

New rules in the immigration system

New Foreigners Act and Posting of Workers to the Republic of Croatia and the Cross-Border Implementation of Financial Penalties Act



Introduction

In November 2020, the Croatian Parliament has enacted two legislative acts regarding the Croatian immigration system:

- ▶ Foreigners Act and
- ▶ Posting of Workers to the Republic of Croatia and the Cross-Border Implementation of Financial Penalties Act.

The respective Acts enter into force on **1 January 2021**.

We present you with a summarized overview of the most significant changes below. EY Croatia will continue to monitor and update you on further legislative developments in this regard.

Third country nationals are entitled to work in Croatia on the basis of a residence and work permit or a work registration certificate.

Before the submission of the application, the employer is obligated to request a performance of a **labor market test** by the Croatian Employment Service ("HZZ"). The purpose of the test is to examine the available workforce in the national labor market. Depending on the outcome of the test, the following procedures will be conducted:

- ▶ If a labor market test indicates that there are persons in the unemployment records who meet the employer's requirements, HZZ will conduct a mediation procedure between the employer and the unemployed persons mentioned above.
- ▶ If a labor market test indicates that there are no persons in the unemployment records who meet the employer's requirements, the employer will be entitled to request the issuance of a residence and work permit **within 90 days** from the receipt of the notification on the labor market test outcome.

Following the submission, the competent police department will ex officio request an opinion from HZZ. HZZ will issue a positive opinion if the application is submitted with proper supporting documentation and if the employer meets the following conditions:

- ▶ The employer performs a registered economic activity in Croatia,
- ▶ The employer has settled all personal income tax liabilities and relating social contributions,



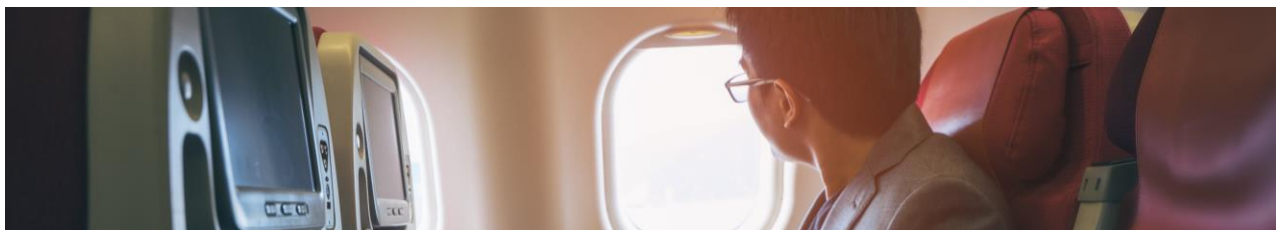
Foreigners Act

The new Foreigners Act was enacted by the Croatian Parliament on 25 November 2020. The Act represents a complete overhaul of the Croatian immigration system and implements new legislative institutes that were intended for the modern business environment.

Below please find the most significant changes introduced by the new Foreigners Act.

1. Removal of annual quotas

Following the entry into force of the new Foreigners Act, a new system regarding the employment of third country nationals is implemented in Croatia. The previous system of annual quotas has been removed and from now on, the need for work performed by third country nationals will be assessed on a case by case basis with certain exceptions.



- ▶ In the period of last 6 months, the employer employs at least one employee who is a Croatian national or a national of an EU or EEA Member State and is working full-time for an indefinite term. (Please note that HZZ will not issue a positive opinion if the number of employed Croatian nationals or nationals of an EU or EEA Member State is less than 25% of the total amount of employees.)
- ▶ The employer has not been convicted for criminal offences in the field of labor affairs and social contributions.

There are certain exceptions to the requirement of conducting a labor market test, such as seasonal workers working up to 90 days in agriculture, forestry, hospitality and tourism or other occupations for which HZZ has assessed that there is no need to conduct a labor market test.

2. Work registration certificates

The work registration certificate is issued for performance of contracted work of short duration and can be issued for up to:

- ▶ 30 days or
- ▶ 90 days.

According to the Foreigners Act, which is in force until 1 January 2021, work registration certificates could have been issued for up to 30 days, 60 days, and 90 days. The Foreigners Act that enters into force on 1 January 2021 does not envisage the issuance of work registration certificates up to 60 days, but up to 30 days or 90 days only. The categories of third country nationals entitled to work registration certificates are **exhaustively listed**. On the basis of an issued work registration certificate, the third country national is entitled to work for the employer or the service recipient on the entire Croatian territory and is not obligated to have a residence and work permit.

3. Digital nomads

A novelty in the Croatian immigration system introduced by the new Foreigners Act is the approval of temporary stay for digital nomads. Digital nomads are third-country nationals employed or performing work through communication technology for a company (including their own company), **that is not registered in Croatia and does not perform work or provides services to the employers on the Croatian territory.**

The application for the approval of a temporary stay is submitted to the diplomatic mission or consular office of the Republic of Croatia. If a third country national does not need visa to enter Croatia, the respective application can be submitted to the competent police department. The approval of a temporary stay is issued for **one year**.

