

Responding to Labour Force Shortages
with Migration – the Case of Poland
and the Czech Republic

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List of Abbreviations

CEE	Central and Eastern Europe
CEO	Chief Executive Officer
CIS	Commonwealth of Independent States
ECJ	European Court of Justice
EMN	European Migration Network
EU	European Union
EUR	Euro
GDP	Gross Domestic Product
IOM	International Organisation for Migration
NATO	North Atlantic Treaty Organisation
OECD	Organization for Economic Co-operation and Development
PES	Public Employment Service of the Czech Republic
PLN	Polish zloty
TCN	Third Country Nationals
USD	US Dollar
V4	Visegrád Group

Abstract

The thesis aims at adding to the knowledge on one of the most important migration streams from Eastern Europe - the immigration from Ukraine to the Czech Republic and Poland. Migrants from Ukraine constitute not only one of the largest groups of foreigners within both countries but were identified as a favoured source of labour force. This predominant perception of Ukrainian immigrants justifies the focus of the thesis on the use of immigration from Ukraine as a measure or tool for responding to labour force shortages in the period 1989 – 2019. The thesis explores how Poland and the Czech Republic shaped and implemented their migration policies to use the Ukrainian immigration to remedy the problem of labour force shortages. Based on exploration of relevant policies and their implementation, it will be argued that the policy lacks to certain extent effectiveness. Moreover, it can be argued that both countries are still not open to permanent migration and prefer to find solutions over the mode of the short-term temporary migrations of circular character.

Abstrakt

Das Ziel der vorliegenden Magisterarbeit war es, einen Beitrag zur Erforschung eines der wichtigsten Migrationsströme aus Osteuropa zu leisten – der Einwanderung aus der Ukraine in die Tschechische Republik und nach Polen. Ukrainische Migranten stellen nicht nur eine der größten Ausländergruppen in beiden Ländern dar, sondern wurden zugleich als bevorzugte Arbeitskraftquelle identifiziert. Diese prädominante Stellung der ukrainischen Migranten rechtfertigt den Fokus dieser Magisterarbeit, die die Einwanderung aus der Ukraine als Mittel zur Bekämpfung des Arbeitskraftmangelproblems erforschte. Die Grundlage hierfür wurde zunächst durch den theoretischen Teil der Arbeit geschaffen, im zweiten Schritt dann durch die Untersuchung der Gestaltung und Umsetzung der polnischen und tschechischen Einwanderungspolitik im Zeitraum 1989 – 2019 mit Fokus auf ukrainische Einwanderung. Der abschließende Vergleich beider Länder zeigte, dass für die Umsetzung der Einwanderungspolitik in beiden Ländern ein gewisser Grad an Effektivitätsmangel charakteristisch ist. Des Weiteren wurde argumentiert, dass beide Länder sich nur unzureichend der permanenten Migration öffneten und vielmehr auf Lösungen zurückgriffen, die eher als zirkulare und temporäre Migration zu bezeichnen ist.

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1. Introduction

Poland and the Czech Republic belong to the countries within the European Union which experienced a remarkable economic growth in the post crisis times.¹ In the period 2014 to 2018, the GDP annual growth in Poland fluctuated between 3.1 and 5.1% and for the Czech Republic it was respectively 2.6 - 5.3%.² The inflation remained stable, staying below 2.5% for both countries.³ Economic conjuncture resulted in record-low unemployment, reaching in that period the lowest-ever rate of 3.8% in Poland and 2.7% in the Czech Republic.⁴ High grade of employment with uninterrupted and dynamic growth of the economy as a whole might be considered desirable, nevertheless one of their shady side consequences was undoubtedly the emergence of labour force shortage in both countries.⁵ At the same time large-scale construction projects (especially in Poland), boom of residential and commercial building, but also other factors, such as population aging or workforce drain (particularly to Western Europe States) made the scarcity of skilled workers acute.⁶ The shortage of qualified labour force would mean a competitive loss in macro scale and was identified as one of the most significant dangers for the future labour market in the member states of the European Union.⁷ All of the EU countries have in common that they perceive migration as a potential source of

¹ Referring to the Global financial crisis 2007-2009 and its repercussions.

² Data taken from International Monetary Fund World Economic Outlook Database, April 2019, Report for Selected Countries and Subjects. Data for Poland available online: https://www.imf.org/external/pubs/ft/weo/2019/01/weodata/weorept.aspx?pr.x=101&pr.y=12&sy=1980&ey=2024&scsm=1&ssd=1&sort=country&ds=.&br=1&c=964&s=NGDP_RPCH,PPPGDP,PPPPC,PCPIPCH,LUR,GGXWDG_NGDP&grp=0&a= [last accessed 26.08.2020]. Data for the Czech Republic are available online: https://www.imf.org/external/pubs/ft/weo/2018/01/weodata/weorept.aspx?pr.x=31&pr.y=14&sy=1995&ey=2023&scsm=1&ssd=1&sort=country&ds=.&br=1&c=935&s=NGDP_RPCH,PPPGDP,PPPPC,PCPIPCH,LUR,GGXWDG_NGDP&grp=0&a= [last accessed: 26.08.2020].

³ *Ibid.*

⁴ *Ibid.*

⁵ Schotter, James (2018): "Central Europe: running out of steam", Article published in Financial Times on 27.08.2018, available online: <https://www.ft.com/content/21c2d25e-a0ba-11e8-85da-eeb7a9ce36e4> [last accessed 26.08.2020].

⁶ Schotter, James (2019): "Polish companies turn to robots as labour shortage bites", Article published in Financial Times on 17.12.2019, available online: <https://www.ft.com/content/21c2d25e-a0ba-11e8-85da-eeb7a9ce36e4> [last accessed 26.08.2020].

⁷ European Commission (2015): "Determining labour shortages and the need for labour migration from third countries in the EU. Synthesis Report for the EMN Focussed Study 2015", European Migration Network, European Commission, available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_labour_shortages_synthesis__final.pdf [last accessed 26.08.2020].

labour to counteract labour force shortages.⁸ The question of how and where to find sufficient sources of labour to remedy the shortage has emerged as a controversial policy issue due to the various strategies on addressing the labour force shortages or policy issues like integration etc. Labour shortages are an important challenge to address if Poland and the Czech Republic (just as any other country) are to keep their economic growth. It can be noted that Poland and the Czech Republic (as well as other Central European Countries) attracted important foreign investments because of significantly lower costs for hiring qualified labour when compared to Western European States. Labour shortages however are negatively influencing the investment climate, since the lack of labour force or increased costs of labour reduce the rate of return on investment, make the countries less attractive for investments and thus may limit the GDP growth.⁹

This paper aims at exploring how two of the EU member states, Poland and the Czech Republic, used migration as a tool to respond to labour force shortages. This topic will be explored on the background of migration flow from Ukraine. By this, the thesis attempts to add to the knowledge on one of the most dominant migration flows from Eastern Europe.

Both Poland and the Czech Republic are in Central-Eastern Europe. They went through a similar economic transition process from centrally planned economy to free market economy, both countries joined the alliances like NATO and European Union in the same years and both countries have had long periods of prosperity with unemployment at record low. It is also interesting to study the situation in Poland because it is the biggest country that has joined the European Union in the accession round in 2004. Moreover, since the 1990s' it has been developing from a typical emigration country to an immigration country.¹⁰ The Czech Republic

⁸ *Ibid.*

⁹ In the Czech context, it is a topical issue that has gained prominence in the last years; for more information cf. Fall, Falilou (2018): "The Czech economy is thriving but labour shortages will limit growth", OECD, ECOSCOPE - OECD Economics Department, available online: <https://oecdecoscope.blog/2018/07/16/the-czech-economy-is-thriving-but-labour-shortages-will-limit-growth/> [last accessed 01.12.2020]; In the context of Poland the Polish scholars anticipated the difficulties of the labour market and the danger of labor force shortages already after the big wave of emigration from Poland following the country's EU accession, for more information see e.g.: Fihel, Agnieszka/Kaczmarczyk, Paweł/Mackiewicz-Łyziak, Joanna/Okólski, Marek (2007): "Labour mobility within the EU in the context of enlargement and the functioning of the transitional arrangements - Country report: Poland", VC/2007/0293 Deliverable 8, Centre of Migration Research and Faculty of Economic Sciences, University of Warsaw (part of European Integration Consortium), Available online: <https://www.wiiv.ac.at/labour-mobility-country-report-poland-dlp-658.pdf> [last accessed 21.10.2020].

¹⁰ Kaczmarczyk, Paweł/Górny, Agata (2017): "A Temporary Solution with Structural Consequences? Ukrainian Workers on the Polish Labor Market", in: *The Influence of Economic Migration on the Polish Economy*, edited by J. Tyrowicz, P. Kaczmarczyk and A. Górny, Warsaw: CASE, pp. 31–48.

was chosen as a comparison peer because it is one of the most advanced economies of the 2004 accession and in its history applied other policies on migration matters than neighbouring Poland. In the last few years, both countries experience parallel difficulties in their labour markets, having problems to properly address the problem of labour force shortages. Although the countries share cultural, geographical, economical, and linguistic similarities (and similar historic experience with the communist rule), they are still two independent economies and as will be shown, immigration flow from Ukraine has behaved very differently in each case.

Both Poland and the Czech Republic try to support their economies relying on temporary immigration and both countries decided to define Ukraine as their desired target labour source. Ukrainians have been identified as a favourable source of incoming labour force because of the cultural, geographic, and lingual proximity, but also because Poland and Czech Republic have much stronger economies than Ukraine and can use this comparative advantage as an attracting factor. Moreover, emigration from Ukraine to Poland and the Czech Republic was caused by several other, internal reasons that pushed the people out, such as a weak economy, low wages, and low standard of living etc.¹¹

The added value of this paper lies in the fact that while most existing analyses on migration in the context of the EU focus on Western European EU states (focusing on the issue of welfare migration), this paper focuses on the often (in the context of immigration) marginalized countries. These countries are having their own peculiarities, unorthodox perspectives on migration issues and due to their geographical location and regional affinity to Eastern Europe are often experiencing migration from other countries than for example Germany, Sweden, or Ireland.

This paper shall the focus on and provide answers to the following questions:

- What is labour shortage in general and how can it be defined?
- Since migration is perceived by all EU Member States as a tool suitable to counter labour force shortages, how did Poland and the Czech Republic shape their migration

¹¹ The situation is a topic of many articles in the countries of CEE Zachová, Aneta (2018): "Visegrad is opening its doors to migrants, but specific jobseekers only", Visegradinfo.eu, available online: <https://visegradinfo.eu/index.php/80-articles/565-visegrad-is-opening-its-doors-to-migrants-but-specific-jobseekers-only> [last accessed 20.02.2019].

policy and its implementation in response to this problem on the background of immigration from Ukraine?

- What are the common points and the differences between the paths taken and developments in both countries?

To respond to these questions, the paper will proceed in four main steps. First substantive chapter (Chapter No. 3) will provide a terminological basis by exploring and explaining the definitions and the scope of the term “labour force shortage”, as well as other relevant terms. After briefly exploring the term “labour market”, this chapter will shed light on the murky waters of existing definitions of “labour force shortages”. To delineate its definition, meaning and content, similar terms, such as “skill shortage”, “skill mismatch” and others will be briefly addressed, as well as the reasons for existence of labour force shortages and their classification. The second part of this chapter will provide a necessary introduction into migration as a tool to remedy labour force shortages.

In the second step (Chapter No. 4) the paper will provide an analysis of the history, character, and policies of the Ukrainian immigration to Poland and Czech Republic emphasizing the moderation and development of the immigration on the respective labour market.

The following chapter (No. 5) is aiming at analysing the implementation of immigration policies and identifying their success stories and failures against the background of their aims. The consequences of diverging approaches of both countries to the issue of labour migration of Ukrainians will be demonstrated with the help of a case study, which will show the complexity of the issue.

Chapter 6 will draw upon the previous chapters. It will evaluate in comparative perspective approaches and policies of Poland and the Czech Republic towards using migration, and in particular Ukrainian immigration, as a tool to respond to the problem of labour force shortages. This comparison will show that both countries set the focus on a similar mode of mobility - short term circular migration but achieved diverging results.

