

LEGAL ISSUES AND ECONOMIC JUSTIFICATION OF EU WORK PERMIT QUOTAS

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Abstract. The interest in the European Union work permit quotas arises largely as a result of globalization and digitalization, while the European Union member states produce more labor services than materials, followed by deviations in labor policies. The main *aim* of the article is to analyze the work permit policies implemented by the EU and its member states to manage the legal employment of migrant workers, focusing on the existing programs during the last two years. The *subject* of the study is the outcome of work permit legislation and quotas for third country economic relations with the European Union. The *methodology* of the research includes the method of descriptive and explanatory study of legal issues of EU work permit quotas, followed by statistical analysis with legal review of the data on the subject. The study is based on the analysis of documents (founding acts, directives, regulations, decrees, etc.) of the EU countries and is focused on the research of the scope of their domestic decisions. As a *result*, the paper raises and analyzes many important issues of the European Union's work permit quota regulations in times of socio-economic imbalance. The first section of the paper provides an analysis of the legal background of labor migration policy at the EU level. The second section deals with the political and legal work permit measures (quotas) defined by the member states to secure their national economy. The second section is dedicated to the statistical survey of the EU work permit policy in the context of the employment of migrant workers of Ukrainian origin. The *hypothesis* of the paper is that labor migration is a social phenomenon with a long historical background, while the work permit quota is an annual governmental mechanism established in relevant normative acts of the states. *Practical implications* are as follows: the conclusions and methodological approaches to legal work permit model, obtained as a result of the study, is considered a tool for national security management of multiplicative risk factors, and is applicable to condense misleading in labor policies of EU member states and in third countries. The *value/originality* of the paper is revealed by the use of behavioral and economic analysis (in the context of humanitarian crisis in Ukraine). The paper modifies the current situation on execution of regulatory acts within the framework of EU work permit quotas as currently improving measures.

Key words: European Union, freedom of movement, labour migration policy, measures, national security, temporarily protection, work permit quotas.

JEL Classification: E24, I38, J08, K30, K31, K38

1. Introduction

There are no unified rules for EU labor law, although there are numerous governmental acts aimed at common management of labor migration policy.

According to the latest Frontex Risk Analysis Report, the main risks for European Integrated Border Management in 2022/2023 are:

1. Irregular migration on established migration routes to the EU.
2. Transnational crime and terrorism.
3. The instrumentalization of migration as a political bargaining chip.
4. The widening gap between return decisions and actual returns.

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All of these risks are expected to be exacerbated by the multiple, long-term consequences of the war in Ukraine (Frontex, 2022).

Millions of refugees from Ukraine found their shelter in the European Union and registered for temporary protection with main destinations in Poland, Germany, Hungary and Romania (Operational Data Portal, 2023).

In the member states of the European Union, work permits for employment of foreigners are usually issued within the framework of the specified *work permit quota* – the number of work permits that can be issued to foreigners in certain occupations in one year in accordance with the migration policy of the country and the situation on the labor market.

The work permits specified in the annual quota by activities and professions shall be issued first for the purpose of extending the already issued work permits and then for new employment. When issuing work permits, priority is given to foreigners who already have a temporary residence permit in the country on the basis of family reunification.

In addition, it is well known that all EU citizens and their family members¹ have the right to move and reside freely within the EU.

The Treaty of Rome establishing the European Economic Community (hereafter EEC, 1958) is recognized as one of the elementary international agreements to liberalize trade in goods, services and capital, free movement of workers and freedom of establishment, followed by the Single Market without barriers and border controls (1993). (Single Market Act, 2011)

Today, the free movement of workers in the European Union is regulated by the norms of the Treaty on the Functioning of the European Union (hereinafter TFEU), based on the Treaty of Maastricht (Treaty on the European Union, hereinafter TEU, 1993) with the set of EU rules on free movement of persons with some restrictions for new EU member countries.

These provisions must be read in the context of the general principle of non-discrimination based on Article 21(2) of the Charter of Fundamental Rights of the European Union:

1. Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to their specific provisions, any discrimination on grounds of nationality shall be prohibited.

