

NEW REGIME RELATED TO THE STAY AND WORK OF UKRAINIAN CITIZENS IN POLAND.

On Monday, 14 March 2022, the Act on Assistance for Citizens of Ukraine in Connection with the Armed Conflict in Ukraine, adopted on 12 March 2022 (the "**Act**") came into force. The Act sets out special rules for legalizing residence, offering work and providing assistance to Ukrainian citizens in Poland. The provisions of the Act complement the existing solutions resulting from Council Implementing Decision (EU) 2022/382 of 4 March 2022 stating the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and resulting in the introduction of temporary protection (the "**Decision**"). In this summary, we focus on the provisions of the Act and the terms of the Decision relating to the legalization of stay and work.

Group of persons to whom the Act applies

The Act applies to **Ukrainian citizens** who have entered Poland **directly from Ukraine** on or after **24 February 2022**. This means that both persons who do not have Ukrainian citizenship and persons who have entered Poland via another state will not be covered by the Act. The requirement to cross the border into Poland directly from Ukraine does not apply to Ukrainian citizens holding a Polish Card (*Karta Polaka*). In addition, under the Act, the spouses of Ukrainian citizens who do not have Ukrainian citizenship are granted the same rights as Ukrainian citizens, provided that they enter Poland directly from Ukraine.

Legalization of stay

The Act legalizes the stay of Ukrainian citizens for a period of 18 months from 24 February 2022. In addition, the Act provides that the stay of a child born in Poland to a mother who benefits from the provisions of the Act is considered legal.

In order to exercise the rights, a Ukrainian citizen should submit an application for a PESEL number to any executive body of a municipality in the Republic of Poland, within 60 days of entering Poland. On the basis of the application, in addition to a PESEL number, that person's stay in Poland will be registered.

Key issues

- Group of persons to whom the Act applies
- Legalization of stay
- Legalization of work
- Legalization of stay and work on the basis of the EU Council Decision

This is basically the only formality that should be completed to benefit from the rights provided for in the Act.

It is extremely important to note that if **a Ukrainian citizen leaves the Republic of Poland for a period of more than one month, they will be deprived of the rights related to the legalization of their stay.**

Ukrainian citizens who wish to stay in Poland for more than 18 months may apply for a temporary residence permit (e.g. for the purpose of work). However, the application may be submitted no earlier than nine months from the date they entered Poland – applications submitted earlier will not be examined.

In addition, the Act extends the validity periods of documents legalizing the stay of Ukrainian citizens in Poland or other rights to reside legally in Poland, if a Ukrainian citizen was already staying in Poland legally before 24 February 2022. Namely, if the last day of legal residence falls on or after 24 February 2022, the validity of documents legalizing the stay in Poland is extended::

- until 31 December 2022, in the case of for a national visa and a temporary residence permit; and
- by 18 months in the case of a residence card, a Polish identity document or a permit for tolerated stay.

In addition, if a Ukrainian citizen has been staying in Poland on the basis of a Schengen visa issued by a Polish authority or another Schengen state, a residence permit issued by the competent authority of the Schengen state or is staying in Poland based on the visa-free regime and the last day of the permitted stay is on or after 24 February 2022 and the stay began before that date, stay for 18 months is considered legal.

Legalization of work

With regard to Ukrainian citizens, the formalities related to taking up work have been greatly simplified. Under the Act, both persons using the special path of legalization of stay referred to above as well as Ukrainian citizens legally residing in Poland on the basis of provisions already in force before the Act was introduced, may work in Poland, if their employer notifies the relevant district labour office of this within 14 days of the day they start work. The notification must be made through the electronic system (www.praca.gov.pl). This is a considerable simplification compared to the obligation to obtain a work permit or even employ someone on the basis of an employer's statement (which must be submitted before starting work).

Ukrainian citizens who are granted a temporary residence permit on the basis of the Act will be entitled to work in the Republic of Poland without having to obtain a work permit.

Ukrainian citizens who do not take up work can also register as unemployed or jobseekers.

In addition, Ukrainian citizens who reside legally in the Republic of Poland (whether on the basis of the Act or on the basis of the Act on Foreigners) have been granted the right to take up and carry on business activity on the same terms as Polish citizens, the only condition being that they obtain a PESEL number.

Legalization of stay and work on the basis of the EU Council Decision

Regardless of the provisions of the Act, stay and work may be legalized on the basis of the Decision. The persons covered by the Decision are entitled, among other things, to the right of residence (up to a maximum of 24 months) and to access to the labour market - on the basis of so-called temporary protection. The Decision applies to the following categories of persons:

- Ukrainian citizens residing in Ukraine before 24 February 2022;
- stateless persons or nationals of third countries other than Ukraine who, before 24 February 2022, enjoyed international protection or equivalent national protection in Ukraine; and
- family members of the above-mentioned persons.

The scope of the Decision therefore is broader than the Act, and hence a number of persons who will not be covered by the Act will be able to benefit from protection under the Decision. In particular, the procedure for legalizing stay and work in Poland on the basis of the Decision will be available to Ukrainian citizens who left Ukraine on or after 24 February 2022 to go to a country other than Poland and only later arrived in Poland (the provisions of the Act do not cover such persons).

The Decision was issued on the basis of Directive 2001/55/EU, which was implemented into Polish law through the Act on Granting Foreigners Protection in the Republic of Poland of 13 June 2003. Under its provisions, a foreigner enjoying temporary protection is issued a visa if this is necessary for them to enter Poland, and after arrival in Poland they are issued a temporary residence permit for a year and a residence card. A person enjoying temporary protection may work in Poland without having to obtain a work permit.

It is worth stressing that the stay and work in the Republic of Poland of a person with temporary protection are already legal under the Decision, while a temporary residence permit and a residence card only confirm those rights. Still, it is advisable to obtain those documents as it may be necessary to hold them in order to obtain certain privileges.

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