The period of interest of this thesis is marked by the fall of the Iron Curtain in 1989 as a starting point, the subsequent years of transition to market economies and preparations for the accession of both countries (2004), and also covers the period following the financial crisis in 2008 until 2019.

2. Methodology and Sources

2.1 Methodology

The exploration of Ukrainian labour immigration to Poland and the Czech Republic as a response to labour force shortages in these two countries will be carried out by different methods, the choice of which reflects the aims and content of the chapters, as well as their function in the overall structure of the thesis.

First two substantial chapters aim at providing a basis and framework for the second - analytical part of the thesis. Chapter 3 will deliver the necessary theoretical background, focusing on the question of how to define labour force shortages and providing context for understanding immigration as a measure that can be used as a strategy to remedy labour force shortages. The following chapter will then provide an overview about the development of migration policy of Poland and of the Czech Republic, whereas detailed attention will be paid to immigration from Ukraine as an aspect, which the migration policies of both countries reflected from the time of their creation. Taking this into account, in both chapters the descriptive method will be used as the dominant one, however supplemented by analytical and comparative methods to benchmark both countries.

Chapter 5 and 6 are of analytical nature. Chapter 5 will look at the implementation of migration policies in both countries separately to identify how the various policy measures translated into practice and what were their results. Both countries will be analysed separately to develop a deeper understanding of the evolution and policy shifts of each of the countries. Last substantive chapter (No. 6) contains a comparative analysis, which allows to highlight the common points and differences in both, policies and adopted measures in Poland and the Czech Republic, and at the same time it will show that even if both countries chose circular mobility as their preferred approach, the results of such strategy differ.

2.2 Sources

This thesis contains theoretical parts, as well as parts describing and analysing policies and practices of Poland and the Czech Republic. The choice of sources reflects this fact. While the first substantive part of the thesis will rely primarily on scholarly works (journal articles, reports, books, and book chapters) from Polish, Czech, Ukrainian and international experts,

the part of the thesis dedicated to migration policies and their implementation will next to scholarly works make widely use of primary sources, such as statistical data, state authority reports and similar.

As to scholarly works, the literature dealing with the topic of migration from Ukraine is in the case of Poland broad and diverse, and approaching the topic from economic, but also sociological, political, or even cultural studies perspective. Last years brought widening of the literature which could correspond with gender studies specifying the female migration from Ukraine to Poland.¹² As to secondary sources, many studies from state bodies like Polish National Bank or reports of the Polish State's Ministries were identified as a suitable source. The number of studies, reports and secondary analyses and other scholarly works grew since 2014, since in this time Poland experienced record growth of immigration and the topic became salient among academia but also society.

As to the Czech Republic, the situation with regard to availability of sources is worse. The scholarly literature available in English is limited¹³, which is one of the examples of several difficulties to be faced while writing the thesis.

Another difficulty results from the low availability of sources in English or German language, whereas this applies especially - as it was already mentioned - to sources concerning the situation in the Czech Republic. Official documents, reports or similar are often available only in the local language. Moreover, especially in the Czech Republic there is a limited number of scholars dealing with the issue of Ukrainian immigration in general, and with the context of immigration as a tool to remedy labour force shortages.

Second significant obstacle relates to low availability of relevant data, which can be considered crucial for the purpose of assessing the impact of immigration policy on the problem of labour force shortages. The low availability of data has several reasons. One of the factors limiting data availability is the character of the typical mobility mode of immigration from Ukraine, which is seasonal, circular and of high dynamics. This means that Ukrainian nationals performing work or pursuing to do so were moving between the Ukraine and the

¹² For example the paper of Grażyna Gajewska: Gajewska, Grażyna (2018): "Między nacjami, klasami, płciami – zarobkowa migracja Ukraińców i Ukrainek do Polski" [eng. Between Nations, Classes, Gendres - Migration of Ukrainians to Poland"], „Уманська Старовина. Науковий журнал”, 5/2018, pp. 35-44.

¹³ The main Czech expert researching on the topic of Immigration to Czech Republic can be considered Dušan Drbohlav from the Charles University of Prague, who has been publishing on the topic since the fall of the Iron Curtain.

country of the destination (Poland or Czech Republic) often without any special evidence or in some cases not crossing the border, even though they have been granted the authorization to do so.

Moreover, another limiting factor is the variety of authorities collecting or publishing the data concerning (labour) migration. For example, the “data architecture” in case of Poland is intrinsically dispersed with Polish Central Statistical Office¹⁴ gathering information on permanent migration, Polish Ministry of Family, Labour and Social Policy concentrating exclusively on economic migration. Polish Statistical office is gathering its own data on migration.¹⁵ However, seasonal circular work of Ukrainian nationals does not fall into any definition of the Polish Study on the Economic Activity of the Society, therefore the data is not collected.¹⁶ Supplementary data sources are Eurostat (capturing periodic migration), or Ukrainian authorities, such as the National Statistical Service of Ukraine. However, these data are often of limited use¹⁷.

The data quality and availability issue is a problem that has been identified in numerous papers of researchers specialized in migration research. In the context of Poland, many scholars pointed out that the determination of the factual number of the Ukrainians working in Poland is problematic since the authorities like Polish Central Statistical Office [pol. Główny Urząd Statystyczny], Polish Office for Foreigners [pol. Urząd ds. Cudzoziemców], Ministry of Foreign Affairs [pol. Ministerstwo Spraw Zagranicznych], Ministry of Labour and Social Policy [pol. Ministerstwo Pracy i Polityki Społecznej], Polish Border Guard [pol. Straż Graniczna]¹⁸ offer data focused on fragments of migration. Moreover, since the Ukrainians work in Polish

¹⁴ Polish Central Statistical Office (in Polish: Główny Urząd Statystyczny).

¹⁵ The complexity of the data landscape was also seen by Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018): “Are Poland and Ukraine Gravity Centres for Each Other? Study on the Labour Migration Patterns”, in: *Comparative Economic Research*, Vol. 21/1, De Gruyter, pp. 53ff.; the problem of data architecture can be found in the analysis of Brunarska, Zuzana (2014): “Ukraińscy migranci zarobkowi w Polsce – dlaczego tak trudno ich policzyć?” [Ukrainian labour migrants in Poland – why is it difficult to count them?] *Studia BAS*, 40(4), pp. 155–174, available online:

[http://orka.sejm.gov.pl/WydBAS.nsf/0/863EFD04A3A92462C1257DDA0045500C/\\$file/Strony%20odStudia_BAS_40-9.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/863EFD04A3A92462C1257DDA0045500C/$file/Strony%20odStudia_BAS_40-9.pdf) [last accessed 11.04.2021].

¹⁶ Polish Study on Economic Activity of the Society (in Polish: Badaniu Aktywności Ekonomicznej Ludności), published by Polish Central Statistical Office, available online: <https://stat.gov.pl/badania-statystyczne/badania-gospodarstw-domowych-i-rolnicze/badanie-aktywnosci-ekonomicznej-ludnosci-bael/> [last accessed 11.04.2021].

¹⁷ The Ukrainian authorities (such as the Ukrainian Statistical Office) are using atypical units, for example the number of visits of Ukrainians to Poland, instead of giving the exact number of people.

¹⁸ The text relies on official translations, but in case of non-availability of the official authority’s name in English language the author used own translations.

grey zone, existing data on them (tracing their length of stay length, earning, etc.) rely heavily on estimations.¹⁹

In the case of Czech Republic similar problems can be identified. Already in the early 2000's the scholars claimed insufficient data quality, pointing out the inaccuracy, delayed and irregular flow of information, incompatibility and lack of detail.²⁰ For a very long time the reason for such a condition was lacking experience with handling the migration and lacking financial means.²¹ Czech data has been and partly still is dispersed and full of shortcomings.²² However the data on migration started to improve around the millennium year and as of 2019 the Czech Statistical Office provides studies capturing valuable data. Nevertheless, as in the case of Poland, Czech authorities focus only on the legal migration. This leads to the situation that the mosaic of migration in Czech Republic remains incomplete.

Despite the abovementioned obstacles, the data available from primary or secondary sources are sufficient to illustrate the dynamics and to assess the impact of the implementation of Czech and Polish (labour) migration policies in answer to labour force shortages.

The research was concluded in August 2019. The period, which this thesis deals with, encompasses the time between 1989 - 2019, thus not considering developments after 2019, including the developments in connection with COVID-19.

3. What is labour force shortage and how to remedy it

To understand the phenomenon of labour force shortage, in the first step the underlying term "labour market" must be defined. Labour market, according to Kallenberg and Sørensen, can be understood as

¹⁹ Mentioned in: Jaroszewicz, Marta/ Kindler, Marta (2015) : "Irregular migration from Ukraine and Belarus to the EU: A risk analysis study", CMR Working Papers, No. 80/138, University of Warsaw, Centre of Migration Research (CMR), Warsaw, available online: <https://www.econstor.eu/bitstream/10419/140863/1/82293907X.pdf> [last accessed 11.04.2021].

²⁰ Cf. Drbohlav, Dušan (2003): "Immigration and the Czech Republic with a Special Focus on the Foreign Labor Force", in *The International Migration Review*, Vol. 37, No. 1 (Spring, 2003), pp. 194-224, Available online: https://www.researchgate.net/publication/227685563_Immigration_and_the_Czech_Republic_with_a_Special_Focus_on_the_Foreign_Labor_Force1 [last access 01.05.2021].

²¹ *Ibid.*

²² Confirming this statement: Drbohlav, Dušan/Janurová, Kristýna (2019): "Migration and Integration in Czechia: Policy Advances and the Hand Brake of Populism" in: *The Online Journal of Migration Policy Institute*, available online at: www.migrationpolicy.org/article/migration-and-integration-czechia-policy-advances-and-hand-brake-populism [last accessed 20.01.2020].

“the arenas in which workers exchange their labour power in return for wages, status, and other job rewards. The concept, therefore, refers broadly to the institutions and practices that govern the purchase, sale, and pricing of labour services. These structures include the means by which workers are distributed among jobs and the rules that govern employment, mobility, the acquisition of skills and training, and the distribution of wages and other rewards obtained contingent upon participation in the economic system.”²³

In other words, the labour market is a platform or space that matches potential employees willing to take up the work, with the potential employers offering the workplaces and rewarding the workers with suitable market-conform compensation. It means that the labour market is a mechanism where the demand for labour and the labour supply meet.

Labour markets change as the societies and world are changing. Depending on the development and character, the labour market can operate at local, regional, national, and increasingly, at international level, consequently reflecting how economies operate.²⁴ The character of the labour market is defined by its conditions. Its competitiveness depends on changes in the (external and internal) business environment, government interventions and laws, as well as policies.²⁵

When assessing the condition of the labour market, experts tend to concentrate on competitiveness. Nowadays the new source of competitive advantage of the labour market, as well as on the labour market, is a competent labour force, and especially highly skilled and talented individuals capable of adapting to changes.²⁶ Modern and sustainably oriented

²³ Cf. Kallenberg, Arne/Sørensen, Aage (1979): “The sociology of labor markets”, in: Annual Review of Sociology, Vol. 5, pp. 351 - 379.

²⁴ The internationalization of the labour market is a subject of many studies but an interesting position in the literature describing and analysing the topic can be found in Kuptsch, Christiane (2010): “The internationalization of labour markets”, International Labour Organization (International Institute for Labour Studies), Geneva, available online: <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.188.961&rep=rep1&type=pdf> [last accessed 11.04.2021].

²⁵ For more information on the topic of regulation and governance of the labour market Esping-Andersen, Gøsta/Regini, Marino (2000): “Why Deregulate Labour Markets?”, New York: Oxford University Press, 357 p.

²⁶ More to be found in Boxall, Peter (1996): “The strategic HRM debate and the resource-based view of the firm”. Human Resource Management Journal, 6(3), 59–75; Boxall, Peter/ Purcell, John (2003): “Strategic human resource management: where have we come from and where should we be going?”, International Journal of Management Reviews, Vol. 2 (Issue 2), pp. 183–203; Boxall, Peter (2003): “HR strategy and competitive advantage in the service sector”, Human Resource Management Journal 13(3), pp. 5-20; Boxall and Purcell worked on the topic in the future publishing further editions of their papers.

labour markets prioritize the adaptation ability and highly skilled labour force, as these requirements are necessary to generate human capital advantage which is indeed crucial to improve performance of the organizations operating in the economy.²⁷

3.1 Defining and delimiting the term “labour force shortage”

This paper looks at immigration from Ukraine as a measure to remedy labour force shortages. Consequently, the key term to be delineated and explained providing a starting point for an analysis of the specific case of immigration from Ukraine (as third country nationals) to the countries of the European Union (in this case respectively the Czech Republic and Poland) to remedy labour force shortages of these two countries, is the notion of “labour force shortage”.

