

## RESEARCH ARTICLES

### The Impact of the Crisis on Illegal Employment of Foreigners and the Related Policy - Case study: Czech Republic

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**Abstract.** The aim of the article is to provide a critical perspective of the public policy measures to tackle the illegal employment of foreigners in the Czech Republic taken by the Czech government in the wake of the global financial crisis. In the introductory part of the article, the problem of illegal employment of migrants in the Czech Republic is delimited and put into a theoretical context. Based on the study of official documents as well as on expert interviews, the analysis of the changes in the public policy dealing with the problem of illegal employment is conducted. While the crisis triggered a more open public debate and brought the problem on the agenda of some core public policy actors and while new measures were taken to address the issue, some of the main underlying problems remain unaddressed. In the final part, a possible future development in the area of illegal employment of migrants is outlined, drawing on the global labor migration trends as well as on the current public policy practice in the Czech Republic.

**Keywords:** *illegal employment, labor migration, non-EU nationals, public policy, impact of economic crisis*

#### Introduction

Recently, with the economic crisis, the concern about illegal employment<sup>1</sup> of migrants (re)surfaced on the political as well as academic<sup>2</sup> agenda worldwide. There is a relatively large body of literature providing a general overview of global migration trends after the crisis, (usually only briefly) mentioning the illegal labor

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<sup>1</sup> The term *illegal* (as opposed to e.g. *irregular*) is used in the Czech legislature. To avoid confusion, the term *illegal* will be used throughout the article.

<sup>2</sup> Unfortunately, however, the literature on the topic is still relatively scarce compared to other migration-related topics.

migration/employment<sup>3</sup>. While the authors speak of a global trend of restrictions on labor migration all over the world – from Russia to Australia, from the UK to Malaysia<sup>4</sup> - they also note an actual decrease in irregular labor migration<sup>5</sup>. Based on a historical analysis, Green and Winters<sup>6</sup> acknowledge in this regard the impact of government immigration policies: *Their structure and operation can affect how much and how quickly inflows respond to changing circumstances, and how likely migrants are to leave*<sup>7</sup>.

For the Czech Republic, there are reports on how the policymaking responded to the crisis<sup>8</sup>, however these do not devote much attention to the problem of illegal employment as such. The problematic was covered for the first time by Drbohlav<sup>9</sup>, yet this work was published immediately before the crisis and thus does not reflect the impact thereof.

The aim of this paper is to provide a more detailed contextual overview of the problem of illegal employment with respect to the public policy at place. Especially in the field of policy analysis, such practice is expected to contribute to the structuring of the problem<sup>10</sup> and to a better understanding thereof – enabling us to predict, at least partially, the outcomes of the policy measures taken in the wake of the economic crisis.

The following text, then, will seek to answer the research question: Did the crisis lead to an actual increase in illegal employment? And if so, how did this happen? Rather than looking only at the quantitative data (which are used here as indicators<sup>11</sup>) the paper will examine various forms of illegal employment, their changes and their consequences. To achieve this objective, the explorative analysis will be used, aiming specifically at problem structuring as described by Dunn<sup>12</sup>. The main methods applied include the secondary data analysis, analysis of the legislature and semi-structured expert interviews.

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<sup>3</sup> See e.g. Dadush, Falcao 2009; Koser 2010; Castels, Miller 2010

<sup>4</sup> Koser 2010; 17; Castels, Miller 2010; 9

<sup>5</sup> Koser 2010; 19

<sup>6</sup> Green, Winters (2010)

<sup>7</sup> *ibid*; 1068

<sup>8</sup> Most notably Rozumek, Tollarová, Valentová 2010

<sup>9</sup> Drbohlav 2008

<sup>10</sup> see e.g. Dunn 2004

<sup>11</sup> Given the nature of the phenomenon of illegal employment, no „hard“ data are at disposal. The indicators used in this article derive from the data on (legal) economic activities of migrants as published annually by the Czech Statistical Office.

<sup>12</sup> Dunn 2004

Although there have recently appeared analyses of the problem on the global level<sup>13</sup> as well as on the regional level<sup>14</sup>, the author believes that a better understanding of the problem requires a lower level of analysis in the first place, especially when the policy implications are to be considered. Therefore, the level of nation state was selected. The particular case of the Czech Republic is interesting insofar that it – on the one hand – represents a new EU member state with only a recent experience with labor immigration, as opposed to the old EU countries where the illegal employment has been on the political agenda for many years.

On the other hand, however, the Czech case is specific in that of all new EU countries, it has relatively soon become a destination country for foreign labor migration and has been predominantly a country of immigration<sup>15</sup> over the last seven years<sup>16</sup>. The country has the highest immigration numbers of non-EU citizens, compared to all other new EU countries<sup>17, 18</sup>. Other states in the region show much lower immigration figures<sup>19</sup> and somewhat different patterns: While in Poland and Hungary the illegal employment of migrants is strongly connected with seasonal work and with the agricultural sector<sup>20</sup>, in the Czech case this is more strongly linked with the industry and tends to be of a rather structural nature<sup>21, 22</sup>. As such, the Czech Republic occupies a specific place between the old and the new EU countries regarding the problem of illegal employment of migrants.

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<sup>13</sup> see e.g. Castels, Miller (2010)

<sup>14</sup> see e.g. Maroukis, Iglicka, Gmaj (2011)

<sup>15</sup> Note: As opposed to being a transition country for labor migration.

<sup>16</sup> MoI 2011

<sup>17</sup> Flander 2011; 2

<sup>18</sup> In 2008 nearly 60 thousand non-EU citizens migrated into the Czech Republic (which was 77% of all immigration). The second highest number among the new EU countries can be found in Slovenia with 26 thousand non-EU immigrants making up for 93% of total immigration. Source: Flander/Eurostat 2011.

<sup>19</sup> In 2008 the immigration of non-EU citizens to Hungary was approximately 18 thousand (50% of all immigration); to Poland 9 thousand (74% of total) and to Slovakia 8 thousand (48% of total). Source: Flander/Eurostat 2011.

<sup>20</sup> Maroukis, Iglicka, Gmaj 2011; 136.

<sup>21</sup> See further.