¹ who is classed as a "family member" is defined at Article 2.

The corresponding provision is mentioned in Article 18 TFEU: "Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."

Article 45 TFEU (ex-Article 39 TEC) also mentions this:

1. Freedom of movement for workers within the Union shall be ensured.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall include the right, subject to limitations justified on grounds of public policy, public security or public health, to:

- (a) to accept offers of employment actually made;
- (b) to move freely within the territory of the Member States for that purpose;
- (c) to remain in a Member State for the purpose of employment in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State;
- (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions to be laid down in regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

Researchers Amy Weatherburn, Lisa Berntsen claim that "EU legislation provides for the equal treatment of posted workers, ... while the EU labour law framework is not harmonized, the EU has the competence under Article 153(1) TFEU to adopt minimum requirements in certain areas, including inter alia the improvement of the working environment to protect workers' health and safety and working conditions." (Weatherburn, Berntsen, 2021)

2. Legal background of free movement and work permits in EU labor migration policy

The common policy of free movement of workers in the EU is based on the economic freedom of free movement of labor and the freedom of establishment, which is based on the economic freedom of services (the right to self-employment) under Article 49 TFEU (ex-Article 43 TEC), which provides that:

"Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries

by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital." This rule applies to individuals and legal entities.

Remarkably, the Title V: Area of Freedom, Security and Justice, Chapter 2: Policies on Border Control, Shelter and Immigration, Article 78 TFEU (ex-Articles 63(1) and (2) and 64(2) TEC) provides that:

"1. The Union shall develop a common policy on shelter, subsidiary protection and temporary protection with a view to offering an appropriate status to any third country national in need of international protection and ensuring compliance with the principle of non-refoulement. This policy shall be consistent with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European shelter system comprising:

- (a) a uniform status of refugee for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who are in need of international protection and cannot obtain European shelter; and
- (c) a common system of temporary protection for displaced persons in the event of a mass influx;
- (d) common procedures for granting and withdrawing uniform shelter or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for examining an application for shelter or subsidiary protection;
- (f) standards on the conditions for the reception of applicants for shelter or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of applicants for shelter or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted with an emergency situation characterized by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. The Council shall act after consulting the European Parliament."

Secondary EU legislation sets out more detailed rules to regulate free movement, through Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

The specific rights relating to the free movement of workers and their family members are set out in Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union. This means that all EU citizens and their family members have the right to move and reside freely within the territory of the Member States, including the right not to be discriminated against on grounds of nationality regarding:

- access to employment;
- working conditions;
- social and fiscal advantages;
- access to training;
- membership of trade unions;
- access to housing;
- access to education, apprenticeships and training for their children, etc.

To this end, the free movement of persons also applies to countries that are part of the European Free Trade Area, as a result of the Agreement establishing the European Economic Area ("EEA") and the Agreement on the Free Movement of Persons ("AFMP") with the Swiss Federation (Opinion of Advocate General Hogan, 2021).

In order to implement the norms of Article 78(3) TFEU, the European Commission proposed in 2015 a Council Decision on emergency measures to help Italy, Greece, Hungary (to relocate shelter seekers from Syria and Eritrea) (Proposal, 2015) and Latvia, Lithuania and Poland (to solve the migration situation at the borders of Belarus).

It is extremely important to mention Council Implementing Decision (EU) 2022/382 to solve the migration flow of refugees from Ukraine because of Russia inhuman crimes of aggression and illegal invasion of the territory of Ukraine. On March 4, 2022 the EU member states unanimously agreed to activate the Temporary Protection Directive 2001/55/1 (Council Implementing Decision (EU) 2022/382).