The term "labour force shortage" is not used in a uniform way. The notions of “labour shortage”²⁸, “labour imbalances”²⁹, are some of the other descriptions exemplifying the problem with availability of workers on the labour market(s). Furthermore, country specific terms can be identified. For example, the Polish literature often uses the term “employees’ labour market” denoting the situation, in which the labour force is scarce and the employee gains relative power in negotiation of employment conditions.³⁰ Moreover, depending on the country or the specific labour market, the phenomenon of labour force shortage can be also presented with focus on “skill shortage”³¹ or “labour mismatch”³².

²⁷ The problem of labour imbalances was in the past researched also in other countries of the European Union, e.g., in Italy. For more on the topic cf. Ingrassia, Raimondo (2019): “Labour Market Imbalances and Personnel Recruitment”, *American Journal of Industrial and Business Management*, Vol. 9, pp. 1376-1394, available online: <https://www.scirp.org/journal/paperinformation.aspx?paperid=93248> [last accessed 20.10.2020].

²⁸ The terminus of “labour force shortage” as the issue for migration policy was mentioned already in the 1978 in the context of the labour market development in Canada cf. Denton, Frank / Spencer, Byron (1978): “On the Prospect of a Labour Shortage” in *Canadian Public Policy / Analyse de Politiques*, University of Toronto Press, Toronto, pp. 101-118.

²⁹ This term is used e.g., in the context European context of Italy, cf. Ingrassia, Raimondo (2019), *op.cit.* 27, p. 26.

³⁰ The expression “employees labour market” is a direct translation from the Polish language. For the first time the terminus had been used in Fryzeł, Barbara (2005): “Kultura korporacyjna. Poglądy, teorie, zarządzanie” [Corporate culture. Opinions, theories, management], Jagiellonian University Press, Kraków, p. 37.

³¹ On the role of skill and skill shortage was written by Richardson, Sue (2003): “What is a skill shortage?”, National Centre for Vocational Education Research, Adelaide, Available Online: <https://files.eric.ed.gov/fulltext/ED495918.pdf> [20.04.2019].

³² For an analysis of the topic by the OECD see: McGowas, Adalet Müge/ Andrews, Dan (2015): “Labour Market Mismatch and Labour Productivity: Evidence from PIAAC Data”, *Economics Department Working Papers No. 1209 - ECO/WKP(2015)27*, OECD, Paris, available online: <https://www.oecd.org/economy/growth/Labour->

3.1.1. What is “labour force shortage”

Defining the term “labour force shortage” is an uneasy undertaking because of existence and the use of similar terms and because of the lack of a commonly agreed or otherwise commonly accepted definition. Even the EU countries have a different understanding of what labour force shortages are and most of the EU states’ legal systems do not contain any legal definition of the term. Common practice in the EU member states is to introduce definitions mostly referring to occupations or professional groups, but the methodologies used across the EU to measure or define the labour force shortages vary.³³

If looking for a common denominator of scholarly definitions, many authors refer to labour shortages as to a situation in which labour demand exceeds labour supply.³⁴ The European Commission narrowed the definition by concluding that “*labour shortages occur where the demand for workers in a particular occupation exceeds the supply of workers who are qualified, available, and willing to do that job*”.³⁵

Among the first scholars who analysed the issues of labour force shortages were *David M. Blank* and *George Stigler*.³⁶ They understood the phenomenon of labour force shortage as “*a shortage of members of a specific profession if the number of available workers is less than the number needed, as established by some social criterion or goal*.”³⁷ This broad definition focused on the ratio between vacancies and people actively looking for employment.

Market-Mismatch-and-Labour-Productivity-Evidence-from-PIAAC-Data.pdf (last accessed 12.02.2021).

³³ Detailed information in: European Commission (2015), *op. cit.* 7.

³⁴ Barnow, Burt S., Trutko, John, and Piatak, Jaclyn Schede (2013), “Conceptual Basis for Identifying and Measuring Occupational Labour Shortages.”, in: Barnow, B.S., Trutko, J., and Piatak, J.S. (Eds.), *Occupational Labour Shortages: concepts Causes, Consequences, and Cures*. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research (pp. 1-34), available at: https://research.upjohn.org/cgi/viewcontent.cgi?article=1238&context=up_press (last accessed 11.04.2021).

³⁵ European Commission, (2004): “Forecasting Labour and Skills Shortages: How Can Projections Better Inform Labour Migration Policies?”, DG Employment and Social Affairs, p. 5, available online: https://www.academia.edu/14765353/Forecasting_labour_and_skills_shortages_How_can_projections_better_inform_labour_migration_policies [last access 07.06.2020], as quoted in: European Parliament, Directorate-General for Internal Policies (2015): “LABOUR MARKET SHORTAGES IN THE EUROPEAN UNION”, European Parliament, Available Online [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/542202/IPOL_STU\(2015\)542202_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/542202/IPOL_STU(2015)542202_EN.pdf) [last access 20.09.2019].

³⁶ After Blank, David M./Stigler, George J. (1957): „The demand and supply of scientific personnel.” New York: National Bureau of Economic Research.

³⁷ *Ibid.*, p. 23.

The definition developed by *Blank* and *Stigler* was rewritten and further developed in 1970's by Frank and Sobel. According to these authors, labour force shortage is "a situation existing over an extended period of time in which employers were unable to hire at going wages or salaries sufficient numbers of qualified persons to fill positions for which there were budgeted funds and for which personnel were required to meet existing demands for services."³⁸ Frank and Sobel added to the discourse new criteria and occurrences defining labour force shortages, they stressed the importance of time aspect, remuneration and skills. Their definition of labour force shortage uses words such as "extended period of time", "going wages" or „sufficient number". This shows that labour force shortage is not a rigid concept but rather a relative one.³⁹

a. Quantitative and qualitative shortages

According to the literature on the labour force shortages two categories⁴⁰⁴¹ of labour force shortages can be generally distinguished: *quantitative* (also known as aggregate) shortages and *qualitative* (also known as segmented) shortages.

1. Quantitative shortages

Quantitative, or Aggregate labour shortage occurs according to *Boswell, Stiller and Straubhaar* in the situation of (nearly) full employment and reflects the situations when the labour supply does not match the labour demand on the labour market.⁴² In the core of the labour force shortages are mainly two reasons:

³⁸ After Frank, Walter/ Sobel, Irving (1970): "The shortages of skilled technical workers". Lexington (USA, MA): Heath-Lexington Books.

³⁹ *Ibid.*

⁴⁰ Cf. Zimmer, H. (2012): "Labour market mismatches". Economic Review, 2012(09), pp. 55-68, Brussels: National Bank of Belgium, available online: http://www.nationalebank.be/doc/ts/publications/economicreview/2012/ecorevii2012_h4.pdf [last accessed 11.04.2021].

⁴¹ Cf. Adams, John/Greig, Malcolm/McQuaid, Ronald W. (2000): "Mismatch unemployment and local labour-market efficiency: the role of employer and vacancy characteristics", *Environment and Planning, A* 32: 1841-1856.

⁴² Boswell, Christina/ Stiller, Sebastian /Straubhaar, Thomas (2004): "Forecasting Labour and Skills Shortages: How Can Projections Better Inform Labour Migration Policies?", HHWA edit. Paper conducted for European Commission, DG Employment and Social Affairs. Brussels: European Commission, P.5 ff. Available online: https://www.academia.edu/14765353/Forecasting_labour_and_skills_shortages_How_can_projections_better_inform_labour_migration_policies [last access 01.06.2020].

- first, total labour supply is not sufficient, meaning insufficient total number of available workers due to ageing population, emigration, decline in the participation rate of particular groups.
- second, because of increase of demand for labour that occurs in the period of economic growth and or shifts in consumer demand (for example need for healthcare and wellness as an emerging trend due to ageing population and thus consumers⁴³) and changes in relative prices of factors of production (when rapidly rising price of production machines shifts a human labour force to a substitute for machine work and thus increases labour demand⁴⁴). High grade of employment leads to a small number of available labour forces and in its consequence to general difficulty in finding workers to fill vacant positions. Quantitative shortage is also known under the term of the aggregate labour shortage.⁴⁵

Barnow, Trutko and Piatak propose the definition of labour force shortage (in the quantitative sense) as “a sustained market disequilibrium between supply and demand in which the quantity of workers demanded exceeds the supply available and willing to work at a particular wage and working conditions at a particular place and point in time”⁴⁶.

2. Qualitative shortages

Qualitative shortage (which is also known as segmented shortage) is the second category of the term “labour shortage”. At the centre of the qualitative shortage is the lack of skill(s). Qualitative shortage of labour takes place if the labour supply in specific jobs or job sectors requiring special skills is lower than the demand requiring that specific skills.⁴⁷ European

⁴³ European Parliament, Directorate-General for Internal Policies (2015): “LABOUR MARKET SHORTAGES IN THE EUROPEAN UNION”, *op. cit.* 35, pp. 21ff.

⁴⁴ *Ibid.*; the idea increasing of demand of human labour as substitute in the production in Barnow, Burt S./ Trutko, John/Piatak, Jaclyn S. (2013): “Conceptual Basis for Identifying and Measuring Occupational Labour Shortages” in Barnow, Burt S., Trutko, John/ Piatak, Jaclyn S. (Eds.): “Occupational Labour Shortages: concepts Causes, Consequences, and Cures.” Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, pp. 1-34.

⁴⁵ European Parliament, Directorate-General for Internal Policies (2015): “LABOUR MARKET SHORTAGES IN THE EUROPEAN UNION”, *op. cit.* 35, pp. 18.

⁴⁶ Barnow, Burt S./ Trutko, John/Piatak, Jaclyn S. for OECD/ European Union (2014): “Matching Economic Migration with Labour Market Needs”, OECD Publishing, Paris, p. 337, available online: <https://www.eesc.europa.eu/resources/docs/oecd-2014---matching-economic-migration-with-labour-market-needs.pdf> [last access 20.09.2019].

⁴⁷ European Parliament, Directorate-General for Internal Policies (2015): “LABOUR MARKET SHORTAGES IN THE EUROPEAN UNION”, *op. cit.* 35, pp. 24ff.

Commission uses in this context often the term of bottleneck occupations, which are occupations for which employers have problems finding and hiring staff to fill vacancies.⁴⁸ It happens that there is a situation of “*mismatch between the particular characteristics of the labour supply and the particular characteristics of the labour demand, resulting in a shortage in a specific segment of the labour market*”.⁴⁹ Interestingly, qualitative labour shortage can coexist with an over-supply of labour in other sectors or occupations (demanding different skills) and at the aggregate level and in consequence with high unemployment rates.⁵⁰

- *Skill shortage as one of the causes of qualitative labour shortage*

An important cause for qualitative labour market shortages, the skill shortage, is addressing problems of the labour market from a different perspective. The shortage of skills refers to a situation in which the employers offering certain remuneration are not able to find employees equipped with the suitable or needed skills surplus would take place in the opposite situation, i.e. when the skill supply is surpassing the demand.⁵¹ This way to explain the imbalances on the labour market is centred around the notion of *skill shortage*.

- *Skills mismatch*

One of the possible important causes of skill shortage is skills mismatch. One of the direct consequences of skill mismatch is skill shortage. In this context the misallocation on the labour market means that underqualified or overqualified labour power is misallocated and is lacking in another place in the economy. This term skill mismatch addresses a situation when the skill is available but is misallocated.⁵² It is addressing the situation when a vacant position remains unfilled, because employers are unable to find a suitable person with the skills they need or are unable to find the needed skill at a going pay. Such a situation often results in recruiting workers who are under-skilled for a specific job.⁵³

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Quintini, G. (2011): “Over-qualified or Under-skilled: A Review of Existing Literature”, OECD Social, Employment and Migration Working Papers, No. 121. Paris: OECD Publishing. Available online: <https://doi.org/10.1787/5kg58j9d7b6d-en>. [last access 20.04.2020].