<sup>22</sup> Note: Both Polish and Hungarian visa have recently started to be misused by the Ukrainian migrants as „channels“ of how to get into the Czech Republic after the restrictions on the Czech labour visa. Source: Schroth, interview 23.10.2011.

## **Problem delimitation**

This paper focuses exclusively on the so-called third country nationals. Although the EU citizens can be employed illegally, the legality of their stay remains untouched<sup>23</sup>. This contrasts significantly with the situation of the formerly mentioned group, where the legality of stay depends on the legality of employment. Asylum seekers, too, find themselves in a more advantageous position in this regard, as the issue of their work permit does not have to reflect the situation on the labour market as it is the case with non-EU labour migrants.<sup>24</sup> The practice of illegal employment, moreover, concerns the third country nationals predominantly<sup>25</sup>, however is the scope of the problem hard to estimate.<sup>26</sup>

When employed illegally, the exploitation of migrants is quite common<sup>27</sup>. Not only the employment rights are neglected (e.g. extremely long working hours, low wages, poor working conditions, etc.) but in some cases even the human rights are breached upon.<sup>28</sup> Due to their irregular status, these people do not have virtually any means of how to solve their situation. The life in an irregular position, moreover, does not confront the migrants only with existence problems, but also with further pressing questions after their identity, status or group belonging<sup>29</sup>.

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23Burdová and Hradečná, undated

24ibid.

<sup>25</sup> To be more specific: As for the legally employed migrants from non-EU countries, the Ukrainians and Vietnamese together have steadily represented more than one third of all migrants (both from EU and non-EU countries) employed in the Czech Republic, the average for the years 2004-2008 lying at 38% of all employed foreigners. After the migrants coming from Slovakia, the Ukrainians and Vietnamese are by far the largest groups of labour migrants. Quite similarly, among the migrants caught at illegal stay (and hence supposedly engaged in illegal work), the majority is from Ukraine (33% in 2008 and 35% in 2009) and Vietnam (7% in 2008 and 9% in 2009). Since 2004, the Ukrainians and Vietnamese (in the given order) have always been the two nationalities leading the figures on illegal stay. (data from the Czech Statistical Office 2011 and Police Headquarters Czech Rep., latest data available for 2009)

<sup>26</sup> Given the illegality of the conduct, the only possibility is to rely on (however imperfect) expert estimates. These vary largely, however, from 40.000 to more than 200.000 illegally employed migrants before the economic crisis started. (Drbohlav 2008; 111)

<sup>27</sup> It is fair to note, however, that e.g. a study conducted among Pakistani migrants in the UK showed that legal status did not always mean better wages. (Ahmad 2008)

28 Drbohlav 2008; 10

29 Eichenhofer 1999; 13

From a security point of view, on the other hand, the (altogether not uncommon) link with organized crime and corruption can be seen as a challenge. Also from the economic perspective – although there are some authors who argue that illegal employment is actually beneficial for the local economy<sup>30</sup> – the positive effect is often outnumbered by the costs spent on prevention and repression<sup>31</sup>.

With the human rights, security and economic aspects being covered elsewhere in the literature, the aim of this paper is to shed some light on what could be called a public policy aspect. From this perspective, especially the interplay between illegal employment and labour migration policy will be studied.

### **Why Is There Illegal Employment – Theoretical Explanations**

With the integration of the country in global production chains and with most of the immigration being for labour purposes, the theory of Transnational production circuits<sup>32</sup> can be regarded the most appropriate theory at the general level of explanation. In the pursuit of attracting foreign investment, the activity of offshore companies has been facilitated with the help of tax holidays and lower regulation under the neo-liberal agenda. The result has been the shift of some parts of the production<sup>33</sup> to other states. Together with this, the decoupling of the direct relationship between the companies and the labour occurred in many cases. The workers are frequently hired by subcontractors, which practice often enables the firms to misuse illegal labour without being “guilty” of illegal employment themselves. According to McNevin, in this way, the differences between the formal and informal economy are actually blurring. The transnational production circuits encourage the hiring of irregular migrants who represent a source of cheap and flexible labour.<sup>34</sup>

In the Czech Republic, the supra-national companies specialized in the final assembly of products are the most criticised in this regard. Being lured into the country by investment incentives, these companies rely largely on foreign manual labour. As the former minister of Labour and Social Affairs put it, due to the character of the positions offered by these companies, large numbers of unskilled manual labour are needed in an

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30 see e.g. Boyes, Melvin 2008

31 see e.g. Hanson 2007

32 see e.g. McNevin 2007

33 Most notably manufacturing of materials and assembly

34 McNevin 2007; 659-660

extent the Czech labour market is unable to provide.<sup>35</sup>

Quite complementary with the above mentioned theory – yet on a lower level of explanation – is the dual labour market theory. Labour migration (be it legal or illegal) is understood here as a consequence of a permanent demand inherent to economic structures of advanced societies. Ignoring the *push factors*, the dual labour market theory seeks an explanation on the side of *pull factors* and eventually sticks with the *chronic and inevitable need for foreign labour force*<sup>36</sup>.

The main assumption of this theory is that some positions (or occupations) are not attractive for the domestic workforce. They are typically the so-called 3D<sup>37</sup> jobs which are coupled with low social status and low wages. For the employers, it is a better strategy to employ foreigners who are willing to accept low wages. Labour market is thus virtually divided into two different markets: the primary and the secondary one. The latter is characterized by a high intensity of work, unskilled and unstable jobs. It is particularly this workforce that can be easily dismissed. Especially in the times of an economic downturn, these workers are expected to be among the first to be laid off.<sup>38</sup>

In line with the above theory, in the Czech Republic, the employment of third country nationals is associated predominantly with unskilled manual work characterized by extreme flexibility and replaceability of the workforce. Also the words of the director of one of the regional Labour Offices point in the direction of an existence of a dual labour market: *There is a large number of activities which a Czech worker would not do, even when discarded from the register of job seekers and suffering economically from not taking that job.*<sup>39</sup> This concerns predominantly the electrical industry, assembly and excavation work where the employment of foreigners appears necessary.<sup>40</sup>

In the field of public policy, another two theoretical approaches can be identified in the literature on the topic. Although not being as frequently quoted as the above theories, the so-called complementarity and substitution theses deserve some attention.