Article 2(1) of Council Decision 2022/382 identifies three categories of persons to whom temporary protection applies: (I) Ukrainian nationals residing in Ukraine on or before February 24, 2022; (II) stateless persons and nationals of third countries other than Ukraine who enjoyed international

protection or equivalent national protection in Ukraine before February 24, 2022; and (III) family members of the aforementioned groups. While the Temporary Protection Directive allows Member States to have national complementary schemes, the majority of responding Member States reported that they apply temporary protection exclusively under the Temporary Protection Directive. According to Article 9 of the Temporary Protection Directive, Member States are required to provide beneficiaries of temporary protection with a document in a language which they can understand, clearly indicating the provisions of temporary protection which apply to them.

It should be emphasized that in accordance with paragraphs 10 and 18 of Directive 2004/38/EC:

"(10) Persons exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during a first period of residence. The right of residence for Union citizens and their family members for periods exceeding three months should therefore be subject to conditions.

...
(18) In order to be a genuine instrument of integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once acquired, should not be subject to any conditions."

The right of residence is governed by Chapter III of Directive 2004/38, entitled "Right of residence". In this chapter, Article 7 deals with the right of residence for more than three months. It provides:

"1. Every Union citizen shall have the right of residence in the territory of another Member State for a period of more than three months if the person concerned is:

(a) are workers or self-employed persons in the host Member State; or
(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or

...
(d) are family members accompanying or joining a Union citizen who satisfies the conditions laid down in points (a), (b) or (c)."

In addition, the following legal acts, among others, are of extreme importance:

– Regulation (EC) No 883/2004 of the European Parliament and of the Council of April 29, 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

– Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

– Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers was adopted to facilitate the free movement of EU workers and their family members and to make these rights more effective.

Article 4 of the Directive states: "1. Each Member State shall designate one or more structures or bodies ("bodies") for the promotion, analysis, monitoring and support of equal treatment of Union workers and their family² members without discrimination on grounds of nationality and without unjustified restrictions or obstacles to their right of free movement and shall make the necessary arrangements for the proper functioning of such bodies. These bodies may be part of existing bodies at national level which have similar objectives ... 4. Member States shall ensure that existing or newly created bodies are aware of, can make use of and cooperate with existing information and assistance services at Union level, such as Your Europe, SOLVIT, EURES, the Enterprise Europe Network and the points of single contact."

– Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of service.

Case law is essential part of legislation that guarantees the freedom of movement in the EU, e.g.:

– judgment of 26 February 1991, *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen*;

– judgment of 31 March 1993, *Kraus*;

– judgment of 20 June 1996, *Semeraro Casa Uno and Others*;

– judgment of 27 January 2000, *Graf*;

– judgment of 11 July 2002, *D'Hoop*;

– judgment 23 March 2004, *Collins*;

– judgment of 4 June 2009, *Vatsouras (C-22/08)* and *Josif Koupatantze (C-23/08) v Arbeitsgemeinschaft (ARGE) Nürnberg 900*;

– judgment of the Court of 23 February 2010, *Teixeira*;

– judgment of 29 March 2011, *Commission v Italy*;

– judgment of 12 July 2012, *SC Volksbank România, etc.*

In paragraph 70 of the *Teixeira* case, the Court ruled that "the right of residence in the host Member State of the parent who is the primary carer of a child exercising the right to education under

² Members of their family' should be understood as having the same meaning as the term defined in point (2) of Article 2 of Directive 2004/38/EC of the European Parliament and of the Council

Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (15) is not subject to the condition that that parent has sufficient resources not to become a burden on the social assistance system of that Member State during the period of residence and has comprehensive sickness insurance cover there."

3. Domestic government initiatives and decisions on work permit quotas in EU member states

It is well known that EU Member States apply quotas or limits as measures to manage labor migration from third countries (C-190/98, EU:C:2000:49, paragraph 25).