⁵² European Parliament, Directorate-General for Internal Policies (2015): “LABOUR MARKET SHORTAGES IN THE EUROPEAN UNION”, *op. cit.* 35.

⁵³ The topic was researched in detail by: Desjardins, R. and K. Rubenson (2011). An Analysis of Skill Mismatch Using Direct Measures of Skills, OECD Education Working Papers, No. 63. Paris: OECD Publishing, available online: https://edmsp1.ilo.org/edmsp1/groups/skills/documents/skpcontent/mwdf/mdey/~edisp/fm11g_012415.pdf (last accessed 11.04.2021).

Skill mismatch is a phenomenon that is observable on the labour market on both, the macro and micro level. At the macro level (which is relevant for this paper) it simply could be described as a gap between the aggregate supply and demand for skills, typically with reference to a specific geographical unit (region, country or country group), and to the fact that observed matches between available workers and available jobs offered by firms in terms of skills and/or qualifications are rather sub-optimal.⁵⁴ Skill mismatch at the micro level occurs when workers have a level of skills that is different from what is required for their job.⁵⁵

Besides the skill mismatch in the context of lacking skills there is also the term “skill gap” which is often used when the skill levels of the existing workforce are insufficient to meet the requirements of firms.⁵⁶

3. Reasons for occurrence of quantitative and qualitative shortages

When seeking an explanation of what labour force shortage is (in qualitative and quantitative sense), it appears crucial to explore why such a situation occurs in the labour market. This question was addressed by *Maly and Maier*, who refer to labour shortages as multifaceted challenges. In their opinion, labour force shortages are caused by disruptions of the labour market.⁵⁷

- Need for replacement

One of such disruptions is the *need for replacement*, which has its roots in demographic changes. Low birth rates combined with aging population and high share of retired employees are the source for replacement problems, since the share of population in productive age in the economy is not big enough to substitute the retired workers⁵⁸. Another disruption of the

⁵⁴ *Ibid.*

⁵⁵ Eurostat further classifies “micro” skills mismatch into a) vertical mismatch, i.e. the mismatch between formal education and job requirements measured against a benchmark; b) horizontal mismatch, for example mismatches between the worker’s field of education and job requirements. Mismatches have also been analysed in terms of over-skilling and under-skilling of workers. See: Eurostat (2016): “Statistical Approaches to the Measurement of Skills”, Luxembourg, available online at: <https://ec.europa.eu/eurostat/web/products-statistical-working-papers/-/KS-TC-16-023> (last accessed 11.04.2021). For specific research in European context cf. Brunello, Giorgio/ Wruuck, Patricia (2019): European Investment Bank Report “Skill shortages and skill mismatch in Europe: A review of the literature” ECONOMICS – WORKING PAPERS 2019/05, p. 4ff.

⁵⁶ Skill gap explained in: McGuinness, Seamus/ Pouliakas, Konstantinos/ Redmond, Paul (2017): “How Useful Is the Concept of Skills Mismatch?”, IZA Discussion Papers, No. 10786, Institute of Labor Economics (IZA), Bonn.

⁵⁷ Maly, Radek /Maier, Christoph (2009): “Emigration, labour shortages and brain drain in the new EU member states: some descriptive evidence.” In Nowotny, Ewald/ Mooslechner, Peter/ Ritzberger-Grünwald, Doris (Eds.): “The integration of European labour markets”, pp. 163-176, Cheltenham: Edward Elgar Publishing Limited.

⁵⁸ Need for replacement and ageing population are being called multiple times regarding the type of shortage in

labour market is (paradoxically) *economic growth*, which intensifies the organizations' experience of labour shortage.⁵⁹ In the period of economic growth, demand for certain goods (for example due to new product developments) and services is increasing the pressure on industries to increase productivity. Rapid growth leads to expeditious growth of labour demand, resulting in many unfilled, vacant positions. In this context the length of the period of the economic growth, as well as its pace have a high impact on labour market development.⁶⁰

- Lack of specifically skilled workers

Further disruption example provided by *Maly and Maier* is the lack of specifically skilled workers⁶¹, which will become more visible in knowledge-based and skill reliant economies. Modern economies are transforming into knowledge-oriented economies.⁶² Such economies require very specific skills and rely on highly talented labour. Because they are based on specific skills, the subjects operating on such markets are confronted with various complications and barriers in finding a labour force equipped with specific talent and/or skills.⁶³ Many industries are using information and communication technologies to optimize their complex production management or transactions to preserve efficiency and competitive advantages. This creates the demand for a very specific labour force.⁶⁴ Well educated and highly skilled labour force is essential for the organizations to guarantee the development and

European Parliament, Directorate-General for Internal Policies (2015): "LABOUR MARKET SHORTAGES IN THE EUROPEAN UNION", *op. cit.* 35.

⁵⁹ *Ibid.*; cf. also: Capelli, Peter (2005): "Will There Really Be a Labor Shortage?", *Human Resource Management* 44(2), pp.143 - 149.

⁶⁰ According to Cappelli (*op.cit.* 59), a stable economic growth can be considered as one of the key factors influencing labour demand, while Nevidon and Erickson (Nevidjon, Brenda /Erickson, Janette (2001): "The nursing shortage: solutions for the short and long term", *Online Journal of Issues in Nursing*, Vol. 6 No. 1, Manuscript 4, available online: www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volum e62001/No1Jan01/NursingShortageSolutions.aspx, last accessed 30.05.2021) argue that rapid growth in some sectors like healthcare may accelerate the labour shortage.

⁶¹ Maly, Radek /Maier, Christoph (2009): "Emigration, labour shortages ...", *op.cit.* 57, pp.172f.

⁶² Marić, Ivana/ Barisić, Petra/ Jurjević, Ivana (2012): "Knowledge and Skills Needed in Knowledge Economy", Paper from Central European Conference on Information and Intelligent Systems, 19/21, University of Zagreb, Zagreb, pp.181-185.

⁶³ Beechler, Schon/ Woodward, Ian C. (2009): "The global "war for talent", *Journal of International Management*, Vol. 15, issue 3, pp. 273-285.

⁶⁴ Boswell et al., *op.cit.* 42.

implementation of innovative solutions.^{65 66}

- Emigration

Emigration is counted by some authors to the disruptions on the labour market having an impact on the labour force shortages. Emigration is considered problematic for the sending country because of the outflow of the population in the productive age. Emigration has of course two sides (two sides of the same coin). While it causes workforce shortages in country of origin of those leaving⁶⁷, the country of destination benefits from immigration, since it may potentially mitigate its existing labour force shortages. Despite that, the receiving country gets an accumulation of skills if it succeeds in attracting a lot of skilled foreigners. If the process lasts over a longer period of time, then the sending country is confronted with a brain drain phenomenon^{68 69} and the suitable labour is not any longer available on the labour market, i.e. labour supply of the sending country declines.

- Lack of mobility

Lack of mobility can be also considered as a source of labour market disruption, leading to labour force shortages. Mobility is a reason for geographical mismatch: if the labour force is concentrated in one region which is different from the region with available jobs, then mobility would be a natural remedy to match jobs and people, if this criterion is not fulfilled then the consequence will be labour shortage.⁷⁰ In cross border context, the attitude towards

⁶⁵ On the topic of the role of the qualification of the workforce cf. Göttlichová, Marcela (2019): "How to Win with the Use of Creative Thinking—The Integration of Theory and Practice in Tertiary Education," Springer Proceedings in Business and Economics, in: Damianos P. Sakas & Dimitrios K. Nasiopoulos (ed.), Strategic Innovative Marketing, Springer, pp. 91-97, available online: https://www.researchgate.net/publication/333373417_How_to_Win_with_the_Use_of_Creative_Thinking-The_Integration_of_Theory_and_Practice_in_Tertiary_Education (last accessed 11.04.2021).

⁶⁶ Marić / Barisić / Jurjević (2012), *op.cit.* 62.

⁶⁷ This aspect was analysed in detail in: Kaminska, Monika / Kahancova, Marta (2010): "Emigration and labour shortages: an opportunity for trade unions in new member states?", (AIAS working paper; No. 10-87). Amsterdam Institute for Advanced Labour Studies, University of Amsterdam. Available online: http://uvaaias.net/uploaded_files/publications/WP87-Kaminska,Kahancova.pdf (last accessed 30.05.2021).

⁶⁸ Cf. Exenberger, Andreas (2007). "Migration from Africa to Europe in the age of globalization". In B. Gebrewold (Ed.), Africa and Fortress Europe. Threats and Opportunities, pp.107–126. Hampshire: Ashgate, p. 15.

⁶⁹ Of special importance for the sending economy is the profile of an emigrant, having a direct impact on the extent of the labour shortage. If the emigrants are young and educated then it is a bad indicator for the future of the sending country, see Heinz, Frigyes Ferdinand/ Ward-Warmedinger, Melanie E. (2006): "Cross-Border Labour Mobility within an Enlarged EU", ECB Occasional Paper No. 52, p.25 Available online at SSRN: <https://ssrn.com/abstract=923371> [last accessed 20.09.2019].

⁷⁰ European Parliament, Directorate-General for Internal Policies (2015): "LABOUR MARKET SHORTAGES IN THE

mobility of many workers might be negative and they might not be willing to relocate because of a language barrier, administrative difficulties (such as recognition of their education, qualification and others).⁷¹ If labour is not mobile then the mobility of the companies could theoretically provide a solution for a specific labour force shortage, but such a process of moving a company or creating a new headquarter or plant is usually costly and time consuming for companies and workers. Inter-regional mobility or its lack can also have an impact on labour shortages because the match between firms and workers is dependent on mobility.⁷²

- Low labour market participation

Also, *low labour market participation* may contribute to creation of labour shortages. The potential of certain socio-demographic groups, such as women, low-skilled migrants, disabled, chronically ill, elderly, is often not exploited, as their affiliation to one of the specific socio-demographic groups creates a barrier for their labour market participation.⁷³

3.2 Strategies to remedy labour force shortages

Labour force shortage can bear serious consequences for economies and relevant actors. Shortages on the labour market typically increase during economic expansions, when many firms rely on the outside labour market to recruit the skills required to fill new positions.⁷⁴ Increasing shortages in Eastern Europe have been accompanied by sustained real earnings growth. If such situation occurs and there is no counteraction to face this challenge, labour force shortage can result in loss of efficiency, but also in productivity recession, failure to meet the financial goals and/or obligations, but also higher work pressure and labour force loss in sectors with lacking manpower due to worsening of work-life balance ratio for the employees at the given company.⁷⁵ For example skills mismatch can result in economic losses, since it

EUROPEAN UNION”, *op. cit.* 35, pp. 24ff.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*, pp.18ff.

⁷⁴ Brunello, Giorgio / Wruuck, Patricia (2019): European Investment Bank Report “Skill shortages and skill mismatch in Europe: A review of the literature” ECONOMICS – WORKING PAPERS 2019/05, pp. 9ff.

⁷⁵ Henkens, Kène et al. (2018): “What We Need to Know About Retirement: Pressing Issues for the Coming Decade”, *The Gerontologist*, Oxford University Press, Oxford, Vol. 58, Iss. 5, pp. 805-812, available online:

may affect negatively the productivity : lower output may result from firms hiring less-skilled workers as a replacement for skilled labour that is hard to recruit, or from the increasing bargaining power of skilled workers who are in the position to slow down their pace of work.⁷⁶ This example shows how serious the consequences of labour and skills shortages can be, but also indicates how widespread the problem is. It is thus not surprising that it has been addressed by many studies⁷⁷, which analysed and explained the problem, and proposed solutions based often on analysis of case studies. A closer look into the studies reveals that the studies apply different approaches, when dealing with the problem. Two main approaches can be identified:

The first approach is directed towards widening the dependency on labour by engaging intensively recruitment agencies, reforming the labour market by opening it to workers from preselected target groups and reforming the labour market by introduction of attractive and competitive working conditions.⁷⁸

Second approach however applies a totally opposite logic, in the centre of this approach is the reduction of the dependency on labour, which could be mitigated by automation of jobs or other structural changes and actions, such as increasing workers productivity by geographical relocation of jobs via nearshoring, offshoring, or outsourcing.⁷⁹ Depending on the approach chosen, authors identify relevant strategies to face the labour force shortage problem.

