

INFORMATIVE NOTE

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EU AND COMPETITION LAW

CHANGES TO THE LAW ON NON-EU FOREIGN NATIONALS

Law 29/2012 was published on 9 August 2012 and is the first amendment to the law establishing the legal rules applicable to the entry, stay, exit and removal of foreign nationals into and out of Portugal, which had been approved by Law 23/2007, of 4 July. This law is not, in general, applicable to EU citizens.

The new law, which will come into force on 8 October 2012, adopts, in Portugal, the rules set out in Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009, establishing a Community Code on Visas. The new law also implements several EU Directives.

The amendments focus on the following aspects: (i) the establishment of a mechanism that will allow third-country nationals (i.e. a person who is not a citizen of the EU) to obtain a residence permit in Portugal, if they make certain investments; (ii) the introduction of a new type of residence permit, known as the "EU Blue Card"; (iii) the extension of the long-term resident status to beneficiaries of international protection; (iv) harmonisation of standards and procedures for returning third-country nationals who stay in the country illegally; (v) the strengthening of criminal penalties relating to the employment of illegal immigrants; (vi) implementation of strategic measures for the integration of immigrants into Portuguese society.

1. RESIDENCE PERMIT IN THE CASE OF CERTAIN INVESTMENTS

Law 29/2012 establishes a new mechanism that will allow third-country nationals to obtain a residence permit if they make certain investments in Portugal. This instrument is further regulated by Decree 11820-A/2012, of 3 September, with regard, *inter alia*, to the minimum requirements in terms of amount and duration, the minimum stay periods in Portugal and the means of proof.

This means that it will now be possible to grant a temporary residence permit to third-country nationals, without the need to obtain a prior residence visa - which would have to be requested at the Portuguese Consulate of the country of origin - if they carry out, personally or through a company, an investment activity that leads to the achievement of at least one of the following situations in Portugal: (i) transfer of capital in the amount of at least EUR 1 million; (ii) creation of at least 30 jobs; (iii) acquisition of real estate with a value of at least EUR 500,000 (the applicant must have the full ownership of the property and it must be free of any charge or liability). When the investment activity is carried out through a company, only the proportion of investment corresponding to the applicant's share in the company is considered for the purposes of the residence permit.

"Portuguese Law Firm of the Year"
Chambers European Excellence Awards, 2009, 2012 / Who's Who Legal Awards, 2006, 2008, 2009, 2010, 2011 / The Lawyer European Awards-Shortlisted 2010, 2011, 2012

"5th Most Innovative Law Firm in Continental Europe"
Financial Times - Innovative Lawyers Awards, 2011 / Shortlisted 2012

"Best Portuguese Law Firm for Client Service"
Clients Choice Award - International Law Office, 2008, 2010

"TOP 100 Firms in Competition"
Global Competition Review 2007 - 2012

"Best Portuguese Tax Firm of the Year"
International Tax Review - Tax Awards 2006, 2008, 2009, 2010, 2011

"Best Portuguese Law Firm"
International Financial Law Review Awards 2006 / Shortlisted 2007 - 2012

CHANGES TO THE LAW ON NON-EU FOREIGN NATIONALS

Law 29/2012 sets forth a new mechanism that will allow third-country nationals to obtain a residence permit if they carry out certain investments in Portugal.

It should be noted that only investment activities occurring after 8 October 2012 will be relevant for these purposes.

At the time of submission of the application for a residence permit, the investment must have already been made, and it should be maintained for a period of five years as from the date of granting of the residence permit.

Residence permit applicants must also: (i) comply with the general requirements for the granting of temporary residence permits (with the exception of the prior granting of a valid residence visa); (ii) be the holder of a valid Schengen visa (i.e., a short-stay visa); (iii) legalise the stay in Portugal within 90 days of the date of the first entry into Portugal.

The residence permit may be renewed for two years, provided that the conditions necessary for granting it are maintained. For the purposes of renewal, applicants must demonstrate that they have complied with the following minimum periods of stay in Portugal: (i) 30 days in the first year; (ii) 60 days in the following year and subsequent periods of two years.