According to the first mentioned one, the legal and illegal forms of employment of migrants are relatively independent. Any broadening of the extant legal schemes for labour migration thus does not necessarily lead to a corresponding lowering of the demand for the clandestine work. As the illegal employment remains attractive for the

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35 Nečas, in an interview for *MF Dnes* 3.9.2008

36 Massey et al. 1993; 440-441

37 *3D stands for Dirty, Degrading and Dangerous*

38 Massey et al. 1993; 440-444

39 Fránek, 14.10.2010

40 *ibid.*

employers by its low costs, the demand therefor will continue to remain in place. On the supply side, the broadening of legal schemes is expected to lead to an increase in labour migration in general – both regular and irregular one - regardless of the demand.<sup>41</sup>

The reasoning of the latter thesis of substitution – on the other hand – points in a totally different direction. According to this thesis, the broadening of legal schemes is seen as a means of reduction of both the demand for clandestine labour and the supply thereof. Hence, the main assumption here is that the demand for legal workers will increase if the supply is sufficiently high. The main difference from the previous thesis of complementarity is the expectation that supply (including the potential one) is more or less finite.<sup>42</sup>

### **Various Facets of Illegal Employment in the Czech Republic**

At the first glance, the notion of illegal employment seems to be obvious and, hence, the definition thereof simple. Yet, when dealing with the problem in more detail, we encounter a large variety of forms that this practice actually takes on. These different “facets”, as they might be called, are crucial not only for the comprehension and assessment of the relevant policy measures, but also for the understanding of the impacts of the economic crisis in this field. Before being able to assess any impacts that the crisis had on illegal employment of foreigners, it is thus crucial to define and delimit what actually illegal employment is.

Illegal employment is often directly associated with irregular migration. However, as it will be shown further, this relation is not the only possible one. In fact, the irregular migration which (in the Czech legal context) inevitably leads to illegal employment makes up only a very small share.

According to the Czech law, illegal work is defined as any *dependent gainful activity exercised without any labour or other contract*. While this applying to the Czech citizens as well, in the case of foreigners also the accord with the work permit and the validity thereof must be met.<sup>43</sup> Defining the term in a slightly different way, the Czech Research Institute for Labour and Social Affairs understands illegal employment to be *breaches against legal prescriptions on employment and entrepreneurship of foreigners*<sup>44</sup>. Although both of these two

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41 Boswell, Straubhaar 2004

42 *ibid.*

43 Employment Act No. 435/2004 Coll. §5

44 Horáková 2005; 26

categories – employment and entrepreneurship – abide by totally different legal regulations, in the particular case of illegal employment of foreigners, they often melt into one category in practice.

To shed more light on the different interactions between the (il)legality of stay and the (il)legality of employment, the work of Junkert and Kreienbrink<sup>45</sup> seems to be fairly helpful. Dealing with the legal aspects of illegal employment of foreigners in Germany, the authors come to distinguish four categories of illegal employment – depending on the stay- and work status of migrants. After some modifications which are to be explained further, the resulting chart can be quite successfully adapted to the Czech context (Table 1).

**Table 1: Types employment**

		Employment	
		Illegal	Legal
Stay	Illegal	A „Classical case“ so-called <i>overstayers</i>	B Not possible in the Czech Republic
	Legal	C Semi-legal so-called <i>(special)partners</i>	D Seemingly legal so-called <i>self- employed</i>

Source: author, based on Junkert, Kreienbrink 2008;22 – adapted and changed to fit the Czech reality and the topic of this paper (based on own analysis).

The category A, as identified in the table, represents a „classical case“ of illegal employment of foreigners who are staying in the country illegally. Apart from those migrants who already entered the country by illegal means (e.g. with the help of smugglers or using forged documents), this group is characterized by the so-called *overstayers*, i.e. foreigners who entered the country using tourist or other visa and who have stayed in the country after their visa expired, becoming irregular in this way.<sup>46</sup>

Due to the existence of the external borders control of the Schengen area and also due to the geographical location of the Czech Republic, surrounded exclusively by Schengen members, most foreigners enter the country in a regular way and only thereafter become irregular. Usually, this happens after the

<sup>45</sup> Junkert, Kreienbrink 2008

<sup>46</sup> Junkert, Kreienbrink 2008; 22



expiration of the tourist visa which is frequently misused for irregular labour migration. In 2007, this was the most frequent way of how migrants got to the black labour market in the Czech Republic.<sup>47</sup> Quite a similar situation occurs when work visa expire or are not prolonged.<sup>48</sup>

One of the reasons for such practice is believed to be the ignorance or unawareness of some of the migrants who – quite often – are unable to distinguish between the different types of visa.<sup>49</sup> Another reason could also be a better accessibility of the tourist visa (and its lower price in the case of corruption). Last but not least, the dismissal from job also leads automatically to the loss of working visa (as this is bound to one specific position). Especially this category A has become the main target of policies directed to tackling illegal employment – both at the EU and the national level.

The category B represents – in the Czech legal context – only a purely theoretical category. Obtaining a legal stay permit is bound to the existence of a regular employment. Hence, it is virtually impossible for the migrants to reside in the country illegally and yet have a legal employment. A similar practice seems to be common for all countries in the Middle Europe<sup>50, 51</sup>

The category C includes, according to Junkert and Kreienbrink, those foreigners who have a valid residence permit but who do not possess a permission to work in the country. The authors give here an example of the citizens of the new EU Member States in Germany<sup>52</sup> (under the transitional period for the free movement of workers in place till May 2011).