In most Member States, mobile third-country workers do not receive any significant preferential treatment compared to newly arrived third-country nationals and must therefore obtain a work permit under the same conditions as third-country nationals coming directly from outside the EU³, subject to a labor market test procedure or labor market quotas. In practice, however, the administrative procedures and the resulting granting of work permits to third-country nationals show both similarities and differences between the Member States. In some Member States, concessions are granted in particular to those third-country nationals whose mobility is provided for under EU directives for long-term residents and specific categories of workers. In particular, exemptions apply to particular highly skilled / qualified workers⁴ or personnel in foreign companies (Cyprus).⁵

In 2006, Philip L. Martin wrote that "the General Agreement on Trade in Services (GATS) offers a potential mechanism for encouraging such migration, particularly by facilitating the cross-border movement of professional service providers. If the GATS were to liberalize the movement of service providers, there could be "hundreds of millions" of additional migrants." (GATS, 2006)

Legally speaking, GATS Mode 4 is defined as the supply of a service by a service supplier of one WTO member through the presence of natural persons of another WTO member. Nowadays, the movement of natural persons covers services supplied by a service supplier of one member through the presence of natural persons of one member in the territory of any other member. Mode 4 may affect such sectors of the economy as: information technology, professional services, other services where the movement of

service providing personnel is crucial (i.e., after-sales services) (WTO, 2021).

Types of measures affecting Mode 4 trade:

- Visa and work permit processing delays;
- Licensure/certification requirements;
- Restrictions on employment of spouses;
- Restricted entry for certain types of occupations;
- Economic needs and labor market tests;
- Quotas;
- Technology transfer requirements;
- Residency and citizenship requirements;
- Training/Education/Qualification requirements;
- Promotion of economic relations.

In general, visa and work permit requirements and procedures are among the most important measures affecting Mode 4 trade. Eligibility criteria tend to be strict, with a bias towards categories of highly skilled and educated individuals at higher functional levels. Their movement tends to be linked to a commercial establishment in the host country and to a prior period of employment in the home company. Permits are issued for periods of stay that are not always tailored to the needs of Mode 4 service providers and are often not renewable. There are also often quantitative restrictions on visas and work permits, expressed as numerical quotas and/or economic needs tests (ENTs). The latter may take the form of labor market tests, management needs tests, staffing requirements, or other types of tests and conditions. ENTs implemented in the absence of clearly defined criteria and procedures are comparable in effect to the absence of any binding policy.

Procedures related to visas and work permits can be an additional barrier to Mode 4 trade. Application procedures are often cumbersome, costly and administratively complex; processing times are likely to be long; rejection rates can be high; and the cost of reapplying is significant. Two separate procedures, one for an entry visa and one for a work permit, are often required. Permits are generally not transferable from one employer to another, and extension and renewal procedures are not necessarily streamlined. Procedures, particularly those related to work permits, rarely distinguish between temporary and permanent movement of workers and are therefore particularly ill-suited to the temporary and often time-sensitive types of movement that Mode 4 involves. Opacity and arbitrariness are also cited as problems associated with entry and work permit procedures (WTO, 2021).

For example, on March 30, 2020, the EU Commission published two additional communi-

³ Austria, Belgium, Estonia, Greece, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Malta, Sweden

⁴ Belgium, France, Cyprus, Finland, Poland

⁵ In Finland, France and Poland, for example, highly qualified third country national workers holding an EU Blue Card are exempt from a labour market test.

cations: the "Guidelines concerning the exercise of the free movement of workers during the COVID-19 outbreak" and the "Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy", adding seasonal workers in the agricultural sector to the list of third-country nationals who can enter the EU despite the closure of its external border. As noted in point 2 of the guidance: "The temporary restriction of non-essential travel should not apply to [...] seasonal agricultural workers." In the same guide, the EU Commission also provided practical measures for Member State authorities to promote a coordinated management of external border controls on travelers authorized to cross the border, through a strict application of the Schengen Borders Code. These measures ranged from systematic checks through consultation of the Schengen Information System (SIS) to health checks of travelers in relation to COVID-19 with thermal scanning and/or symptom screening. Member States and Schengen associated countries were able to limit the number of border crossing points that remained open to "essential workers". And, based on national decisions, each country applied the most appropriate control measures to detect and limit the spread of COVID-19, such as quarantining anyone entering their country (including their own citizens) for 14 days (Geraci, 2021).