2. THE EU BLUE CARD

The second important amendment relates to the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and provides for the existence of the "EU Blue Card". This new EU Blue Card is a residence permit entitling its holder to reside and to engage in a highly qualified work in Portugal.

For the EU Blue Card to be granted, the third-country national must: (i) submit an employment contract that is compatible with the performance of highly qualified work, the duration of which must

not be less than one year and which corresponds to an annual salary of at least 1.5 times the national average gross salary (or, in some cases, of at least 1.2 times the national average gross salary); (ii) have health insurance or provide proof of being covered by the Portuguese National Health Service; (iii) be registered for Social Security; (iv) submit proof of professional qualifications or proof of professional certification; (v) meet the general requirements for the granting of a temporary residence permit (the applicant may be exempted from the obligation to have a prior residence visa if he or she holds a valid right to reside in Portugal).

The EU Blue Card has an initial validity of one year, renewable for successive periods of two years.

This instrument allows progressive access to the labour market in Portugal. Workers benefit from equal treatment vis-à-vis Portuguese workers, in particular as regards working conditions, education and vocational training and retirement pension.

3. THE EXTENSION OF THE LONG-TERM RESIDENT STATUS TO BENEFICIARIES OF INTERNATIONAL PROTECTION

Law 29/2012 also makes it possible to grant the "long-term resident" status to third-country nationals benefiting from international protection. In order for this status to be granted, the beneficiaries of international protection must have had legal and uninterrupted residence in Portugal for a period of five years as from the date of submission of the application which resulted in the granting of international protection.

Where revocation, removal or refusal to renew the international protection occurs, the long-term resident status on the basis of international protection should be refused.

4. HARMONISATION OF STANDARDS AND PROCEDURES FOR RETURNING THIRD-COUNTRY NATIONALS WHO STAY IN PORTUGAL ILLEGALLY

Law 29/2012 also harmonises the rules and procedures to be applied to the returning of third-country nationals who are staying illegally in Portugal

by implementing Directive 2008/115/EC, of the European Parliament and of the Council of 16 December 2008 (the «Return Directive»).

At the same time, the rules on re-admission of third-country citizens in Portugal have also been altered. «Re-admission» is the mechanism by which foreign citizens who are staying illegally in one State, having come directly from another State, may be re-admitted by the latter, upon a request made by the State in which they are staying.

The previous rules had already provided for the immediate re-admission, without formalities, of third-country nationals who had acquired long-term resident status in Portugal and members of their families, whenever they had been subject to a coercive expulsion measure by the Member State where they had exercised their right of residence. This possibility is now extended to third-country nationals who are EU Blue Card holders, as well as to their families, even if it has expired or has been withdrawn during the analysis of the application. It may also be extended to those subject to a request for acceptance made by another EU Member State, under the terms of agreements or conventions.

5. STRENGTHENING OF CRIMINAL PENALTIES RELATING TO THE EMPLOYMENT OF ILLEGAL IMMIGRANTS

Some changes have also been made to the criminal law rules applicable to the hiring of illegal immigrants.

Firstly, the maximum prison sentences for the crimes of «aiding illegal immigration», «soliciting illegal labour» and «marriage

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or union of convenience» have been increased to five years (in the first case) or six years (in the latter two cases).

Secondly, a new criminal offence of «using the activity of a foreign citizen in illegal situation», has been introduced and may be punished with a prison sentence of up to two years. The prison sentence may go up to five years, when the offence involves particularly exploitative working conditions or degrading treatment, or even to six years, when the employer is aware that the worker is a victim of human trafficking.

6. MEASURES FOR THE PROTECTION OF IMMIGRANTS

The new rules also include measures aimed at strengthening the protection of immigrants in Portugal.

Law 29/2012 clarifies the legal aid scheme for victims of human trafficking or of the crime of aiding illegal immigration.

Furthermore, in criminal proceedings for domestic violence, the requirement for a conviction has been replaced by with a requirement for a simple accusation by the public prosecutor in order for an autonomous residence permit to be granted to reunified family members who are victims of these situations.

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