In the Czech Republic, on the other hand, no such provisions are extant, which would combine valid residence permit with a restriction on employment<sup>53</sup>. Under the above stated category C, however, the semi-legal practices can be

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47Čermák, Džurová 2008; 148

48Drbohlav, presentation 31.8.2009

49Byamba, presentation 3.9.2009

50see e.g. Junkert, Kreienbrink 2008; 24 or Čížinský 2005

<sup>51</sup>It has to be noted, however, that in some other European countries this category - combining the legality of employment with the illegality of stay - does not represent solely an empty residue of the four-field box. An example of such country can be the Netherlands, where migrants can obtain their social security numbers (and thus also work legally) *de facto* regardless the legal status of their stay. (see e.g. Čížinský 2005)

52 Junkert, Kreienbrink 2008; 22-23

53 The only exception from this can be the case of asylum seekers who are not allowed to work during the first year after their arrival (see Asylum Act No. 325/1999 Coll). Being a very specific category and migrating from different reasons than the labour migrants, asylum seekers are not dealt with in this paper.

subsumed, where migrants are employed officially as special partners or members of a cooperative. This way of employing migrants in a semi-legal way is most common in the construction industry: Dozens of foreigners become members of a cooperative but in reality they do manual work in a position of employees.<sup>54</sup> The main reason for employing migrants in this way is above all the relative ease of this practice combined with a large difficulty to prove the misconduct in case of a control.<sup>55</sup>

Under the practice described here, foreigners do stay in the country legally using entrepreneur visa. It must be also noted that this given kind of visa is significantly easier to obtain, compared to regular work visa.<sup>56</sup> A valid entrepreneur visa thus ensures the legality of stay. The employment in this way, on the other hand, cannot be regarded as legal, such practice (in the case of foreigners) being explicitly forbidden by the law.<sup>57</sup>

The misuse of corporate entities (limited liability companies and cooperatives) for the illegal employment of migrants has started to gain significance since 2004.<sup>58</sup> In the place of (special) partners, however, migrants find themselves frequently in an unfavorable position as their employers dispose of a large array of compulsory means. One (quite popular) of them is to indicate a fictive address of migrant's residence in the official documents or the cancellation of the consent to accommodation. In such case, migrants only have a limited time to indicate the change of the address to the Alien Police to maintain their regular status. When such practice has been applied by the employers, many migrants found themselves in an irregular position without even knowing about it.<sup>59</sup>

The category D could be perceived as the „most legal“ kind of illegal employment. It would be misleading, though, to associate it with purely legal practice. Junkert and Kreienbrink, for example, distinguish four different modalities of infringements to be found within this category<sup>60</sup>: a) the legal employment of migrants where the Labor Code is severely neglected<sup>61</sup>; b) cases with all

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54 Sieveking, Reim, Sandbrink 1997

55 Kalinová, e-mail correspondence 15.5.2009

56 *ibid.*

57 Employment Act No. 435/2004 Coll.

58 Vintr, presentation in January 2008

59 *ibid.*

<sup>60</sup> Junkert, Kreienbrink 2008; 23-24

<sup>61</sup> In the Czech context, the practice of (some) staffing agencies can be mentioned in this regard, as they are commonly accused of the non-existence of insurance, precarious working

infringements caused solely by the employer<sup>62</sup>; c) cases where otherwise legally employed migrants who are staying legally in the country undertake a further, additional, job they are not entitled to<sup>63</sup>; and finally d) the so-called *bogus self-employment* when officially self-employed migrants work in reality exclusively for one employer and are fully dependent on the instructions as well as on the conditions laid down by this employer.<sup>64</sup> This disguised employment is not, however, only a domain of migrants. On the contrary. Both in the Czech Republic, as well as in other EU Member States, not a negligible proportion of citizens participate in the labor market in this way.<sup>65</sup>

In the case of migrants, however, the situation is further complicated by the fact that even when belonging to this category, migrants can quite easily move to the category A described above, i.e. to a full irregularity. After two years, when the visa expires, the duty to prolong the visa arises. This, again, is often coupled with organized corruption and with the unawareness of some of the migrants of the necessity to activate their visa.<sup>66</sup>

Quite common is also the switch from labor visa to entrepreneur visa by the migrants employed by the staffing agencies. As the staff manager of an agency specialized in employing foreigners put it: *Our Vietnamese (...) are preparing themselves for the situation after their work permits expire by switching to entrepreneur visa. Internally, I do not agree with this, but I do not hinder them, however.*<sup>67</sup>

Although it is the category A which is mainly perceived as a challenge by policymakers – which is also strongly reflected in the policy of fighting the illegal employment – the categories C and D should not be taken for less problematic. As the main difference is only the temporary or seeming legality of stay of the

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conditions, extremely long working hours, immediate replaceability with no social security, etc. (see e.g. coverage of the topic by M. Vidlák published in *Lidové Noviny* newspaper in 2008 and 2009).

<sup>62</sup>Given the fact, though, that in the Czech Republic the work permit is strictly linked to a particular position, this situation cannot occur under the Czech legislation.

<sup>63</sup>A common example in the Czech case would be workers from Eastern Europe working on (re)constructions of private houses on the weekends. Yet, it can be argued that particularly this practice should not be perceived as vastly problematic as this form of conduct does not largely endanger the legality of migrants' stay.

<sup>64</sup>Junkert, Kreienbrink 2008; 23-24

<sup>65</sup>Communication from the Commission COM(2007) 640; Williams 2009

<sup>66</sup>Schroth, interview 8.4.2009

<sup>67</sup>Novotný, e-mail correspondence 13.3.2009

migrants, the problems of poor working conditions, low wages and a potential adverse impact on the official labour migration policy remain the same.

Moreover, the categories C and D resulted to be more convenient for the employers, also when compared with the legal employment. While legal employment of migrants is strictly regulated and perceived as very rigid by the employers, employing the migrant workers through the category C or D is significantly easier. The conditions to be met in the latter cases are – in contrast – very liberal.<sup>68</sup> As it will be shown further, especially the category D seems to have gained on importance with the economic crisis.

### **Policy preceding the crisis**

The policy efforts to tackle illegal employment in the Czech Republic prior to the crisis can be divided into three periods. The first one, in mid 90s, when illegal employment was not defined as a social problem, was characterized by liberal policies.<sup>69</sup> This corresponds with the scope of migration at that time – the country being mostly a transit one with respect to labour migration. The liberal orientation of the given period could be also explained by the ruling center-right coalition which governed practically throughout the whole 1990s<sup>70</sup>.

The second half of the 1990s, on the other hand, is to be seen as a restrictive one, influenced by the then restrictive policies of the EU.<sup>71</sup> Although still being predominantly a transit country for labour migration at that time, in the 1990s irregular migration started to increase, with migrants coming especially from the former USSR.<sup>72</sup> It can be assumed that it was particularly this fact of increasing migration (both regular and irregular) which led to the imposition of the Act on the Residence of Foreign Nationals<sup>73</sup> in 1999. Out of the same reason – because being mostly a transit country – no provisions in other areas (such as regulations of employment or sanctions for illegal employment) were necessary. With the course of time, this was to change, however.

