

# Labor Market Protectionism in Ukraine: Fear or confidence?

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Today, Ukraine's policy towards the employment of foreigners is not in line with European standards and is not even on the agenda for politicians, the expert community or the press. The exchange of experience at home, that is, hiring foreign specialists on the Ukrainian labor market is not widespread practice, while popular attitudes do not suggest a need for this. Thus, the question whether the mechanism for employing foreign specialists in Ukraine is any good simply doesn't arise.

Much more in people's minds, for instance, is discussion over the issue of the visa regime that the European Union still maintains with regard to Ukraine. Yet, the criticisms often heard about the unequal visa policy Ukraine has towards EU citizens are justified only with reference to short-term stays. Once the 90-day term is up, EU citizens must have a visa to enter Ukraine properly.

The lack of interest in the legal entry of foreigners to take up employment in Ukraine is equally unjustified. A survey run by Headhunter, an employment service, in 2009 showed that every eighth Ukrainian enterprise planned to look for specialists abroad. Moreover, they were not talking about third-world nationals but citizens of Russia, Belarus, Germany and the US.

According to a 2009 study by McKinsey, an international consultancy, the productivity of Ukrainians is about sixfold lower than for their American counterparts and about three times less than for their Russian counterparts. So, the Ukrainian businesses should think about the prospect of attracting foreign workforce.

Of course, it's no secret that EU citizens can freely move and work in any of the 27 member countries. Enroute to a Free Trade Area with the EU, Ukraine is also facing the fact that, if Ukrainians are allowed freedom of movement within the EU, the same will be true of EU citizens—that they will be free to come to Ukraine to work. And Ukraine needs to be prepared for this.

## East and West Together: What the neighbors know about immigration

In contrast to Ukraine, the subject of immigration is more than urgent in Europe. EU countries together take in more than a million immigrants every year, which has given them valuable lessons in how to take advantage of this phenomenon for domestic economic growth. By taking a look at three groups of countries with different degrees of development, we can see examples of how to deal with this phenomenon and to manage it effectively.

### *The EU: A success story*

The European Union has long been aware that immigration is a resource that needs to be properly used. Despite the fact that universities in Great Britain, Germany and France are among the best in the world, European experts say that the EU economy is still short of highly qualified specialists.<sup>1</sup> This is especially true of computer technologies, commerce and medicine. One way out of this situation, in the eyes

<sup>1</sup> In connection with this, on 13 April 2010, the European Community Court allowed European universities to establish quotas for foreign students where such a decision is needed to guarantee the well-being of European citizens, such as in medical faculties.

of Europeans is to institute a kind of "blue card,"<sup>2</sup> which will allow professionals from third countries to enter any EU member state for two years, on condition that they have an offer of employment. Payment for this work must also be at least three times higher than the minimum wage, while the employer has to guarantee that the position will be filled by the foreigner for at least 12 months.

Nor is this the first step that has been taken to unify migration policy in the Union. In 2008, an Immigration Pact was proposed by France, although it failed to find support among all EU members. The principle of selectiveness proposed in this Immigration Pact and aimed at getting only the *crème de la crème* is the basis for the creation of the "blue card."

At the moment, migration policy issues are still being handled at the national level and here, too, the policy of selection is at work. The most selective country today is Germany, which closed its doors to unqualified immigrants by its 2005 Immigration Act. At the same time, this Act opened the door to easier access and better conditions of stay in the country for those with excellent professional skills. Highly qualified individuals gained both the right to employment and the right to permanent residence, which is granted immediately after they arrive in the country.

### *Foreign workers not a luxury*

What attracts foreign workers to developed countries is fairly obvious. So, how might a country whose development is somewhat less than another country attract that country's specialists? The answer is that it's not so hard.

Central and Eastern European (CEE) countries are a fine example of this, with Czech Republic the record-breaker—prior to joining the European Union, of course. In 1998, the country's share of immigrants among the total workforce was 2.4%, which was

<sup>2</sup> EU Council Directive №2009/50/EC. EU member states are required to bring their legislation in line with this Directive by 19 June 2011.

more than the share of foreigners among the general population, 2%.<sup>3</sup> These kinds of numbers were the equivalent of the levels in EU member countries at the time. Moreover, this was the case even though unemployment in Czech Republic was hitting 15% at the time.