In the context of the first approach (strategies in expanding the dependency of labour), the first step towards the solution of labour force shortage is to actively search for the labour

<https://research.tilburguniversity.edu/en/publications/f15b17d9-e1c3-47db-b249-56c31d1d04d9> [last access 19.09.2019].

⁷⁶ Haskel, Jonathan / Martin, Christopher (1993): "Do Skill Shortages Reduce Productivity? Theory and Evidence from the United Kingdom", *The Economic Journal*, vol. 103, no. 417, 1993, pp. 386–394. Available Online: www.jstor.org/stable/2234777. [last access 6 June 2019].

⁷⁷ For example Allas, Terra/ Dimson, Jonathan/ Foote, Elisabeth/ Jeffrey, Barbara (2019): "The future of work: Rethinking skills to tackle the UK's looming talent shortage" McKinsey & Company, Available online: <https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-rethinking-skills-to-tackle-the-uks-looming-talent-shortage> [last access 19.12.2019]; OECD (2018): "Labour shortages are increasing in some countries, especially in central Europe: Percentage of manufacturing firms pointing to labour shortages as a factor limiting production", in *OECD Economic Surveys: European Union 2018*, OECD Publishing, Paris, Available online https://doi.org/10.1787/eco_surveys-eur-2018-graph16-en, [last access 19.12.2019].

⁷⁸ Cappelli, Peter (2005): "Will There Really Be a Labor Shortage?", *Human Resource Management* 44(2), pp. 143 - 149.

⁷⁹ European Parliament (2015): „LABOUR MARKET SHORTAGES...“ P.101.

force.⁸⁰ This seems to be a logical step, which according to the study of Henkens⁸¹ organizations use as the most common method, before engaging more sophisticated or complex solutions and engaging recruitment and employment agencies. This method is so popular because specialized agencies are effective in defeating labour force shortages⁸² via acquiring new reservoirs of the labour force and adjusting employment conditions. In order to reach this goal, it is necessary in the first step to develop programmes to identify the most promising target group and to direct the recruitment investments towards this group.⁸³ A not unimportant role plays the correct identification of targeted workers considering in which position the new labour force would be most profitable.⁸⁴ Once the results are available and the information concerning the most promising target groups is available, the recruitment processes and efforts can be launched. The next step is to open the search process of new target groups. A new source of labour force may come through activation of unused labour force reservoirs. For example, if the core of the staff in a company consists of middle-aged male workers, the new target group can be women, but also older workers, long-time unemployed, people with disabilities; another possibility is to attract and train or retrain workers from other professions.⁸⁵

Search and selection process of target groups takes place not only among domestically available forces, but also among available *migrant* labour forces, which raises the question of migration as a mechanism or method to remedy situations of labour force shortage.

3.2.1. Migration as a strategy to combat the labour force shortage

Migration can be considered as a very complex method to combat labour force shortage. Actors such as governments, organizations or agencies are forced to apply tailored immigration policies for migration to find with the required profile which often means avoidance of unskilled migration and favouring international highly skilled professionals that

⁸⁰ Henkens, Kène/ Remery, Chantal / Schippers, Joop (2008): "Shortages in an ageing labour market: an analysis of employers' behaviour", *The International Journal of Human Resource Management*, 19:7, pp. 1314-1329, Available online: <https://doi.org/10.1080/09585190802110117> [last access 19.12.2019] pp. 1316ff.

⁸¹ *Ibid.*, p. 1323.

⁸² *Ibid.*

⁸³ *Ibid.*, pp. 1325ff.

⁸⁴ *Ibid.*, p. 1327.

⁸⁵ *Ibid.*, p. 1318.

fit into the labour/ skill gap.⁸⁶ Migration is effective if it contributes to needed skills, diversity, and host economy. There is also evidence that immigrants can satisfy labour force shortages in the regions in which the native population is not willing to take up the employment. The immigrants are more responsive to the occurring conditions on the labour market than the native people and immigrants support the adaptation of the labour market to the changes and shocks.⁸⁷

Additional efforts must be done if representatives of the new target group are not equipped with a skillset being in demand on the labour market. In such cases the governments or organizations are responsible for providing training or retraining of prospective adepts, which however is a long and complicated process with unknown effect.⁸⁸

There are ways to attract an accurate workforce. To find people that can keep undertakings running they must offer competitive employment conditions, which means among others to offer more attractive wages. Wage improvement is a measure of limited power because there is evidence that “wage drift theory” forecasts that high wages will reach other companies and sectors after some period of time, declining the competitive advantage of offering high wages.⁸⁹ Wage increase is however a problematic issue, because companies in the free-market economy are usually pragmatic and prioritize cost optimization, resulting in the unwillingness to raise wages. Moreover, higher remuneration of newly hired workers can result in demands to increase the remuneration of the already employed workers.⁹⁰ There is still a way for undertakings to provide for attractive employment conditions and at the end to increase the number of workers.⁹¹ To the spectrum of bonuses increasing the attractiveness of work-place belong pay premiums, retention bonuses, flexible working hours, and various onsite services (child care, fitness centres, car washes, laundry services, quiet spaces and relax

⁸⁶ For the issue of immigration as strategy to overcome the deficits of the European labour markets cf.: Zimmermann, Klaus F. (2004): “European Labour Mobility: Challenges and Potentials”, IZA Discussion Papers, No. 1410, Institute for the Study of Labor (IZA), Bonn.

⁸⁷ Cf. Borjas, George J. (2001): “Does Immigration Grease the Wheels of the Labor Market?”, *Brookings Papers on Economic Activity*, 32(1), 69–134.

⁸⁸ Cf. Zimmermann (2004), op. cit. 86.

⁸⁹ Described in the final version of the article of Holden, Steinar (1989): “Wage Drift and Bargaining: Evidence From Norway”, *Economica*, 56(224), 419–432. Available online: <http://www.jstor.org/stable/2554320> [last access 19.09.2019].

⁹⁰ Veneri, Carolyn M. (1999): “Can Occupational Labor Shortages Be Identified Using Available Data?”, *Monthly Labor Review*, 122(3), pp. 15-22 (17). Available online: <https://www.bls.gov/opub/mlr/1999/03/art2full.pdf> [last access 19.12.2019].

⁹¹ *Ibid.*

zones etc.).⁹² The companies can try various schemes and options to widen the recruitment radius and to enclose new reservoirs of workforce.

Also when looking at the topic through the European lens we see that the labour force shortage is a complex phenomenon influenced by a variety of factors. For this reason, no simple or straightforward solution can exist. There are rather multiple ways to resolve or at least to mitigate the problem of a lacking labour force. The European Parliament demonstrated its awareness of the labour force shortage problem on European labour markets in its study “Labour market shortages in the European Union”, which delivered a systematized catalogue of methods and measures in response to labour force shortages, including raising the participation rate, simplification of employment procedures, increasing productivity, advancing the skill level, increase of the quality of jobs, ensuring highest possible transparency on the labour markets, increasing cross-border and international mobility - so in other words increasing of labour migration.⁹³

Immigration was mentioned by scholars⁹⁴ and acknowledged by European Union's institutions⁹⁵ as one of the solutions to the labour force shortages. It is also a remedy that has been implemented in many countries, including Germany - the neighbouring country of Poland and the Czech Republic. That is why for the needs of this paper the focus will be set on the measures concentrated around the aspect of mobility, and more specifically on migration. According to the contemporary state of discourse the migration is interpreted as a form of mobility, which can be categorized into labour mobility or geographical mobility.⁹⁶ Labour mobility is a mobility focused on a change of status of an employee on the labour market and according to the literature is occurring in a case of change of the employer, but also in a case of change of the employee situation.⁹⁷

Geographical mobility however takes regard to permanent or temporary spatial movements

⁹² *Ibid.*

⁹³ European Parliament (2015): “Labour Market Shortages in the European Union”, *op. cit.* 35, pp.54f.

⁹⁴ Veneri, Carolyn M. (1999), *op. cit.* 90.

⁹⁵ European Commission (2015): “Determining labour shortages ...”, *op.cit.* 33.

⁹⁶ Grabowska-Lusińska, Izabela (2012): „Migrantów ścieżki zawodowe bez granic” [eng. „Migrant career paths without borders”], Scholar, Warsaw. p. 58.

⁹⁷ Practically such labour mobility occurs for example because of becoming unemployed or finding a job after a period of unemployment or another case to be considered would be promotion or degradation which influences one's social and/ or material status, social position or the position on the labour market. Cf. Kawczyńska-Butrym, Zofia (2009): „Migracje. Wybrane zagadnienia” [eng. Migrations. Selected Issues], Curie-Skłodowska University Press, Lublin. pp. 16–24.

due to multiple reasons, which can be classified as either compulsory or voluntary. The main reasons for migration are educational, ecological, political, patriotic, or economic reasons. The changes of the social position of a migrant are to be considered as a consequence of geographical mobility.⁹⁸

Modern migration seems to be predominantly an urban affair. This finding is based on an IOM paper from 2015, where it was stated that approximately 50 percent of international migrants live in ten highly urbanized, high income countries in Europe, Middle East, and America.⁹⁹ Such a large scale of the migration processes affects all continents of the developed and developing world. Recent trends also show the heterogeneity of migrations due to age, educational background, and sex of the migrants.¹⁰⁰

Also, the political reality changes the way the people migrate. Globalization, liberalization of visa regimes, or in case of the European Union the removal of legal barriers (the special role play here the four fundamental freedoms, with the greatest role of free movement of persons) are leading to the remarkable increase of non-permanent migration types, such as periodic, seasonal or circular migration. Such trans-border migrations are more and more visible in the Polish-Ukrainian case, as it will be shown in the following chapters.

It seems obvious that economic reasons, as mentioned above, undoubtedly belong to the pushing/ pulling of modern migrations. Despite that it is necessary to underline the political dimension of migration. The migration is a salient topic closely connected with politization. This is due to the fact that international movements (their steering, moderation or avoidance) are influencing, affecting or co-shaping the policy making processes. Moreover, migration influences political relations (whether bilateral, regional or even global), as well as public opinion (especially in domestic context) and the political discourse in regard to public security policies.¹⁰¹ Such development occurs especially in Europe where the deepening cultural

⁹⁸ *Ibid.*

⁹⁹ International Organization for Migration (2016): "World Migration Report 2015", United Nations, Department of Economic and Social Affairs, Population Division, (ST/ESA/SER.A/384), p.2. Available online <https://www.iom.int/world-migration-report-2015> [last access 19.09.2019].

¹⁰⁰ More and more migration studies point out the feminization of migration trends and the same is in the case of Ukraine where papers take focus on the specific of the gender and female migration cf. Gajewska, Grazyna (2018): "Między nacjami, klasami, płciami – zarobkowa migracja Ukrainek i Ukraińców do Polski" [eng. Between nations, classes and genders - the economic migration of Ukrainian and Ukrainian women to Poland], Уманська Старовина. Науковий журнал, 5/2018, pp. 35-44.

¹⁰¹ Cf. Klimek, Dariusz (2015): „Funkcja ekonomiczna migracji zarobkowej z Ukrainy do Polski”, Technical

diversity of migrants paired with the abovementioned factors lead to adaptation of migration patterns.¹⁰²

Migration is often awarded a special function as a possible remedy to the problems of the societies of well developed countries, such as a rapidly ageing population (identified in Chapter 3 as one of the triggers for labour force shortages). It is to be expected that migration will in the upcoming decades affect the demographic structure in well developed countries. Migration can also be a source of problems. The unequal distribution of wealth and development may possibly lead to growing polarization and tensions between developed countries and less developed countries.¹⁰³

3.3. Push-Pull-Theory

It is anticipated that migration flows will intensify in the future.¹⁰⁴ Mobilization and the decision to migrate is a result of many factors. The complexity of this phenomenon attracted the attention of many researchers, who consequently developed a large number of theories to explain it. Central role however will in this paper play the Push-Pull theory¹⁰⁵, which is a fundamental theory in the migration literature. The theory of Everett Lee, although created over 50 years ago, still exists as an important point of reference in migration research. In the core of the Push-Pull theory is the concept of factors influencing the migrations which were:

- push factors, connected with the place of origin,
- pull factors, connected with the emigration destination,
- intervening obstacles, for example distance,
- personal factors.