Weatherburn A., Berntsen L. claim that "in Belgium, the labor law framework is known to offer significant protection to workers. However, the extent to which this protection is extended to migrant workers is criticized by civil society, as labor migration policies do not take into account the specific vulnerability of migrant workers. This is particularly true for third-country nationals, but also applies to EU migrant workers. However, there are sectoral differences. For example, in the meat sector, although there is still the possibility of informal work, significant efforts have been made to ensure equal treatment of all workers, including posted workers. Joint Committee No. 118 determines the working conditions and wages of workers in the food industry. According to Article 5(1) of the Act of March 5, 2002, an employer who employs a posted worker in Belgium is obliged to comply with the employment, wage and working conditions laid down by the legal and regulatory provisions of the CBAs and the Joint Committees." (Weatherburn, Berntsen, 2021)

Continuing the analysis, suppose that in January 2023, the Italian government issues a decree (*decreto*

flussi) that defines the number of quota-eligible non-European Economic Area workers that can be admitted to Italian companies for local employment.

In Italy, caps ("quotas") are determined annually through consultations with local authorities and the employment services, but are the joint responsibility of the Ministry of Labour and the Ministry of the Interior.⁶

In 2023, the increased quota of work permits is up to 82,705 for non-EU nationals, including: The free movement of workers within the Union will be ensured.

Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

It shall include the right, subject to limitations justified on grounds of public policy, public security or public health, to:

- (a) to accept offers of employment actually made;
- (b) to move freely for that purpose within the territory of the Member States;
- (c) to remain in a Member State for the purpose of employment in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State;
- (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions to be laid down in regulations to be adopted by the Commission (Chaloff, 2014).

The quotas of Flow Decree involve the following countries: Albania, Algeria, Bangladesh, Bosnia-Herzegovina, Korea (Republic of Korea), Ivory Coast, Egypt, El Salvador, Ethiopia, Philippines, Gambia, Ghana, Japan, Guatemala, India, Kosovo, Mali, Morocco, Mauritius, Moldova, Montenegro, Niger, Nigeria, Pakistan, Republic of North Macedonia, Senegal, Serbia, Sri Lanka, Sudan, Tunisia, Ukraine, Albania, Algeria, Bangladesh, Bosnia-Herzegovina, Korea, Ivory Coast, Egypt, El Salvador, Ethiopia, Philippines, Gambia, Ghana, Japan, Guatemala, India, Kosovo, Mali, Morocco, Mauritius, Moldova, Montenegro, Niger, Nigeria, Pakistan, Republic of North Macedonia, Senegal, Serbia, Sri Lanka, Sudan, Tunisia, Ukraine.

Applicants for Italian work visas and visa conversions must submit a number of documents by December 31, 2023.

1. Application for the Certificate of No Impediment (so-called *Nulla Osta*).
2. Application for the Italian visa.
3. Entry into Italy and application for the Italian residence permit.

⁶ provisions shall not apply to employment in the public service; 500 authorizations for self-employed, 44,000 authorizations for seasonal workers in the agricultural and tourism-hotel sectors, 31,205 authorizations for local hires of certain nationalities in specific industries, 7,000 authorizations for changes of status.

For example, at the beginning of 2023, the Danish government had published the salary threshold for the Pay Limit Scheme with a minimum salary amount of DKK 465,000 per year (DKK 38,750 per month). The Danish positive list scheme includes new job titles with the new job titles for the next six months.

In Luxembourg, access to employment for beneficiaries of international protection is regulated by a temporary work permit (AOT). The labor market is characterized by a high number of cross-border workers from France, Belgium and Germany, who represent 46.7% of the country's workforce. While third country nationals represent only 4.8% of the total workforce. These figures do not allow for a targeted labor market integration policy for third-country nationals or, more specifically, for applicants for international protection. The legal framework in Luxembourg does not allow applicants for international protection direct access to the labor market. This is only possible after six months from the submission of the application, if the application has not been decided and this lack of decision cannot be attributed to the applicant. This six-month period, during which the applicant cannot access the labor market, is considered by civil society as one of the main challenges for the integration of applicants for international protection into the labor market. However, this is not the only restriction that regulates access to the labor market for applicants for international protection. After the six months, the applicant for international protection has to apply for a temporary work permit (AOT), find an employer willing to employ him/her with the AOT, and also pass the labor market test. This lengthy and rather complicated procedure can be seen as one of the reasons why the number of first-time AOTs issued in Luxembourg is very low (around 10 permits per year) (EMN Report on Integration, 2022).