The secret of this success involved several components aimed at attracting both Western European specialists and third world laborers. The main incentive that the Czechs could offer their western neighbors was the lower cost of living in the country and simplified immigration procedures. Thus, the same rate of pay as in their home countries gave Western Europeans more spending power.

The second part of this experiment was a Czech project called "Selection of qualified foreign workers,"<sup>4</sup> which began operating in 2003 and was extended in 2008. This project is directed at 51 countries, including Canada, the US and New Zealand, who have higher educations, are of working age, and can easily integrate into Czech society. Eligible individuals are offered permanent residence permits as early as 18 months after they enter the country and took up a legitimate job in the Czech Republic.

This project is not the only one of its kind in the European Union. But it is unique in that it was actually launched before accession to the EU, that is, at a time when the country was on the verge of economic turbulence and deliberately took the risk of exacerbating the situation on the job market.

The risk did not materialize for two reasons. First of all, Czechs themselves acknowledge that a number of economic advantages made it easier to attract foreign workers.

<sup>3</sup> OECD, *Migration Policies and EU Enlargement: The case of Central and Eastern Europe, 2001*.

<sup>4</sup> <http://www.imigracecz.org/?lang=en&article=home>

### Economic advantages of attracting foreign workers

1. The wages of foreigners are a source of tax revenues for the State Budget.
2. Each qualified foreign employee is capable of generating more than one additional job, which will go to local workers.
3. Immigrant specialists with a higher education foster the economic development and the expansion of knowledge in the country.
4. Investors need qualified workers.
5. Qualified workers do not compete with each other or with local specialists because work permits are issued by an authorized Employment Bureau, based on the situation on the job market.

Secondly, although the proposition was attractive, for the first 4.5 years that the project ran, the Czech Republic did not even manage to fill its own modest quota: of a permitted 3,500, only 888 workers entered Czech Republic.<sup>5</sup> And in the meanwhile, the country joined the European Union.

Thus, there is little reason to expect that, given the opportunity, the country will find itself colonized by a surplus of workers. Moreover, many EU members who have similar programs set fairly difficult conditions for potential candidates to meet. For instance, Holland requires potential immigrants to be certified Master's degree from an accredited Dutch post-secondary institution or a university that is among the top 150 on the 2007 Higher Education list or the 2007 Academic Ranking of World Universities that is published by Jiao Ton Shanghai University

#### *The Case to the East: A lesson or a threat?*

Migration policies similar to Europe's are common not only in the West. The Russian Ministry for Economic Development is currently preparing a proposal to improve the investment climate: to simplify

<sup>5</sup> <http://www.workpermit.com/news/2008-01-29/czech-republic/foreign-worker-project-failing-attract-non-european-union-skilled-labor.htm>

the visa requirements for foreigners.<sup>6</sup> The agenda includes dropping quotas for work permits and the requirements to have an invitation to enter the country, for employers to have permission to hire foreign specialists and have their entry approved at a State Employment Center.

Like Ukraine, Russia has long looked at immigration as something evil, although in the last decade its policy has evolved in a more positive direction for foreigners. The main reason for this change has been the demographic situation in Russia, which now finds that immigration is vitally important for it to have sufficient human resources. Still, despite the catastrophic need to increase its population or at least maintain the current level, changes in legislation have been restricted to young, educated individuals who have already integrated into Russian society through their studies or professional activities.<sup>7</sup>

Moreover, Russia's steps to improve its migration policy should not be seen only as a threat to Ukraine's labor market. Instead, this experience should offer an incentive to analyze the prospects for a more effective immigration policy, for which Ukraine has both the resources and the basic conditions.

### Ukraine: Conceptual intentions in a thicket of legislation

Few in Ukraine understand that regulated labor immigration can be a powerful factor in national development, both economically and demographically.