After Lee, the migration becomes more likely if the push factors dominate the place of origin and the pull factors the destination place, under the condition that the intervening obstacles will not become strong enough to prevent any movement. All the factors or occurring events

University of Lodz Press, Łódź pp. 38f., available online: https://repozytorium.p.lodz.pl/bitstream/handle/11652/1260/Funkcja_ekonomiczna_migracji_zarobkowej_Klimak_2015.pdf?sequence=1&isAllowed=y [last access 23.04.2020].

¹⁰² Sokolowicz, Mariusz E./ Lishchynskyy, Ihor (2018), *op. cit.* 15, p.47.

¹⁰³ *Ibid.*, pp. 47-48.

¹⁰⁴ *Ibid.*

¹⁰⁵ Lee, Everett S. (1966): „A Theory of Migration“, *Demography*, Vol.3 No.1, pp. 47-57. Available Online: <https://emigratecaportuguesa.files.wordpress.com/2015/04/1966-a-theory-of-migration.pdf> [last access 19.12.2019].

have rather subjective character and can be interpreted for groups or units differently. Although the personal factors are described in a quite enigmatic way, some of the current migration experts from CEE region interpret them as the subjective consideration of push factors, pull factors and intervening obstacles.¹⁰⁶

The biggest advantage of this theory is universal applicability which can be used in research of the migrations on micro and macro level. The objective of this approach is to investigate and determine the “push” factors of the sending country and “pull” factors of the potential receiving country. This theory provides very simple construction but allows to highlight the subjective character of migration factors.

The decision to follow the logic of this theory was also based on the fact that Lee’s theory was born in the time of the emergence of the labour migration in Western Europe of the 60s and 70s, which is a parallel to the labour migration of the Ukrainians to Poland and Czech Republic. Further fact in favour of this theory lies in the high popularity in the research of the migrations of Ukrainians to the CEE region.¹⁰⁷

4. Immigration from Ukraine as a remedy to labour force shortages and its place in the migration policy of Poland and the Czech Republic

From the historical perspective, migration flows were directed from Central and Eastern European Countries (CEE) towards more industrialized West European countries often as a consequence of political, social, and economic reasons. Similar patterns of migration flows can be identified also in the period after the Solidarity Movement in Poland and after the fall of the Iron Curtain. It can thus be argued that migration belongs to the characteristics of the transition process in CEE countries, including Poland and Czech Republic.¹⁰⁸

The changing economic and social reality in the CEE countries led to an interesting development, when the migration patterns changed, and Central Europe became the target region of migration movements. Transition to democracy, freedom of movement and the shift

¹⁰⁶ Cf. Górný, Agata/ Kaczmarczyk, Paweł (2003): “Uwarunkowania i mechanizmy migracji zarobkowych w świetle wybranych koncepcji teoretycznych” [eng. Conditions and mechanisms of labour migrations in the light selected concepts theoretical] PRACE MIGRACYJNE, nr 49, Institute for Social Studies University of Warsaw, Warsaw, p.40.

¹⁰⁷ Sokolowicz, Mariusz E./ Lishchynskyy, Ihor (2018), *op. cit.* 15, p. 48.

¹⁰⁸ Horáková, Milada (2000): “Legal and illegal labour migration in the Czech Republic: Background and current trends”; INTERNATIONAL MIGRATION PAPERS no.32; International Migration Branch International Labour Office, Geneva. P. 1.

towards free market economy, including integration into the global economy and economic liberalization paired with the uneven economic conditions in both labour sending and labour receiving countries, contributed to an intensification of spontaneous labour flows. New reality brought new phenomena, like mass migration on one hand or a situation in which countries with financially motivated traditional high outflow of labour surprisingly became countries attracting immigration. These countries have been opening their labour markets to foreign labour force, but also granting asylum to refugees or displaced persons from instable regions that have experienced war¹⁰⁹, political instabilities or ecological crises. It was the countries of the CEE region, especially Poland and the Czech Republic, which attracted immigration and thus became new labour receiving economies.¹¹⁰

When looking at the CEE countries and their increasing attractiveness for immigrants, also the other side of the same coin must be mentioned - the push factors causing emigration.

A variety of further push factors and motives that determine the decision to leave the home country can be identified. Hartmann and Langthaler categorize the motives into four groups:

- Personal motives, such as poor career prospects, constraints on freedom,
- Economic motives, such as unsatisfying wages, high unemployment,
- Social motives, such as low quality of life expressed by poor living and working conditions, and general social insecurity,
- Political motives, such as persecution, political instability, and insecurity.¹¹¹

In the specific context of emigration from Ukraine, one of the important push factors became the military conflict in Eastern Ukraine. The years 2014-2018 from the global perspective were characterized by economic growth in well developed economies.¹¹² The opposite development however took place in less developed economies, meaning that the less developed economies experienced economic stagnation.¹¹³ The reasons for the stagnation of the not advanced economies are multiple, but one of the main causes was inflaming armed conflicts. Armed conflicts are making the gap between better-off and stagnating economies

¹⁰⁹ For example, in 1990's, Poland was granting the asylum to people from Chechnya, after 2014 to Ukrainians.

¹¹⁰ Horáková (2000), *op.cit.* 108.

¹¹¹ Hartmann, Stephan / Langthaler, Margarita (2009): "The Race for the Best: A European Perspective on the Brain Drain", in: Stocker, Simon (Hg.): "European Watch Report 2009: Migrants in Europe as Development Actors - Between hope and vulnerability"; Eurostep, Brüssel, pp. 14-16.

¹¹² Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018), *op. cit.* 15, pp. 46ff.

¹¹³ *Ibid.*

sharply visible.¹¹⁴ They cause new flows of migration, as can be demonstrated by example of migration flows between Poland and Ukraine, as well as between the Czech Republic and Ukraine. The military conflict in eastern Ukraine and Crimea Peninsula, which inflamed in February 2014, functioned as a push factor for its labour force. It led to changes in migration flows and was one of the push factors of the Ukrainian emigration.

As to other migration push factors, scholars and experts on Ukrainian emigration identified that Ukrainian migrants pursue labour migration because they are “pushed out” by very low levels of income (which is the main impediment for living standard improvement). This becomes evident when looking at the destination countries, which are countries where the level of income is higher than in the Ukraine.¹¹⁵

Also, the structural problems of Ukrainian labour market can be put forward as further pushing factors. They include for example arrears of unpaid salaries and under-staffing. Both phenomena are occurring in formal as well as in informal sectors.¹¹⁶ The result of such a dismal situation was the decision of millions of Ukrainians to secure their financial conditions for living through emigration. Considering the fact that 70% of Ukrainians going abroad were employed before deciding on labour mobility¹¹⁷, it may be even more said that it was the low wage level and not unemployment that pushed the Ukrainians out. The vision of quick improvement of financial conditions is thus certainly a strong incentive for emigration.¹¹⁸

Another emigration strategy, which can be observed in the context of Ukraine, is short-term or midterm migration, when the building up of human capital (via development of new skills, gathering of know-how) and the accumulation of capital stands in the foreground in order to create or increase the economic opportunities back in Ukraine.¹¹⁹ There is evidence suggesting that many Ukrainian labour migrants decide on return when reaching their own

¹¹⁴ *Ibid.*

¹¹⁵ Kupets, Olga (2016): “Economic Aspects of Ukrainian Migration to EU Countries” pp.36ff in Fedyuk, Olena/ Kindler, Marta, eds. (2016): “Ukrainian Migration to the European Union”, IMISCOE Research Series, Springer, Available online: https://doi.org/10.1007/978-3-319-41776-9_3 [last access 20.12.2019].

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.* p.38.

¹¹⁸ *Ibid.*

¹¹⁹ Bauer, Thomas K./ Haisken-DeNew, John P., / Schmidt, Christoph M. (2005): “International labour migration, economic growth and labour markets: The current state of affairs”. In United Nations Economic Commission for Europe, The New Demographic Regime Population Challenges and Policy Responses, pp. 111 - 136, at p. 114, Available online: https://unece.org/DAM/pau/_docs/pau/PAU_2005_Publ_NDR.pdf#page=124 [last access 19.12.2019].

saving targets.¹²⁰

In the decision of Ukrainians on the destination of their emigration, the cultural capital plays an undeniable role. This behaviour opposes the neoclassical economic theory, according to which the Ukrainian emigrants should mainly aim at destinations where their net-return would be the greatest, i.e. countries such as Sweden, Switzerland, Germany and other wealthy countries in Europe. The Ukrainians prefer to decide for destinations with moderate migration cost and satisfying (but not maximized) net-return. In their decision-making process their language skills, values, and traditions as well as education, as the elements of cultural capital complemented by the social capital, are considered. The Ukrainians thus tend rather to emigrate to CEE countries or even Southern Europe. Such a move is motivated by risk diversification and utility maximization.¹²¹

According to the International Organization for Migration, migration destinations of the Ukrainians changed rapidly due to the decrease of migration of Ukrainians to Russia by ca. 30%, which can be considered as a consequence of the armed conflict between these two states. The trend changed in favour of countries such as Poland and the Czech Republic.¹²² Poland, being in fact a country which usually was not a recipient of immigrants¹²³, became a country that started to attract a spectacularly growing number of both short-period and long-term immigrants.¹²⁴ It was due to the reason that Poland, as the biggest western neighbour of Ukraine, offered relatively attractive employment opportunities, which motivated migration from Ukraine to Poland.¹²⁵ These conclusions apply also in the context of migration into the Czech Republic.

¹²⁰ Kupets, Olga (2016), *op. cit.* 115, p. 38.

¹²¹ *Ibid.*

¹²² International Organization for Migration, Mission in Ukraine (2016a): “Міграція В Україні: Факти І Цифри” [eng. Migration In Ukraine: Facts And Figures], Available online: <https://iom.org.ua/en/node/1622> (last accessed 19.12.2019).

¹²³ The country is known for immigration skepticism, which demonstrated itself for example during the European Migration Crisis 2015.

¹²⁴ Cf. Józwiak, Ignacy; Piechowska, Maria (2017): Crisis-driven mobility between Ukraine and Poland: What does the available data (not) tell us, CMR Working Papers, No. 99/157, University of Warsaw, Centre of Migration Research (CMR), Warsaw p. 7, available online: <https://www.econstor.eu/handle/10419/180986?locale=de> [last access 20.04.2020].

¹²⁵ Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018), *op. cit.* 15, p. 46.

Migration from and to Ukraine developed over the time to a specific pattern, which is described as circular migration. Circular migration takes place not only in Ukraine, but is very characteristic for the CEE region.¹²⁶ It can be defined as a seasonal or periodical form of trans-border migration. In the context of Ukraine, this type of migration could be observed already in the communist era¹²⁷, however it became very popular especially in the period after the fall of the Iron Curtain due to removal of legal barriers like visa¹²⁸ or facilitation of work permit procedures.¹²⁹ The circular migration phenomenon became later on one of the aspects, which have been taken up and taken advantage of by Polish migration policy makers, as it will be explained in Chapter 4.1.

Growing intensity of migration affects national policies, bilateral or international relations, and is to some extent influencing also the narration of domestic policies with regard to the safety and public security matters.¹³⁰ The migration forecasters stated that migration will on one hand bring the risk of political tensions due to development disparities across the world, on the other hand it could have from the perspective of demographic changes a strong impact on ageing societies of developed countries, such as Poland.¹³¹

Having shed some light on the migration of Ukrainians, the reasons and specificities of their emigration, it is necessary to introduce the migration policies and their development of Poland and the Czech Republic, as the two countries are on the top of the destination list of Ukrainian migrants.

¹²⁶ The concept of “circular migrant ” is actually very seldom in the literature of subjects outside of the CEE region, and if it can be found it often relates to the migrants from Central-Eastern or Eastern Europe; cf. Górný, Agata/ Kindler, Marta (2016): “The Temporary Nature of Ukrainian Migration: Definitions, Determinants and Consequences” pp.96ff., in Fedyuk, Olena/ Kindler, Marta eds. (2016): “Ukrainian Migration to the European Union”, IMISCOE Research Series, Springer, Available online: https://doi.org/10.1007/978-3-319-41776-9_3 [last access 20.12.2019].

¹²⁷ Okólski, Marek (1999), “Recent Migration in Poland: Trends and Causes”, in Iglicka, Krystyna/ Sword, Keith (1999): “The Challenge of East-West Migration for Poland”, Studies in Russia and East Europe, London: Palgrave Macmillan, pp. 15-44.