The Irish government has relaxed the rules for general applications under the Atypical Working Scheme (hereafter AWS) with effect from January 1, 2023. A 90-day permit under the AWS will be allowed to be spread over a six-month period, allowing the employee to travel intermittently during that period. The cooling-off period for starting a new AWS permit after this six-month period will also be reduced from 12 months to one month. This will be beneficial to foreign nationals who are able to work in Ireland on a regular basis and are not required to work for a continuous period of 90 days. The salary threshold for the AWS will be revised from the current National Minimum Wage to align with the published salary requirement for a General Employment Permit (currently €30,000). The Irish Equality and Human Rights Commission (hereinafter IHREC) has been designated as the

"Designated Body" for Ireland under Article 4 of the IHREC Act 2014. In certain circumstances, IHREC may provide legal and/or other assistance to EEA workers and their families to help them assert their rights under the Directive and the IHREC Act 2014. It also has functions to promote, analyse, monitor and support the equal treatment of workers and their family members without discrimination on grounds of nationality. With effect from 1 January 2023, the Employment Services Act No. 5/2004 has been amended and several changes have been implemented affecting the immigration processes of EU and non-EU nationals.

The Romanian government has published its decree with annual quota for non-EU/EEA/Swiss workers from outside the European Union, European Economic Area and Switzerland. As of January 1, 2023, the Romanian government has set the work permit quota at 100,000 work permits for non-EU/EEA/Swiss nationals to be employed in Romania.

The Slovak government has obliged Slovak companies that employ EU citizens on secondment to Slovakia to submit information cards to the Labor Office at the beginning and end of the secondment. It is not necessary for the Labor Office to conduct a labor market review during the renewal process for non-EU nationals who are applying for a Single Permit Renewal or a Blue Card Renewal and who are not changing their job position. Non-EU nationals who have a pending Single Permit Renewal application will be allowed to work until a decision is made, even if the current permit expires; it is just important to submit the renewal application 90 days before the expiration date, in exceptional cases 30 days before the expiration date. Employers must submit the information card to the labor office.

On December 22, 2022 the Spanish government introduced a law on teleworking visa, the so-called *El visado para el teletrabajo de carácter internacional*. The telework visa is intended for non-EU nationals who wish to live and work in Spain on a self-employed basis or as employees of foreign companies who perform their duties remotely for up to one year. It is possible to apply for a three-year residence permit and then renew it every two years. The sponsoring foreign company with which the applicant has an employment relationship must provide proof of prior real and continuous activity for at least one year. The fact that supporting documents must include, among other things, police certificates, proof of social security coverage and proof of health insurance means that sufficient lead time is required to collect these documents (Abboud, Vennwald, 2023).

To compare the EU policy with other countries' policies, it is worth mentioning that Switzerland has the right to renew seasonal work permits, which

allows the worker to apply for a permanent residence permit after four consecutive seasons (OECD (2002a)). The Swiss authorities have published the work permit quotas for foreign workers for 2023, with the same quota allocations as for 2022. As before, quotas do not apply to applications for L permits for stays of less than four months, status changes, and renewals. In contrast to 2022, quotas for Croatian nationals will be reintroduced in 2023 (Federal Council, 2023; Switzerland, 2023).

On January 30, 2023, the Government of Canada announced that Canada will temporarily extend work permits to family members of principal applicants under the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP) to help Canada address chronic labour shortages. Eligibility for work permits will be extended to the following classes of applicants:

- The spouse, common-law partner, or dependent child of a work permit holder who is working in an occupation in any of the Training, Education, Experience, and Responsibilities (TEER) categories (0 to 5), or;
- The spouse, common-law partner, or dependent child of a work permit holder who is the principal petitioner and has an open work permit (example: post-graduate work permit holders at all skill levels);
- The person is a spouse, common-law partner, or dependent child of a permanent resident petitioner in the economic class who has a work permit.

