors which may relativize the value of the migrant's "initial investment" into the new society. Sometimes the "investment" is not only relativized, but even turned into quite the reverse. The thing is that some of these factors are derived directly from the instability of modern society. It happens that many well-educated and at first successful migrants subsequently – e.g. due to the absence of contacts in the majority of society or due to being directly discriminated against – drop out from the labour market and become dependent on the social system. On the other hand, many of the successful ones whose fortune has not left them will not stay in the host country, and they will move to another place with a higher rate of return of their educational or financial capital. More generally it can be said that if migration policy is a certain intensification of the current neo-liberal capitalism, then migration fails to either solve or ease the problems of this neo-liberal system in any respect. Moreover, in the case of migrants, its impact will only be amplified, both in terms of the virtues of the current capitalist system, and in terms of its negative sides.

Connected to this issue is one expectation which is not based on reality: namely that – under the current circumstances – the need for low-skilled work could be satisfied by the domestic unemployed population. It is of course true that even the domestic workers would perform these types of jobs, but only if this work was sig-

nificantly better paid. An increase in the value of unskilled labour would, though, mean a significantly greater change in the (power) settings of the modern society than the continuation of migrant work, long-established in the developed countries, brings with it. The claim that, all of the sudden, the government employment policy will finally somehow magically succeed in making the domestic population accept low-paid unskilled labour which is not connected either to social prestige or the perspective of moving upwards, is rooted in closing the eyes to reality. Its practical consequence is keeping low-skilled migrants in an inferior legal status (often even half-legal), whereby the wages, prestige and future perspective associated with these types of work continue to fall. On the other hand, it needs to be said that a sufficient pool of unskilled labour for Western European countries is provided by the free movement of Central and Eastern European EU nationals – and newly also by nationals of Southern European countries. Under the present legislation, this situation cannot be regulated by national migration policies of individual EU member states and the number of eligible countries may rise as a result of association agreements with EU candidate states. This is surely one of the factors enabling the restrictive British, German, Austrian, but also Czech migration policy towards incoming low-skilled labour migrants.

In any case, it is necessary to view labour migration also from another perspective than just from the point of view of what is most beneficial for the labour market and economic growth. The starting point could be the term social integration – i.e. social cohesion, and the emphasis would be on legitimacy and fairness in the way the state treats migrants, and on migrants' loyalty to the state, migrants' readiness to move the center of their vital interests to the target country, and their involvement in the life of various individual (not just local) communities and their knowledge of the country of destination. In such a de-economized and de-commercialized understanding of migration policy, not only employer unions, but also representatives of the local communities and professional and academic bodies could have a voice. This could be linked to decentralization or de-etatization of migration policies.

However, it is realistic to expect that the basis of the Czech migration policy will not change in the coming years, including its objective to attract the well-educated and the rich (and harshness on the low-skilled and the poor). Even if we accept this state of things, we can however still raise the question, under what conditions does the Czech Republic have a chance to succeed in attracting the preferred migrants in competition with other countries? The Czech Republic is a small country, the

language is learned abroad by only a fraction of those who study German or let alone English, Czech economic performance is considerably weaker and the wage level lower than that of the Western European countries, and the prestige of Czech universities is incomparable with the world leaders. Under these circumstances: does the Czech Republic have a chance to be interesting for those migrants who may be, according to the above-mentioned meaning, beneficial for the Czech economy?⁴²⁴ Does the country have an option to be picky at all – and can it afford to refuse migrants? Should not the Czech Republic make its immigration rules friendlier at least to those "interesting" migrants?

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⁴²⁴ According to the Ministry of the Interior, based on the data in the Report on the situation in the field of migration and integration of foreigners for the year 2013 (see page 49), a Blue Card application was filed by only 95 foreigners this year.

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**Foreign workers in the labour market in the Czech Republic
and in selected European countries**

Čížinský Pavel, Čech Valentová Eva, Hradečná Pavla, Holíková Klára,
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