The country's Demographic Development Strategy for 2006-2015 takes a particularly interesting position. The document does indeed state that, to maintain the population at 47 million the country needs 300,000 migrants every year. Still, it means

<sup>6</sup> <http://www.hrc.com.ua/content/news/index.php?news=5590>

<sup>7</sup> O.A. Malynovska, "The Russian Federation's Migration Policy: Contemporary approaches and lessons for Ukraine," Kyiv, Demographics and the Social Economy, 2006. <http://www.niisp.gov.ua/content/articles/files/malinovskaya-migr-571d1.pdf>

migrants from third world countries. What's more, the strategy notes, "the arrival of large numbers of migrants will disrupt the integrity of the mentality of Ukraine's population and the internal equilibrium of society." Recommended measures include three steps to establish the necessary conditions *for Ukrainians to work abroad* (!), but nothing about attracting foreign specialists to Ukraine. Thus, immigration continues to be perceived as *a priori* negative – a phenomenon requiring strict regulation, if not eradication, and one worse still than the loss of Ukraine's own citizens to emigration.

The Concept for a National Migration Policy,<sup>8</sup> a general document that passed first reading in February 2010, is somewhat more restrained. One of the reasons for drafting this concept in the first place was immigration policies of other countries that are openly aimed at attracting foreign workers. However, this document does not indicate specifically how the phenomenon should affect Ukraine's own policy and facilitate the institution of this kind of practice or attempt to stem the tide of emigration. Instead, it simply states that Ukraine needs to "fully take advantage of the intellectual and labor potential" of foreign citizens on its territory.

### *The country needs best of the best... Ukrainian ones*

At this time, Ukrainian laws regarding foreigners are unusually restrictive and contradictory. The immigration process in Ukraine is governed by quotas according to categories outlined in the Law of Ukraine "On immigration." Of these, the category "commercial activity" potentially encompasses three groups:

- 1) scientists and artists whose immigration is of interest to Ukraine;
- 2) highly qualified specialists and skilled workers for whom there is a very strong need in Ukraine's economy;

- 3) individuals who have invested outside money in the country's economy in converted foreign currency worth at least US \$100,000 (unlimited quota).

Just how the "urgency" of the need for workers in the second group should be determined is not stated in the Law, nor are their qualifications. An additional group that has no quota on it, labeled "individuals whose immigration is of national interest for Ukraine," is even more vaguely designated.

Still, the wishy-washiness of these categories does not appear to be abused. The Cabinet of Ministers, which designates annual quotas, has issued its Instruction №231 "On setting immigration quotas for 2010." Of the three listed groups, only scientists and artists received a quota of 345, while the quota for investors was left unlimited. It appears that the country has no urgent need for highly qualified workers at this time. The quota for this group has not been met a single time since 2001, when the Law "On immigration" first came into effect.

It's important to point out that the Law "On immigration" covers only those who want to come to Ukraine or stay here on a permanent basis. According to Derzhkomstat, the state statistics agency, there were 8,600 such individuals in 2009, while the total number of people who entered Ukraine for business purposes was 741,900. The latter are clearly governed by other laws.

In the current situation, the country's migration policies have the strongest impact on one particular group of foreigners who want to work in Ukraine—entrepreneurs. The Law "On the legal status of foreigners and stateless persons" declares that "foreigners and stateless persons have the same rights and obligations in labor relations as citizens of Ukraine." Theoretically, such individuals should not have any problems registering as entrepreneurs in Ukraine. However, in order to enter the country for business purposes, they must have a visa.

<sup>8</sup> [http://search.ligazakon.ua/l\\_doc2.nsf/link1/JF3X900A.html](http://search.ligazakon.ua/l_doc2.nsf/link1/JF3X900A.html)

The actual categories of visas that allow foreigners to work in Ukraine are types B and IM-1. The B-type visa is granted to "individuals who enter Ukraine as co-founders of joint ventures or representatives of companies (firms, associations) who oversee the fulfillment of contracts, or function as consultants to foreign companies (firms, associations), and employees of foreign commercial representative offices in Ukraine." To be granted this type of visa, there needs to be an invitation from the employer in Ukraine who has to have provided evidence of the need to use the services of the foreign employee at a State Employment Center. The IM-1 visa is issued to individuals who enter Ukraine in order to take up employment and have permission from the Ministry of Labor.