Already with the beginning of the new millennium, tens of thousands of

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68 Kalinová, e-mail correspondence 15.5.2009

69 Baršová 2008; 83

70 It was only in 1998 when the center-right government fell and was replaced by a caretaker government.

71 Baršová 2008; 83

72 Kopeček 2004

73 Act on the Residence of Foreign Nationals No. 326/1999 Coll.

Ukrainians were working in the country illegally<sup>74</sup>. The problem of illegal employment started slowly to surface: The notion even appeared for the first time in the policy statement of the (leftist) government elected in 2002. Nevertheless, only the mere existence of the problem was briefly stated here, with reference to illegal migration<sup>75</sup>.

Also the year 2004 can be perceived as an important milestone: With the entry to the EU the Czech Republic turned to be more attractive for labour migration, both legal and illegal one.<sup>76</sup> The third, conciliatory period from 2000 to 2006 was thus characterized on the one hand by the focus on repression; on the other hand, however, the efforts to facilitate legal labour migration appeared.<sup>77</sup> It was in this period, when the Employment Act<sup>78</sup> was enacted, also newly regulating conditions for the employment of migrants.

In the heyday of the economy, foreign companies in automotive and electrical industry were lured by governmental economic incentives to place their plants in the country, which was often done regardless of the characteristics of the domestic labour. Consequently, a large need for low- and unskilled manual workers arose, which the Czech labour market was unable to satisfy. In this respect, the practice of CzechInvest<sup>79</sup> was often criticized: *(CzechInvest) by its activities pushes for the weakening of control functions of the public service, e.g. regarding the mandatory assessment of the impacts of investments.*<sup>80</sup>

Although the policy of employment of foreigners (including the illegal employment) is primarily associated with the Ministry of Labour and Social Affairs, this institution cannot be regarded as the most powerful actor in the field. The call for facilitating cheap labour migration came from the Ministry of Industry and Trade and, as a result, the so called Green Cards were introduced by the amendment to the Employment Act<sup>81</sup> with effect from 1.1.2009, making labour migration easier.

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74 Kopeček 2004

75 Policy Statement 2002; 26

76 Fridrichová, presentation 11.12.2007

77 Baršová 2008; 83

78 Employment Act No. 435/2004 Coll.

79 The investment and business development agency established by the Ministry of Industry and Trade.

80 Kaiserová 2008; 1

81 The amendment also drew a clear distinction between EU Countries citizens and third-country nationals, only the latter being understood to be “foreigners” for the purpose of employment. Employment Act No. 435/2004 Coll. § 85.

From the perspective of this paper, the most important aspect of this new legislation was the inclusion of unskilled workers into the labour migration schemes, which was not an original intent of the official labour migration policy and can be understood as a result of the strong business lobby. The introduction of Green Cards was not preceded by any analysis nor was it grounded in any long term strategy, the whole policy being rather a mere expression of momentary needs of the employers.<sup>82</sup>

Yet there was one even more problematic aspect to the Green Cards with respect to the low-skilled professions. Many countries were ruled out from the scheme by the Ministry of Interior due to security reasons, including the countries from which most of the labour migrants were usually recruited.<sup>83</sup> The reality of labour migration flows was thus in this case largely ignored, with the only exception of Ukraine, which was in the scheme included. Vietnamese and Mongolian migrants (the two largest groups of migrant workers from the third countries after Ukraine) had to rely further on the old and rigid procedures.

Hence, the pre-crisis labour migration policy of the period from 2007 to 2009 can be characterized in many ways as schizophrenic. On the one hand, there was a mismatch between the original intention of facilitating labour migration of high-skilled foreigners<sup>84</sup> and the need for low-skilled workforce of the industry. After the introduction of the (largely criticized) Green Cards, the disparity appeared between the countries which were included in this scheme and the ones from which many labour migrants were recruited. On the other hand, as it was suggested earlier in this paper, there was a vastly large difference between the procedure of getting employment- and entrepreneurial visa (be it for self-employment or special partnership), the latter being significantly easier to obtain and hence misused.

In the pre-crisis period, the illegal employment did not stand high on the agenda, especially when compared with the need to ensure low-skilled workforce for the construction, automotive and electric industry the domestic labour market was not able to provide. Although some experts and NGOs were pointing at the irregular practices<sup>85</sup>, the illegal employment was still rather a latent problem at that time.

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82 Sládková, interview 26. 3. 2009; Kalinová, e-mail correspondence 15. 5. 2009

83 Notice of the Ministry of Interior from 17.12.2008

84 The project *Selection of Qualified Foreign Workers* was developed by the MLSA in 2003.

85 see Drbohlav 2008

## What follows after the crisis?

### A) *The impact of the crisis on the reality of illegal employment*

Due to its integration in global production chains, the Czech economy was seriously hit by the global economic downturn. In 2008, after a relatively long period of growth, the economy slowed markedly and entered a sharp recession in late 2008. A sharp rise in unemployment followed – starting from the first quarter of 2009 – as most major sectors contracted, manufacturing and construction being the most seriously affected. The downward trend of the real economy stopped in the second quarter of 2009 with the economy starting to recover slowly and getting eventually into positive figures in the first quarter of 2010<sup>86, 87</sup>.

Hence, (not only) with respect to the illegal employment, the year 2009 should be perceived as a critical one. On the one hand, some employers, especially in the construction sector, reportedly reacted to the crisis by *laying off Czech long-term employees and hiring foreigners, mostly from Eastern Europe and the former USSR countries (who were) hired for temporary contracts, often without any documentation (i.e. illegally)*.<sup>88</sup>

On the other hand, also many migrants were laid off. As the following graphic (Chart 1) shows, among the five largest groups (by nationality) of legally employed migrants in 2008, the so-called third country nationals were the ones who were the most hit by the crisis and consequent dismissals. Here, the comparison with the Slovaks and Poles (i.e. EU nationals) is quite interesting. The Slovaks and Poles show quite similar distribution among the different occupations<sup>89</sup> as the three other non-EU nationalities – all of them being employed predominantly in manual (both skilled and unskilled) professions.<sup>90</sup> Yet, the employment of the Slovak and Polish nationals seems to follow strikingly different patterns, not reacting markedly to the economic crisis.