Spouses, common-law partners, and dependents of workers in a TEER 4 or 5 job under the low-wage agricultural stream of the Seasonal Agricultural Worker Program and the agricultural stream of the Temporary Foreign Worker Program are not eligible to apply at this time.

4. EU work permit quotas policy for Ukrainian beneficiaries of temporary protection

According to the European Migration Network Report 2022, "the situation with regard to Ukrainian nationals already present on the territory of a Member State before 24 February 2022 varies widely across Member States. Most Member States have adopted specific measures, with three Member States reporting that their existing legal framework already covers such cases. Several Member States reported that Ukrainian nationals legally residing on their territory could remain after the expiry of their visa or other legal basis for stay. Estonia, for example, stated that there was no need to specifically apply for an extension of the documents granting legal stay. Others specified that individuals could apply for an extension of their current permit, apply for temporary protection, or apply for shelter. In contrast, the measures taken by Bulgaria, Malta

and Slovenia do not allow Ukrainians who were already in their territory before the Russia attack to benefit from temporary protection, but only from international protection. To make it easier for those who were already in Sweden at the time of the invasion, the Swedish government adopted an amendment to the relevant ordinance in early April. The amendment, which entered into force on 26 April 2022, has the effect that those who traveled to and stayed in Sweden between 30 October 2021 and 23 February 2022 are also included in the group of persons entitled to a residence permit with temporary protection, provided that they meet the requirements, e.g., being a Ukrainian national and residing in Ukraine. With regard to Ukrainian nationals in an irregular situation, some Member States reported that they provide that such persons are granted a legal basis for temporary stay and that any return decision is thereby postponed or annulled." (EMN Report, 2022)

In terms of policy, Belgium reported that there were no specific provisions for Ukrainian nationals in an irregular situation, but that they could apply for temporary protection. Finland and Latvia put persons in an irregular situation on the same footing as those with valid permits by allowing them to apply for an extension of an expired permit, to apply for temporary protection or to apply for shelter. On the other hand, Italy's measures provide that persons in an irregular situation can apply for international protection and are therefore not subject to possible repatriation.

It is noteworthy that on April 5, 2022, the Luxembourg Refugee Council (Collectif Réfugiés Luxembourg – LFR) issued a statement on certain issues related to persons fleeing Ukraine after the unprovoked war launched by Russia against Ukraine. One of the main points was related to the access to the labor market for the beneficiaries of temporary protection, which indicates: "We are satisfied that access to the labour market will be facilitated for beneficiaries of temporary protection, who will be exempted from the need to apply for a temporary work permit (AOT). They will have free access to the Luxembourg labor market."

However, the statement also criticized the difficulty of access to the labor market for applicants for international protection. In this regard, the declaration states "We expect a rapid positive development regarding access to employment for applicants for international protection, who currently have to wait six months before they can apply for a work permit. The obligation to apply for this authorization (no direct access even after six months) and the labour market test are important obstacles. The authorities informed us that the legislative process is ongoing and that positive developments are expected (abolition

of the labor market test). However, the temporary work permit procedure would remain in place and therefore, contrary to our demands, the impossibility of access to the labor market for applicants for international protection before six months of the procedure would also remain." However, the Luxembourg government has taken certain measures to integrate them into the labor market. Exceptionally, refugees from Ukraine have immediate access to the labor market. They can be hired directly under legal employment contracts (permanent / temporary / fixed-term), subject to the legal provisions of the Labor Code. Employers wishing to hire beneficiaries of temporary protection from Ukraine must register their vacancies with the ADEM in accordance with the usual procedure. When filling in the vacancy declaration, employers should make sure that they choose the public publication of their vacancy in order to ensure that jobseekers from Ukraine can access it directly on the public website of the ADEM's JobBoard (EMN Report, 2022).