Thus, potential private entrepreneurs who might want to work in Ukraine without being connected to a specific company do not fit into any of these categories and cannot request the relevant visa. This does not apply, of course, to citizens of the EU, Canada, the US, Turkey, Switzerland, and Japan, who do not require an invitation to be granted a B-type visa. Both this and the IM-1 visa are issued for only one year and are supposed to be extended if the foreigner wishes to stay in Ukraine longer. For this, the person has to leave Ukraine and apply to a Ukrainian consulate abroad.

The procedure for employing foreigners in Ukraine was complicated by a Cabinet Resolution issued 8 April 2009, but the main bureaucratic and financial burden was placed on the employer.

### *The advantages of decisiveness and the flaws in the way things are*

The procedure for employing foreigners in Ukraine is complicated, bureaucratized and often not very receptive of foreign workers: few of the staff at state passport registration and migrant labor bureaus in Ukraine speak English. Yet this is not the biggest problem with Ukraine's immigration policy.

Although a European education is considered prestigious in Ukraine,<sup>9</sup> the country does not trust non-Ukrainians who have graduated from European post-secondary institutions. As Institute for Euro-Atlantic Cooperation Research Director Oleksandr Sushko points out, the state does not differentiate the quality of professional training of individuals who enter Ukraine for employment and requires the same procedures for entering and staying on the territory of Ukraine for a professor or a person without any higher education.

Should this situation be brought more in line with international models? After all, practice in one country is not always transferable or desirable in another country, even an immediate neighbor. One argument against a facilitating state migration policy is the high level of unemployment in Ukraine—in 2009 it was 8.8%—and the level of the average wage, which is low compared to European standards.

On the other hand, Notification №336 from the European Commission to the Council and the European Parliament on immigration, integration and employment issued in 2003 stated that no direct link had been established between immigration and the level of unemployment in a country.

Similarly the issue of pay should not be an obstacle, as it is well-known that salaries in the private sector in Kyiv are similar to that of a number of Eastern European countries. Moreover, certain categories of professionals, such as teachers who work in Ukraine, are paid by the institution that has seconded them. The question then should not be whether Ukraine offers attractive financial prospects for foreigners but whether the country offers the necessary conditions for them to comfortably live here and work productively.

<sup>9</sup> As an example, the Viktor Pinchuk Foundation offers grants to talented students to study abroad but it requires candidates to be accepted in one of the top 200 universities in the Times Higher Education Review, 59 of which are in EU countries.

According to ICPS Social Economy Program Director Maksym Boroda, Ukraine should be interested in attracting specialists from a number of post-soviet countries, where the standard of education provides decent professional qualifications but the standard of living is lower than Ukraine's. This includes such countries as Armenia, Kyrgyzstan, Uzbekistan, and others. Common cultural values due to their common recent history and the lack of a language barrier make it possible for workers from these countries to integrate more easily into Ukrainian society. This would help Ukraine avoid some of the more serious problems with disaffected immigrants that have plagued both France and Germany.

In addition to the considerable economic and demographic advantages they represent, highly quali-

fied professional immigrants also bring a number of social benefits to Ukraine: they introduce more foreign languages and they expand awareness of other cultures and nations. Eventually, they will have an effect on Ukraine's foreign policies as well: the country's image as a democratic state will rise and its international ties will be strengthened.

Whatever the strategic forecast, the only way to really determine whether Ukraine needs foreign workers and whether they can influence the country's development in a positive way is by trial and error. Before making radical changes to its legislation, Ukraine can introduce some pilot projects, similar to what Czech Republic and Russia have done. The positive results achieved by these two countries suggest that this experiment will be useful for Ukraine, too, in dealing with the challenges of the future.

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