¹²⁸ Agreement between the government of the Polish People Republic and the government of the USSR on mutual non-visa trips of citizens of both states, prepared in Warsaw, December 13, 1979 (Journal of Law 1980 No 13, item 41).

¹²⁹ Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018), *op. cit.* 15, p. 47.

¹³⁰ Klimek, Dariusz (2015), *op. cit.* 101, pp. 37-39.

¹³¹ Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018), *op. cit.* 15, p. 47f.

4.1 Poland

4.1.1 The Polish migration policy and its development

The fall of the Iron Curtain marked the start of the transition process in Poland, and it was also the initial point of development of modern Polish migration policy. In the context of migration from Ukraine, which became independent in 1991, four phases of Ukrainian migration to Poland can be identified:

- First phase (1991 - 1997)

The first phase encompasses the period from 1991 to 1997. The period was characterized by strict labour immigration policy for those who wanted to come to Poland to work legally.¹³² At the same time it was also a period of an out-of-control spontaneous migration of people (mainly from the states of the former Soviet Union, especially Russia, Belarus and Ukraine) on tourist visas, which were free of charge and easy to get.¹³³ Migrants from these states were called “false migrants”, because they entered the country on tourist visas, while performing work or casual trade.¹³⁴

Economic differences between Ukraine and Poland grew due to the development of Polish economy and the shrinking of the Ukrainian economy.¹³⁵ Ukraine was experiencing a decrease of real wages and systematic lowering of Ukrainian GDP, mainly due to lack of social and economic reforms, corruption, heavy industry relying on and working with old and insufficient technologies. The opposite development took place in Poland, which for the first time became due to positive development of its economy, as well as because of the no-visa-requirement-policy, an attractive immigration destination. Poland was a place where Ukrainians could have worked for some time without permanently emigrating. However, exact numbers of persons

¹³² 1994 Act on Fighting Unemployment [pol. Ustawa z dnia 14 grudnia 1994 r. o zatrudnieniu i przeciwdziałaniu bezrobociu/ Dz.U. 1995 nr 1 poz. 1].

¹³³ Iglicka, Krystyna (1999): “The economics of the petty trade on the eastern polish border”, in Iglicka, Krystyna/ Sword, Keith (Eds.), “The challenge of east–west migration for Poland”, London: Macmillan, pp. 120–144, at p. 120.

¹³⁴ Brunarska, Zuzanna/ Kindler, Marta/ Szulecka, Monika/ Toruńczyk-Ruiz, Sabina (2016):” Ukrainian Migration to Poland: A “Local” Mobility?”, p. 122, in Feyduk, Olena/ Kindler, Marta eds. (2016): “Ukrainian Migration to the European Union”, IMISCOE Research Series, Springer, Available online: https://doi.org/10.1007/978-3-319-41776-9_3 [last access 20.12.2019].

¹³⁵ Klimek, Dariusz (2015), *op. cit.* 101, pp. 53-54.

migrating from Ukraine to Poland in the period from 1991 to 1997 are not known, which can be attributed to the fact that the Ukrainians could cross the border without visas.¹³⁶

- Second phase (1998 - 2005)

The second phase lasted from 1998 until 2005. In 1998, the first regulatory step in the form of visa requirements for foreigners was introduced by Poland.¹³⁷ The immediate consequence of such a requirement was the fall of spontaneous migration from Ukraine. An additional impediment of mass migration was at the time relatively high cost of visa and work intermediation. Additionally, the demand for foreign labour force was low, which can be attributed mainly to high unemployment among Polish citizens.¹³⁸ On the other hand, the new procedure theoretically enabled legal employment for foreigners from the Ukraine.¹³⁹

- Third phase (2005 - 2017)

The third phase began with Polish accession to the EU. Two million of Polish citizens emigrated from the country to the well-developed EU economies like the United Kingdom and Ireland.¹⁴⁰ Strong emigration and good condition of the global economy led to disequilibrium on the labour market, because of changed proportions between labour supply and labour demand. In this time a new migration “working without permit”- scheme was introduced. It was named *employers’ declarations of intent to employ a foreigner*. Employers wishing to recruit third-country nationals for any occupation for a period of up to 6 months within a 12-month period can have access to a ‘simplified procedure’ whereby the third-country nationals were exempted from having to pass a labour market test¹⁴¹.

This liberalization of the migration policy was stopped by the 2007 - 2008 financial crisis, which however did not impact Poland significantly. Another reason why the further liberalization of the migration policy did not continue, was the abuse of the *employers’ declarations*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.* pp. 55-57.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.* p. 56.

¹⁴¹ A test when the labour market is tested by ensuring that suitable national / EU candidates are not available to take up a specific vacancy, within a specified period; for more details on the issue in the context of EU countries see European Commission (2015), op. cit. 33, p. 22.

scheme.¹⁴²

The years following the period of financial crisis brought several attempts to create a consistent immigration policy with focus on cutting illegal immigration and establishing penalties for abuse of foreign labour forces.¹⁴³ The country set focus on bettering the situation of foreigners in Poland and remodelling of the procedures. On the one hand obtaining residency and work permits was simplified, on the other the procedure to decide on employers' declarations was handled more strictly, due to more monitoring and inspections. After 2013 a remarkable increase of Ukrainian immigration to Poland could be observed. This time was characterized by a massive decline of real wages in Ukraine, accompanied by the devaluation of Ukrainian hryvnia, the national currency of Ukraine, by 300%. In the same period Poland maintained a flourishing economy and constant growth. Analysing the numbers from the years 2015/2016 makes very evident why working in Poland attracted so many Ukrainian workers, in the respective years the gross average salary exceeded 1,000 USD, while in Ukraine it was only around 200 USD.¹⁴⁴

In 2014, the Polish policy maker (the Ministry of Labour and Social Policy) began to identify professions with the highest labour force shortage indicators (service and sales workers, and clerical support workers, followed by occupations from major group craft and related trade workers).¹⁴⁵ Poland implemented a model which set a focus on satisfying the demand for occupations and to reduce the scale of unfilled vacancies.¹⁴⁶

The circular migration began to intensify especially after 2014, when Ukraine became involved in an armed conflict with Russia, losing control over Eastern provinces, a region with strategic significance for Ukraine's national economy. Such a difficult domestic situation paired with dissatisfaction concerning the economic reality in Ukraine made life and employment in Ukraine less attractive. The armed conflict between Russia and Ukraine in 2014 had a direct

¹⁴² Klimek, Dariusz (2015), *op. cit.* 101, pp. 56-60.

¹⁴³ Mainly to the legal regulations like Law on the effects of entrusting work to foreigners residing on the territory of Poland violating the regulations [pol. Ustawa z dnia 15 czerwca 2012 r. o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej/ Dz.U. 2012 poz. 769].

¹⁴⁴ Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018), *op. cit.* 15, p. 56.

¹⁴⁵ European Commission (2015), *op. cit.* 33, p. 11.

¹⁴⁶ Adamczyk, Anita (2018): „Imigracja zarobkowa do Polski. Casus Ukraińców (2014–2017)”, *ŚSP 2 '18*, pp. 115-136, at p.131, available online: https://www.researchgate.net/publication/344584735_Anita_ADAMCZYK_MIGRACJE_ZAGRANICZNE_DO_POLSKI_A_PROBLEM_BEZPIECZENSTWA_SPOECZNO-POLITYCZNEGO [last accessed 20.04.2020].

impact on the migratory patterns resulting with the decrease of visits of Ukrainians in Russia (that was previously one of the favourite countries for Ukrainian immigration) by one third.¹⁴⁷ In the following period, the “Destination Russia” was replaced by the “Destination Poland”. Such a shift transformed the Ukrainian labour force into an accessible reservoir of cheap labour for the European economies. It might be noted that the conflict in Eastern Ukraine also reshaped the shares of different regions of Ukraine on the overall Ukrainian emigration. Until 2013 Polish companies were employing mostly immigrants from Western, Northern and Central Ukraine (93.7 per cent), but in the period after 2013 the share of Ukrainians emigrating to Poland from Eastern and Southern Ukraine rose to 28.4 per cent.¹⁴⁸

- Fourth phase (since 2017)

The fourth phase is not strictly time-defined in the literature but taking the evolution of regulatory measures as a decisive factor for defining the phases, it could be stated that the year 2017 and the introduction of the visa-free regime for Ukrainians in the EU started a new era.¹⁴⁹

An important policy aspect that facilitated the immigration of the Ukrainian labour force was the introduction of a visa free regime between Ukraine and the EU in 2017. It enabled the Ukrainian nationals to stay in the EU for the period of 3 months every 6 months.^{150 151} The lack of labour force in 2017 in Poland was so acute that nearly one fifth of all employers in the private sector was looking for workers from Ukraine.¹⁵² Unfortunately, the migration policy of that time did not address the migration from Ukraine in any specific way.

In 2017 Poland introduced also changes in the *Act on the promotion of employment and labour market institutions [pol. “zmian w ustawie o promocji zatrudnienia i instytucjach rynku pracy”]*

¹⁴⁷ Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018), *op. cit.* 15, p. 46.

¹⁴⁸ *Ibid.* p.56.

¹⁴⁹ *Ibid.*

¹⁵⁰ Regulation (EU) 2017/850 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine).

¹⁵¹ The barriers were very low like the requirement of the biometric pass, no criminal records or sufficient insurance and financial means.

¹⁵² Personnel Service (2017): „Barometr imigracji zarobkowej, II półrocze 2017. Ukraiński pracownik w Polsce” [eng. Labor immigration barometer, second half of 2017. Ukrainian worker in Poland], Raport of Personnel Service, Available online: <http://personnelservice.pl/pl/biuro-prasowe/Raporty> [last access 20.11.2019].

(entry into force on 1 January 2018), which guaranteed not only legal employment, but also a salary, which could not be lower than minimum salary in the country and it had to be comparable to the usual salary in certain professions.¹⁵³ The new law also regulated seasonal jobs. More specifically, introduced were permits to perform seasonal work [*pol. zezwolenia na pracę sezonową*] and regulations allowing to issue work permits for seasonal work of up to 9 months per year duration.¹⁵⁴

Until 2018 the application for a permit for seasonal work and the declaration on employment of foreigners was free of charge, but in 2018 a symbolic fee of 30 PLN (7,5 EUR) was imposed.¹⁵⁵ The fee was introduced to limit fictitious declarations, since the system of employer declarations was often abused. In the period before 2018 some 60% of the declarations were issued in an illegal way. Also, the “costs” of finding employment and issuing the declaration imposed by the intermediation agencies on Ukrainians seeking employment in Poland was high, it varied between 450 and 880 PLN.¹⁵⁶ This phenomenon was investigated and concluded by the National Labour Inspectorate of Poland.¹⁵⁷

The amended system granted for the regional authorities the right to deny approval of the declaration if the maximal number of declarations was met, the allowed time of stay was

¹⁵³ The standards to be met were set in the Directive 2014/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (Directive, 2014).

¹⁵⁴ Art. 88 of Amendment of the Act on the Promotion of Employment and Labor Market Institutions in the context of the provisions on visa-free travel, [*pol. Ustawa z dnia 26 maja 2017 r. o promocji zatrudnienia i instytucjach rynku pracy (2017)/ Dz. U. 2017, poz. 1065.*]

¹⁵⁵ In Regulation of the Minister of Family, Labor and Social Policy of December 8, 2017, on the amount of payments made in connection with the submission of application for a work permit or seasonal work permit and submitting a declaration on entrusting work to a foreigner (2017b), Journal Of Laws 2017, item 2350. [*pol. Rozporządzenie Ministra Rodziny Pracy i Polityki Społecznej z dnia 8 grudnia 2017 r. w sprawie wysokości wpłat dokonywanych w związku ze złożeniem wniosku o wydanie zezwolenia na pracę lub zezwolenia na pracę sezonową oraz złożeniem oświadczenia o powierzeniu wykonywania pracy cudzoziemcowi (2017b)/ Dz. U. 2017, poz. 2350.*]

¹⁵⁶ Cf. Keryk, Mirosława (2017): “Problemy imigrantów z Ukrainy” [eng. The problems of immigrants from Ukraine] P. 105 in Kupczyk, Teresa (2017): “Imigranci wsparciem dla rynku pracy i rozwoju przedsiębiorstw” [eng. Immigrants as a support for the labor market and enterprise development], *Gazeta Wyborcza/Otto Workforce.eu*, available online: <https://ksiazka.ottoworkforce.pl/> [last accessed 12.12.2019]. It is interesting to note that the Ukrainian work candidates were abused by its compatriots and the unfair intermediation offices registering the declarations but knowing the people will never perform any services nor work for them. Further abuse was by the agencies or registering people, who were officially often the homeless Polish persons that opened fictive companies for some compensation in: Żebrowski, Paweł/ Dyjak, Grzegorz (2017): “Eksperci: grupy przestępcze próbują rejestrować fikcyjne oświadczenia dla cudzoziemców”, „Gazeta Prawna”, Published 16.12.2017, Available online: <http://www.gazetaprawna.pl/artykuly/1092495,eksperti-grupy-przestepcze-probuja-rejestrowac-fikcyjne-oswiadczenia-dla-cudzoziemcow.html> [last access 12.12.2019].