In the reaction to the crisis, the Czech government launched two consequent programmes aimed at helping the migrants who had lost their

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86 Data for the year 2010 from the Czech Statistical Office at [www.czso.cz](http://www.czso.cz)

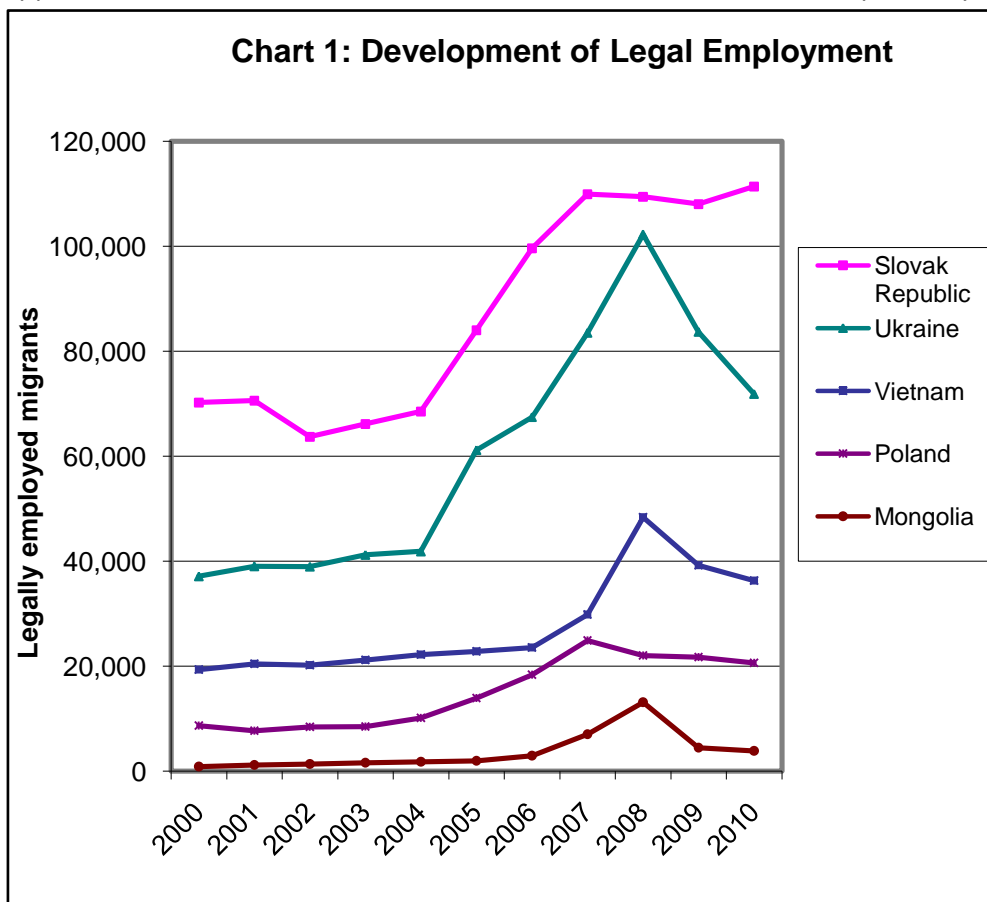
87 OECD April 2010; 3

88 Fránek 10.2.2011

89 According to the official Classification of Occupations (CZ-ISCO)

90 Czech Statistical Office 2011

jobs due to the economic downturn to return back to the country of origin. These *Voluntary Returns*, with both the first and second phase organized in 2009, were declared a success by the government.<sup>91</sup> Yet, in the first phase – designed for the legally staying migrants only – the total number of 1871 third country nationals applied and were facilitated by the program. In the second phase, which was open both for regular and irregular migrants, 199 and 125 applied, respectively.<sup>92</sup>



Source: Own graphics based on the data by the Czech Statistical Office (2011), state of 31.12. for every year.

Looking back to the Chart 1, the total drop in legal employment for Ukrainians, Vietnamese and Mongolians together between 2008 and 2009 was

91 see e.g. the statement of the director of the Dept. of Migration and Asylum Policy of the Ministry of Interior

92 *Parlamentní Listy*, 15.12.2009



36 381<sup>93</sup>. This number seems to be quite contrasting with the figures given by the Voluntary Returns program (i.e. some two thousand people returning back home with the help of local authorities).

According to the statistics, the overall number of migrants leaving the country in 2009 was 9350<sup>94</sup> (this includes all migrants, however, the nationality-specific data not being at disposal). A similar number for emigration is reported by Mr. Daniel Chytil from the Czech Statistical Office also for the year 2010<sup>95</sup>. Hence, there is an apparent mismatch between the number of migrants losing their job (and thus automatically the legality of their stay) and the number of migrants leaving the country.

When the employers had to dismiss their workers due to the crisis, the labour migrants from Ukraine and Vietnam resulted to be by far the most seriously affected groups<sup>96</sup>. As it was already shown above, the emigration figures did not, however, correspond with this situation. As the research of the Czech Economic Chamber suggests, although the demand for labor migrants has fallen significantly among the Czech employers, migrants did not leave the country.<sup>97</sup> In two years, from September 2008 to September 2010, 34 688 Ukrainians reportedly disappeared from the official statistics.<sup>98</sup>

Moreover, the number of immigrants continued to outnumber the emigration even in 2009, with total emigration making up only twenty per cent of the gross migration of foreigners<sup>99</sup>. This general picture is also quite well reflected in the reality of Ukrainian and Vietnamese migration. Unlike Polish (and to a lesser extent Slovak) nationals, who were rather leaving the country, by the third country nationals immigration continued to prevail<sup>100</sup>.