Agree with Daniel Thym on the advantages of the Temporary Protection Directive. Firstly, "the Temporary Protection Directive avoids the overstretching of scarce administrative resources. Beneficiaries receive protection status without having to go through long and complex shelter procedures. This would have taken weeks, if not months. National authorities can instead concentrate on the reception of beneficiaries. Secondly, the Temporary Protection Directive has always been perceived as an instrument of intergovernmental solidarity, in response to protracted political disputes in the 1990s. Germany and Austria were among the countries that received the largest number of people fleeing the civil wars in the former Yugoslavia and lobbied, without much success, for mandatory solidarity. The content of Implementing Decision (EU) 2022/382 is quite different from what many might intuitively think. Inter-state distribution keys or quotas give way to a simple allocation mechanism: "free choice" is the surprising outcome of the Council decision. Politically, the negotiations were not derailed by protracted disputes over quotas, although these had dominated the original debate on the Directive. The implementing decision does not specify which country will receive how many people." (Thym, 2022)

It is noteworthy that the Association Agreement between Ukraine and the EU provides for overcoming discrimination in all its forms and manifestations. The second phase of the EU Action Plan on Liberalization for Ukraine requires effective implementation of legislation and anti-discrimination policies, implementation of relevant UN and Council of Europe documents. The creation of an effective system to prevent and combat discrimination is also

provided for in the National Human Rights Strategy, and item 3, Article 105 of the Action Plan for its implementation directly requires the provision of punishment for crimes committed for reasons of intolerance based on such grounds as race, color, religious beliefs, sexual orientation, transsexualism, disability, language. (Matvieieva, Smokov, Kornienko, 2022)

There are also some hidden dangers and disadvantages, as recalled in the recent statement that "the smuggling of people across the green and blue borders and the considerable gap between return decisions and the actual return of third-country nationals will continue to be two of the most enduring challenges for European border management. The risk remains that irregular migrants will be victimized by exploitative working and living conditions, in some cases as a means of repaying their debts to smugglers." (Frontex, 2022)

5. Conclusions

The observed study shows that the number of people arriving in the EU member states will double in the coming decades. Labor migration is a "tireless" phenomenon in the European Union.

The effect of this process is difficult to interpret from a legal point of view, although it is obvious that no legal overview can fully reveal the issue of labor migration in the European Union.

The analysis of the legal backgrounds identified at the EU level of labor migration policy revealed that work permit measures (quotas) defined by the EU member states to secure their national economies help to reduce unilateral and risky labor migration.

The solidarity of the EU member states is based on the establishment of relevant normative acts to harmonize international security, rescue and reception (shelter) systems.

The global economic situation in the framework of labor migration from Ukraine is still controversial, however, it is implemented to promote Ukrainian trade and migration policy in a comprehensive scale.

Nevertheless, there are several facts of smuggling, human trafficking, visa-free regime violations committed by migrant workers originating from Ukraine, while the exploitation of temporary protection affects EU-Ukraine relations. Ukraine has its own national legislation to prevent and combat illegal human trafficking and sets special "expatriate quotas" to prevent illegal migration from "unfriendly countries".

The EU law obliges legal authorities to issue registrations in several legal matters (entry and customs violations). Observation of the competence of legal institutions, which are in charge of work permit quotas, helps to understand the current aspects of the right to shelter and temporary protection,

forced by the war in Ukraine. National work permit quotas are seen as a tool that cannot exist separately from legal obligations of EU member states, otherwise they are ineffective.

In order to prevent illegal entry of migrant workers into the EU member state, the relevant Ministry of Interior is responsible for the passport and visa control mechanism.

Ministries of Interior and Customs have an essential role to play in the prevention of transnational

displacement, which has an imperative impact on global labor migration policies.

Finally, the European labor migration mechanism is not a common one and depends on the visa policies of each country.

However, the European work permit quota remains a problematic measure that is not exempt from prohibitions and violations of the principles of free movement and non-discrimination.

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