The approval of a temporary stay can be issued to the digital nomad if the following conditions are met:

- ▶ A digital nomad can prove the purpose of temporary stay,
- ▶ A digital nomad has a valid foreign travel document,
- ▶ a digital nomad has sufficient means of subsistence,
- ▶ The digital nomad has health insurance,
- ▶ The digital nomad has evidence that he/she has not been convicted for criminal offences in the native country or the country of last residence in which he/she reside over a year before submitting the application for a temporary stay in Croatia (needed only for the submission of the first application),
- ▶ The digital nomad does not have an entry ban, or a residence ban in Croatia or a SIS warning regarding the entry of the digital nomad, and
- ▶ The digital nomad is not threat to a public order, national security, or public health.

Upon the expiry of the approval of a temporary stay, a new application may be submitted **after 6 months from the expiry**.

4. Long - term visa

A long-term visa ("Visa D") is an approval for a temporary stay in Croatia for **up to 30 days**, that can be issued to a third country national, to whom a temporary stay has been approved or a residence and work permit has been issued, who needs a short-term visa to enter Croatia. Visa D is issued for one or more entries into Croatia and its maximum validity is **6 months**.

Visa D is issued by the diplomatic mission or a consular office of the Republic of Croatia. The applicant is obligated to submit the application **in person** due to the requirement of collecting biometric identifiers.¹

A third country national must meet the following conditions for Visa D:

- ▶ The third country national has an approval of a temporary stay or a residence and work permit,
- ▶ The third country national has the appropriate travel health insurance,
- ▶ The third country national does not have an entry ban, or a residence ban in Croatia or a SIS warning regarding the entry of the third country national, and
- ▶ The third country national is not threat to public order, national security, or public health.

Following the issuance of Visa D, the third country national is obligated to contact the competent police department for the purpose of residence registration and creation of a biometric residence permit.



Posting of Workers to the Republic of Croatia and the Cross-Border Implementation of Financial Penalties Act

The respective act is a new legislative act that will, following its entry into force on 1 January 2020, be the main legislative act regulating posting of workers to Croatia. It implements the Directive 2018/957 which main aim is to improve the status of posted workers.

Notwithstanding the changes described below, the general rule regarding the application of the more favorable law on the posted workers is still in force, hence, if the working conditions prescribed by the law of the country of the employer's residence are more favorable to posted workers, the respective law will apply during the posting in Croatia.

Below please find the most significant changes intended to improve the status of posted workers.

1. Equal Pay Principle

The most significant improvement in the status of posted workers is related to remuneration. In accordance with the respective Act, posted workers are entitled to **all mandatory constituent parts of the remuneration** to which all the domestic workers are entitled under the Croatian law or the collective agreement which application has been extended by the Minister responsible for labor affairs.

¹ Please note that before the entry into force of the Schengen Agreement in Croatia, the request for the issuance of Visa D will be considered valid without the collection of biometric identifiers.



2. Accommodation and expenses

Posted workers working in Croatia are entitled to the **same quality of accommodation** as the domestic workers if the host employer is obligated to ensure accommodation for the domestic workers when they are away from their regular place of work, in accordance with the Croatian law or the collective agreement which application has been extended by the Minister responsible for labor affairs. Furthermore, the posted workers are entitled to **all allowances or benefits related to travel, food, and accommodation** during the performance of work for which they were posted to Croatia under the condition that domestic workers are entitled to the same allowances or benefits, in accordance with the Croatian law or the collective agreement which application has been extended by the Minister responsible for labor affairs.

3. Long - term posting

Long-term posting is a novelty introduced by the respective Act. If the effective duration of posting regarding the performance of the same task exceeds **12 months**, this is considered as long-term posting.

All the applicable terms and conditions of employment that apply to domestic workers in accordance with the Croatian law or the collective agreement which application has been extended by the Minister responsible for labor affairs,

apart from the provisions on the procedure, conditions and administrative obligations related to entering into and/or terminating employment relationship, non-competition, and supplementary occupational retirement pension schemes, will apply to posted workers in case of a long-term posting.

However, the home employer is entitled to extend the period of 12 months to **18 months**. The notification for the extension can **only be submitted once** and must be submitted at least one month before the expiry of the 12-month period.

Furthermore, if a posted worker is replaced by another posted worker who is performing the same work at the same place, the duration of postings of both workers will be cumulatively calculated as a single posting period.

Finally, all postings that have lasted under 18 months before 1 January 2020 are **automatically extended** to 18 months, without the obligation of submission of a motivated notification for the extension. However, all effects arising from long-term posting will apply following the entry into force of the respective Act to postings already lasting over 18 months before 1 January 2020.

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