Another important feature – when assessing the impact of the crisis on illegal employment – is the growth in the numbers of self-employed foreigners in the Czech Republic: Quite interestingly, while the numbers in the employment of foreigners dropped in the wake of the economic crisis, the

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93 Own calculation based on the Czech Statistical Office data for the Employment of foreigners by most frequented citizenship for the years 2000-2010

94 Czech Statistical Office 2011

95 Suchá, 9.12.2010

96 Interview with Petr Klimpl, the director of regional Labour Office in Fránek, 14.10.2010

97 *Ekonom* 3.6.2010

98 Interview with Petr Klimpl, the director of regional Labour Office in Fránek, 14.10.2010

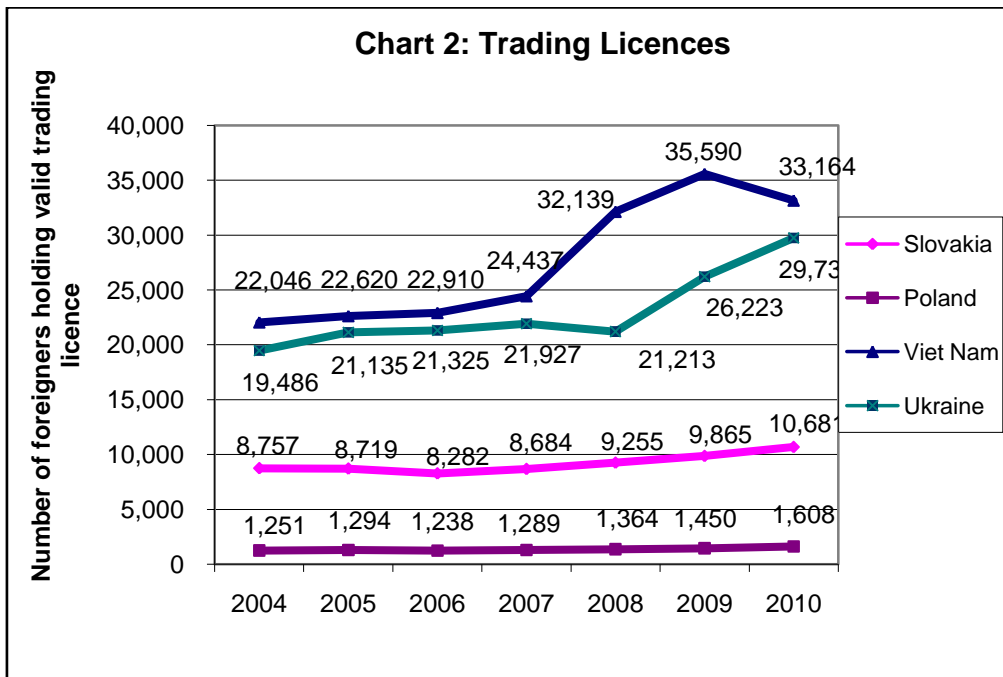
99 Czech Statistical Office 2010

100 Czech Statistical Office 2011

numbers of migrants having a trading license increased significantly, especially between 2008 and 2009.

This (rather unexpected) growth did not, however, concern all migrants in the same way. As it can be seen from the following graphic (Chart 2), across the four groups of labour migrants (both EU and non-EU) which were discussed above with respect to the employment, the growth in self-employment was not even. Particularly with the Ukrainians, the mirror-image to the employment line from the Chart 1 seems to be striking.

Similarly, in the case of Mongolian migrants (who are not included in the chart due to the overall low number of their self-employment), after a relatively steady period lasting for several years, from 2008 to 2009 the number grew markedly, by 72%. Over the next year, the growth continued, yet more slowly (by some 10%)<sup>101</sup>.



Source: Own graphics based on the Czech Statistical Office (2011) data.

The resort to self-employment, subsequent to the crisis, can thus be viewed as an alternative strategy to remain in the country (at least partially)

<sup>101</sup>ibid.

legally<sup>102</sup>. Yet, as it was shown above, this legality is questionable and, which is worse for the migrants, not necessarily stable. Many migrants are unaware of the obligations connected with the trading license<sup>103</sup> and are thus expected to “fall” into illegality<sup>104</sup>.

It can be hence concluded that the findings in this section do support the hypothesis inspired by the theories of transnational production circuits and dual-labour market. The third-country nationals were affected severely by the economic crisis, especially those working in unskilled manual positions. The labour migration turned out, however, not to be fully flexible, with migrants staying in the country even after their dismissal from legally held jobs. From comparing the numbers of dismissed foreign workers with those who left the country – be it in an assisted or not assisted way – the actual increase in illegal stay and hence also employment can be inferred.

### ***B) Policy after the crisis***

As it was already noted above, the immediate reaction of the government to the crisis was the launch of the Voluntary Returns program to help migrants who lost their job due to the crisis getting back home. Nevertheless, relatively large numbers opted rather for staying in the country, despite their legal jobs disappeared. As one study conducted among the migrants in the aftermath of the crisis suggests, the main factors impeding return were *the existence of major debt, the lack of a supportive community*, as well as more subjective factors *such as shame of one's failure to succeed abroad*<sup>105</sup>.

Another swift reaction of the government *vis-a-vis* the crisis was the suspension of all labour visa procedures (for employment, self-employment and special partnership) in selected countries (i.e. Moldova, Mongolia, Thailand, Ukraine and Vietnam) in the period from April to late September 2009.<sup>106</sup> Later on – after this transitional period – the labour visa were set to

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<sup>102</sup> For the employers, this is, of course, a more convenient state as the labor gets cheaper, saving money on social and health insurance.

<sup>103</sup> Such as the payment of insurance or taxes.

<sup>104</sup> Sládková, interview 18.10.2011

<sup>105</sup> Rulíková 2010; 16

<sup>106</sup> MoI 2010

be limited in number, in the case of Moldova, Mongolia, Ukraine and Vietnam.  
107

Being approved in 2009, the new Penal Code<sup>108</sup> in which also the unauthorized employment of foreigners was regulated came into force with the beginning of 2010. This meant an important breakthrough as until then this regulation absented completely, the old Penal Code not even mentioning the notion of illegal employment nor any alike<sup>109</sup>. Not only was this a significant change regarding restrictions, but the new legislation also represented an important turning point in viewing responsibility – this was broadened to include the employers and not solely the migrants themselves. It is necessary to note, however, that the content and imposition of the Penal Code (with respect to illegal employment) was not driven by the reflection of the current situation in the field. Rather, as the main drive can be seen the necessity to implement the EU directive<sup>110</sup> on sanctions for employers<sup>111</sup>.

As the crisis highlighted the semi-legal practices and brought the attention of policymakers to the problem of illegal employment, more regulations started to be underway. One of the most important is the Amendment<sup>112</sup> to the Foreigners Residence Act and to the Employment Act, in place since January 2011. As with the Penal Code, also this Act largely reflected the legislation at the EU level. Yet, in many ways it turned to be stricter than the original EU directives on the issue<sup>113</sup>. In sum, more obligations were introduced both for the migrants as well as for the employers.

