

## FOREIGNERS LAW

### THE AMENDMENTS INTRODUCED BY LAW 29/2012, AUGUST 8, IN THE LEGAL REGIME OF FOREIGNER'S ENTRY, PERMANENCE, LEAVE AND REMOVAL FROM THE NATIONAL TERRITORY

THESE AMENDMENTS AIM THE IMPLEMENTATION AND ADOPTION OF THE EUROPEAN LAW AT A NATIONAL LEVEL.

The new amendments implement Regulation (EC) nr 810/2009 from the European Parliament and Council, which establishes the Community Code on Visas and adopts to the national legislation the following Directives: Directive 2008/115/EC, 2009, on the rules for returning third-country nationals in irregular situation, Directive 2009/50/EC, on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, Directive 2009/52/EC, which establishes the minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Directive 2011/51/EC, amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection and also Directive 2011/98/EC concerning 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 the EU.

New definitions have been established for "investment activity", "EU blue card", "particularly abusive working conditions", "coercive removal decision", "international protection", "high professional qualifications" and "return".

It is relevant to underline that the concepts "blue card" – residence permit that enables a third-country national to reside and perform a high qualified subordinated professional activity in the national territory – and "coercive removal decision" – the administrative act declaring a third-country national to be in an irregular situation, thus ordering his departure from the national territory – are two of the major innovations of the new Law.

Concerning the general conditions of entry in the national territory, and specifically regarding the possibility of a sponsorship declaration to be presented by a national citizen instead of being presented the means of subsistence necessary for a foreign national to enter in the national territory, the national sponsor is now also required to prove his financial capacity.

The limits to entry refusal have been altered, now the entry may not be denied to foreign citizens having minor children of Portuguese or foreign nationality with residence in Portugal at their care, as well as the refused foreign citizen's rights, to whom is guaranteed access to legal assistance by a lawyer in a timely manner. Also, the refused citizen has a new guarantee being that he cannot be sent to a country where he may be persecuted, tortured or suffer an inhuman treatment.

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Regarding visas granted abroad, the transit visa has been revoked, its characteristics having been included within the short term visa. Also, the distinction between individual and collective visas no longer matters, as collective visas have been also revoked – from now on, it is only possible to obtain individual visas abroad. Concerning temporary stay visas, these can now also be granted for purposes of study, teaching, student exchange and professional internship programs, with a term of one year or less, and are valid for 4 months, instead of 3 months, and for multiple entries in the national territory. Third-country nationals bearing residence visas for highly qualified investigation are not subject to the regime of residence visa for the exercise of subordinated professional activity.

Regarding visas granted in border posts, and following the above referred, transit visas are no longer possible as they have been revoked; only the short term visa and the special visa can be granted.

The renewal of the temporary residence permit to a third-country national may only be attributed if the latter has not been condemned to a prison sentence higher than one year nor in cases where the sentence even if suspended was related to crimes of terrorism, violent or highly organised crime; these requirements being also necessary for the attribution of permanent resident permits. Regarding the cancellation of the residence permit, the competent services can now issue a coercive removal decision further to the judicial decision of expulsion.

The third-country national holding a residence permit for the exercise of a subordinated professional may exercise an independent professional activity after replacement of the referred residence title. From now on, those coming to develop investigation, teaching or highly qualified activities have to fulfil only one of the requisites foreseen in the law, and not as previously foreseen all of the requisites cumulatively.

The regime of residence permit for special circumstances has also been amended: foreign citizens who

have been victims of a serious or very serious criminal or administrative infraction regarding their labour relationship (if such facts have been evidenced by the relevant service and as long as such facts have been reported to the competent entities) are now also included within the special circumstances that do not require a visa to obtain a residence permit. However, the infractions above referred include only lack of social protection, salary or working hours exploitation, particularly abusive working conditions or illegal use of minors labour. Additionally, the residence permit shall be cancelled or not renewed if the minors included in the special circumstances regime cease to attend pre-school, primary school, higher education or professional education without a reasonable justification.

The long term resident status may now be attributed to beneficiaries of international protection which have continuous residence in the national territory for 5 years, as from the presentation of the international protection request, but that status of long term resident must be refused when the revocation, suppression or refusal of the said protection occurs.

The limits to the coercive removal decision and expulsion have now an exception for foreigners who endanger national security or the public order notwithstanding they gather the conditions allowing them to remain in the national territory. The national director of SEF (Borders and Foreigners Service) may determine the decision of coercive removal (being also empowered to conduct the procedures including substitution powers), while the expulsion decision must be determined by a judicial authority. The decision of coercive removal shall have the nature of an accessory penalty or can be adopted following the irregular entry and permanence of a foreigner in Portugal. The decision may be judicially contested and the foreign citizen is forbidden to enter into the national territory up to 5 years or for even a higher period of time if there is a serious threat to the public order, public or national security.

The coercive removal is determined when the foreign citizen illegally enters or remains in the national territory and is arrested by the police authorities and delivered to SEF. Within 48 hours, the citizen must be presented before a court for removal, being that he may also be placed in temporary installations or similar, for a period never exceeding 60 days, for the conclusion of the removal procedures. There are however exceptions to the coercive removal decision, including the presentation of an asylum request (in this case, the foreign citizen will wait for the decision in freedom) and the possession of a valid residence title or other entitling him to stay in another State member. Furthermore, citizens born in the national territory and residing herein in a permanent manner, foreign citizens having minor children of Portuguese nationality at their care and those living in Portugal since they were ten years old and herein residing in a regular manner may not be coercively removed nor expelled. Long term residents may be coercively removed if they remain illegally in the national territory.

The citizen against whom a coercive removal or expulsion decision has been issued has between 10 and 20 days to leave

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the national territory. Whenever there are concrete and objective reasons regarding the intention to escape, when forged or fake documents have been used or there is evidence of a crime, the citizen shall be taken into SEF's custody in order for the execution of the expulsion or coercive removal decision.

The punitive regime for the exercise of unauthorised professional activity has also suffered substantial modifications regarding the application of accessory penalties: from now on, only the penalties foreseen in article 21 of the General Regime of Administrative Infractions are applicable to those situations, the remaining penalties having been revoked.

Additionally, new dispositions have been introduced concerning the residence visa for highly qualified activity by subordinated employee, which may be attributed if the employee has a labor contract or a promissory labor contract with the duration of one year. Also, a residence permit is given for purposes of investment activity to State members nationals who fulfill the general conditions for temporary residence permit, who have a valid Schengen visa, who regularize their stay in Portugal within 90 days of their arrival and that fulfill the requisites for investment activity. The new Law creates the EU blue card, which enables the holder to reside and exercise in the national territory a highly qualified activity, also being entitled to family reunion.

In order to benefit from the said blue card, it is also necessary to present a labor contract not inferior to one year with an annual remuneration of at least 1,5 times the national annual average gross salary, to have a health insurance, to be registered with the social security and have professional qualifications. The blue card is renewable for successive periods of two years and its beneficiaries shall be treated equally as nationals regarding, for example, working conditions, freedom of association, education and professional training, recognition of diplomas and other professional qualifications, among others. The blue card holder may obtain the status of long term resident if certain conditions are met like continuous and legal residence in the EU territory for 5 years, holding the said card.

Lastly, concerning criminal and civil liability, namely for helping illegal immigration, use of activity developed by a foreign citizen in irregular circumstances and convenience marriages or unions, the penalties, fines and enforcement measures have been, in general, aggravated.

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