By the new regulation (aimed predominantly at third-country nationals), many aspects of labour migration were touched – including the introduction of biometrics and the obligation to update with any change of address, the aim of which is to eliminate *illicit practices of some work agencies*<sup>114</sup>. Further changes included a partial coverage of expulsions to be borne by the employer, increased control competences of the Customs Office

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107 Government Decree 1205/2009 of 16.9.2009

108 Penal Code Act No.40/2009 Coll.

109 Penal Code Act No. 140/1961 Coll.

110 2009/52/EC

111 Sládková, interview 26.3.2009

112 Act No. 427/2010 Coll.

113 Kučera, 26.11.2010

114 *ibid.*

and – most importantly – a greater regulation of entrepreneurship. As a consequence, residence permits are no longer issued upon the special partnership. Moreover, when applying for entrepreneurial visa, an interview at the respective embassy is required.<sup>115</sup>

Based on the experience from the crisis, in January 2011, a completely new system of economic/labour migration was approved by the government, including the option for setting the limits (quotas) on the numbers of economic immigrants.<sup>116</sup> With this legislation (which is expected to come into force in 2014), the administrative burden for foreigners should be lessened and the responsibility of the employers increased.<sup>117</sup> In the case of low- and unskilled migrants, temporary migration is considered the leading principle.<sup>118</sup> However – as it was the case with the Voluntary Returns – the question arises whether a *flexible system of labour migration reacting accordingly to the current needs of particular industries*<sup>119</sup> is feasible.

In many respects, the crisis served as an impetus for the policy regarding both labour migration and illegal employment. On the one hand, there was a clear shift from holding migrants responsible towards the responsibility of employers (which was mainly due to the EU legislation) and staffing agencies (as a reflection of the common practice). On the other hand, vast restrictions were implemented with respect to the labour migration of third-country nationals.

At the same time, the crisis made apparent the (long time neglected) problem of semi-legal or seemingly legal employment. The differences between the practice of employment and “entrepreneurship” were narrowed down by imposing new regulations on the latter one. The post-crisis period can be, thus, best characterized as restrictive with growing regulation on the whole. The overall changes in policy and the official attitudes of the government – as expressed in the Policy Statements – are summarized in Table 2.

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115 MoI 2011

116 *ibid.*

117 Novotná, presentation 28.2.2011

118 Čížinský, presentation 28.2.2011

119 Novák, presentation 28.2.2011

**Table 2: Illegal employment in the Policy Statements of Czech Governments and related policy**

Gov. of	1992	1996	1998i	1998ii	2002	2004	2005	2006	2007	2009	2010
Content of the Policy Statement of the Government with respect to illegal employment	Nil	Illegal migration mentioned (call for restrictions) – no mention of illegal employment	Nil	Nil	Illegal empl. mentioned with connection to illegal migration (problem only mentioned)	Illegal empl. mentioned with connection to illegal migration (call for restrictions, the need to eliminate the problem expressed)	Illegal empl. mentioned with connection to asylum policy (call for restrictions, the need to eliminate the problem expressed)	Nil	Nil	No illegal empl. mentioned  Decision to monitor the impacts of the crisis in the field of migration	Illegal employment connected with staffing agencies (call for stricter regulation)
Labor Migration Policy	Liberal		Restrictive		Consolidation: restrictions + first attempts to manage legal labour migration			Attempts to facilitate legal labour migration - the needs of the industry prioritized		Restrictive turn  - consolidation through stricter regulation of entrepreneurship	
Legislative Milestones			1999: Act on the Residence of Foreign Nationals		2004: New Employment Act including employment of foreigners		2009: Amendment to the Employment Act – focus on legal labour migration (Green Cards)		2010: New Penal Code (sanctions for employers) – Implementation of EU Directive 2009/52/EC		2011: Amendment to the Foreigners Residence Law – stricter regulation of entrepreneurship
Legend: 1992 – center-right government      2002 – leftist government      2009 – caretaker government Source: author (based on official documents of Policy Statements; „Policy“ and „Milestones“ based on Baršová 2008 and own analysis of the legislature and official documents)											

## Conclusions

The aim of this paper was to provide a more detailed contextual overview of the problem of illegal employment of migrants with respect to the public policy at place. Albeit fully acknowledging the relevance of structuralist theories, the article focused on the policymaking on the level of a nation-state which it understood as an important factor co-influencing the actual practice of illegal employment. After various facets of the problem were outlined, the public policy preceding the crisis was reviewed so as to provide a ground for an assessment of the impacts of the economic crisis.

It can be maintained that the third-country nationals (by then) legally working in the country in low- or unskilled positions were affected more seriously than their EU counterparts. Yet, despite the loss of their legal jobs, many migrants opted for staying in the country, even at less favorable conditions when working in an illegal or seemingly legal way. For the reasons discussed above, especially the bogus self-employment started to proliferate. Although this provides the migrants with a legality of stay, they might easily “fall” into irregularity in the relatively close future, when the obligations from the entrepreneur visa will to be met.

The policy in the field of tackling illegal employment (both pre- and post-crisis) has to be seen rather through the lens of the complementarity thesis, as the liberalization of legal labour migration schemes for unskilled migrants was never thought to be an appropriate means to reduce the practice of illegal employment. Moreover, even when the attempt to facilitate labour migration was made (i.e. Green Cards), this did not respect fully the migration reality, letting out e.g. the Vietnamese and Mongolians who represent a relatively high percentage of the migrant workforce.

From this perspective, it can be argued that it was also the rigidity and complicity of the official schemes which resulted in the misuse of the highly liberal regulations for entrepreneurship. The crisis, then, only highlighted these practices and, as such, served as a catalyst for a more complex policymaking in this area. With more restrictions underway, the question remains, however, whether these will not lead in their effect to an actual increase in illegal employment, especially when not being coupled with sound migration schemes respecting the migration flows. Moreover, the current expectation that the labour migrants will be in the future fully flexible in their reaction to the changing needs of the employers is

highly dubious. In this respect, should the currently proposed concept of temporary migration be implemented, the illegal employment could be expected further to increase.

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