¹⁵⁷ Adamczyk, Anita (2018), *op. cit.* 146, p. 131.

exceeded, or based on security reasons or because of lacking complementarity of Ukrainian applicants with the needs of the Polish labour market. Until 2017 the system allowed the worker eligible for employer declaration to apply for registering the declaration and also allowed the person to change their employer. Since 2018 the procedure has been more strict, making eligible applicants for the declaration only the employers, but not the (future) employees.¹⁵⁸ This amendment of the legal act on employment of foreigners¹⁵⁹ introduced again a list of privileged countries eligible for the programme, whereas Ukraine was included in this list. When looking at the Polish migration policy 's development, attention should be paid to a special scheme, which the Polish policymakers designed as one way to attract foreigners to work and stay in Poland in order to keep the positive development of the Polish economy. This policy addressed the Polish co-ethnics from various parts of the world, but mainly from the Eastern Europe and the CIS region. The *Polish Card (pol. Karta Polaka)* was introduced in 2008.¹⁶⁰ The main objective of this Card was to equip the beneficiaries (irrespectively if employee or entrepreneur) with easy access to entry visas and to repatriation offers, such as cultural offers and education privileges.¹⁶¹ This policy became even more valuable after the novelization of the *Polish Card* regulations in the Law on Aliens from 2013 (effective from May 2014). New regulation brought many privileges compared to regular migration schemes by opening the access to permanent residence permits, as well as a simplified way to obtain the Polish (and therefore EU citizenship) for people who were able to prove their Polish roots and descent. Since its introduction (until 2019), Poland granted the *Polish Card* to 102.000 of Ukrainian citizens.¹⁶²

¹⁵⁸ *Ibid.*, p.121.

¹⁵⁹ In Regulation of the Minister of Family, Labor and Social Policy of December 8 2017 on the countries to whose citizens certain rules apply on the seasonal work permit and the provisions on the declaration on entrusting work to a foreigner (2017c)/ Journal Laws 2017, item 2349 [pol. Rozporządzenie Ministra Rodziny Pracy i Polityki Społecznej z dnia 8 grudnia 2017 r. w sprawie państw, do których obywateli stosuje się niektóre przepisy dotyczące zezwolenia na pracę sezonową oraz przepisy dotyczące oświadczenia o powierzeniu wykonywania pracy cudzoziemcowi (2017c), Dz. U. 2017, poz. 2349.]

¹⁶⁰ Szulecka, Monika (2016): „Regulating Movement of the Very Mobile: Selected Legal and Policy Aspects of Ukrainian Migration to EU Countries”, pp 51-71, p. 60, in Fedyuk, Olena/ Kindler, Marta eds. (2016): “Ukrainian Migration to the European Union”, IMISCOE Research Series, Springer, Available online: https://doi.org/10.1007/978-3-319-41776-9_3 [last access 20.12.2019].

¹⁶¹ *Ibid.*

¹⁶² Frey, Danuta (2019): “Karta Polaka ma objąć wszystkie osoby polskiego pochodzenia oraz wszystkie środowiska polonijne” in Newspaper Rzeczpospolita [eng. The Polish Card is to cover all people of Polish origin and all the Polish community], Published 03.04.2019, Available online: <https://www.rp.pl/W-sadzie-i->

4.1.2 Immigration from Ukraine: a way how to remedy labour force shortages in Poland

First sign of the immigration policy between Poland and Ukraine was the bilateral agreement on seasonal workers from 1990. It was however considered to be not a very effective measure, since in practice the conditions of legal employment of foreigners in Poland were often everything else but satisfactory.¹⁶³ In practice many Ukrainians were coming to Poland performing illegal work. Ukrainians labour force found engagement predominantly in sectors such as agriculture, construction, and households' services.

In the course of the EU accession, Poland had to implement policies, which are compliant with EU policies and standards, including those concerning visa policy for non-EU nationals¹⁶⁴. The process of approximation started in 2000, but the Ukrainians were affected by the policy only in Fall 2003, in the last phase of the readjustment. After Polish EU accession in 2004 for the first time immigration became an issue of public debate, due to mass emigration. It led to a shift in thinking and foreigners arriving in Poland from eastern neighbourhood (especially Belarus, Russia, and Ukraine) have been considered as possible reservoirs of the labour force that will save Polish economy from labour force shortages and stagnation.¹⁶⁵

Poland's visa regime remained relatively liberal until its full incorporation into the Schengen space. Polish state treated the Ukrainians as a privileged group, granting the entry-visas to Ukrainians free of charge. Ukrainians also often received multiple entry visas.¹⁶⁶ The *employers declaration* scheme, introduced in 2006, was aiming from its outset the Ukrainians as the target group. It might be noted that Poland is an example of a very specific labour market, which structurally has had a considerable scale of employment in the shadow economy. Part of this grey economy are Polish people, as well as foreigners (originating mainly

urzedzie/304039975-Karta-Polaka-ma-objac-wszystkie-osoby-polskiego-pochodzenia-oraz-wszystkie-srodowiska-polonijne.html [last access 20.01.2020].

¹⁶³ Iglicka, Krystyna (2008): "Poland: waiting for immigrants. But do we really want them?" Center for International Relations, Warsaw, as part of Country Papers for Centro Studi di Politica Internazionale, Compagna di San Paolo, Rome, p. 7, available online: https://www.cespi.it/sites/default/files/documenti/country_migration-poland.pdf [last access 20.03.2021].

¹⁶⁴ *Ibid.*, p.4

¹⁶⁵ Iglicka, Krystyna (2008), *op. cit.* 163, p. 6.

¹⁶⁶ *Ibid.*, p.7.

from the Ukraine), working especially in construction and agricultural sectors.¹⁶⁷ Reasons for the existence of such a shadow economy can be traced back to the very complicated, time-intensive, expensive, and bureaucratic process to obtain the work permit legally, which was the case in Poland till 2007. ¹⁶⁸As it was already mentioned above, the year 2007 marked a significant policy shift, facilitating the bureaucracy and costs of admission to Polish labour market for the seasonal workers especially from Ukraine, Belarus, and Russia. Moreover, the system of *employers' declaration* was also redesigned (as mentioned above), but there were no specific measures or developments, which would target workers from Ukraine to remedy the increasing labour force shortage.

Since its introduction, the declaration system was the main tool to govern short-term migration, and although it was amended¹⁶⁹ it was not replaced by any other regulation and constitutes since its introduction the main “constant” in the immigration policy.

4.2 The Czech Republic

4.2.1 The Czech migration policy and its development

The immigration to the Czech Republic gained new momentum after the opening of the country which was a direct consequence of the fall of the Iron Curtain. Migration was quite a new experience for the country, because before the transformation the country did not have any experience with coping with an influx of migrants. Additionally, the EU accession process led the country to rethinking and reshaping its migration and asylum policies to reach the European Union's standard.¹⁷⁰

When attempting to describe the development of immigration (policy), we need first to distinguish three categories of migration: *temporary migration* (which is addressing all migrations below 90 days) and *permanent migration* (which stands for stays over a longer

¹⁶⁷ Sokolowicz, Mariusz E./ Lishchynskyy, Ihor (2018), *op. cit.* 15, p.56.

¹⁶⁸ See Klimek, Dariusz (2015), *op. cit.* 101, p. 54.

¹⁶⁹ Last significant amendments were passed in 2017. The latest information on the declaration system is available on the webpage of the Ministry of Economic Development, Labour and Technology [pol. Ministerstwo Rozwoju, Pracy i Technologii] <https://www.gov.pl/web/rozwoj-praca-technologie/oswiadczenia-o-powierzeniu-wykonywania-pracy-cudzoziemcowi> [last access 20.01.2021].

¹⁷⁰ Cf. Prat, Sarka (2016): “Labour migration to the Czech Republic”, *International Journal of Social Sciences*, Vol. V(3), pp. 17-40 (21); Available Online: <https://www.iises.net/international-journal-of-social-sciences/publication-detail-845> [04.05.2020].

period in the country due to permanent residency permit) and *trade license*.¹⁷¹

Immigration periods in the Czech Republic can be divided into six phases.¹⁷²

1. The first phase is prior to the accession of the Czech Republic to the European Union, i.e. from 1990 to 1992. The phase was characterized by various economic reforms due to the transformation to a free market economy. It was the time when the responsible bodies, legislation and programmes were established.¹⁷³ Also in this phase the system introduced first legislative acts regulating the presence of foreigners in the Czech Republic.¹⁷⁴

2. 1993-1996 is the time of the second phase. Czech Republic was a developing country attracting a high inflow of immigrants. Between 1993 and 1997 it was a time of dynamic immigration increase of all immigrants especially Central and Eastern Europe. Czech Republic developed into an attractive immigration destination to a larger extent than the other CEE countries.¹⁷⁵

In this phase Czech Republic started to pursue bilateral agreements on the matter of migration and for example in 1996 such agreement was signed between the Czech Republic and Ukraine. It was a first wave of regulations intended to put pressure on illegal migration.¹⁷⁶

3. Third phase is dated to the years 1997-1999. This phase was in the time of economic disequilibrium, a weakening economy and it triggered new economic measures. The restrictive measures indeed contributed to decrease of legal immigration but led to shift into illegality or semi-legality. However, the liberal trade licence system enabled foreigners to find a company and provide services. The trade licences system was an evasion mechanism to the restrictions of bilateral agreement.¹⁷⁷

¹⁷¹ *Ibid.*, p. 21.

¹⁷² Own observation based on the study of the literature of the subject.

¹⁷³ Drbohlav, Dusan (2003), *op. cit.* 20, p.10f.

¹⁷⁴ Entry and stay of foreigners were ruled by: Aliens Act No. 123/1992, Law No. 190/1994, 150/1996 and many further amendments. The employment of foreigners was regulated mainly by Law No. 1/1991 as well as Law No. 9/1991 passed by the Czech National Assembly. Czech regulations on business activities of foreigners were regulated by Law. No. 455/1991 but also through Trade Code No. 513/1993 but it was also an object of numerous amendments.

¹⁷⁵ Drbohlav, Dusan (2003), *op. cit.* 20, p. 10.

¹⁷⁶ *Ibid.*, p. 11f and 19f.

¹⁷⁷ Prat, Sarka (2016), *op. cit.* 170, p.25.

4. The fourth phase starts in 2000 and lasts to the year 2008, when the global financial crisis affected the Czech Republic. The first years of the new millennium were a time of economic restoration in the Czech Republic. As of 2000 the labour migration was a dominating form of migration and contributed 86% to the total immigration.¹⁷⁸ Already in the year 2000 Ukrainians made up the biggest group of immigrants in Czech Republic - 41.000 Ukrainians were provided long-term visas.¹⁷⁹ Ukrainians at the time were also granted most trade licences - 21.400.¹⁸⁰ By 2000 the number of illegal migrants in the Czech Republic was estimated to be 295.000 - 335.000.¹⁸¹ The number of undocumented immigrants from the Ukraine was in 2000 estimated to be as high as the number of legal immigrants.¹⁸² The state bodies started to focus on immigration as an important topic of public debate. The new regulatory measures were implemented; however, the amendments were rather restrictive and negatively influenced the number of the inflowing foreign legal labour force. Positive was the fact that since 1999 the Czech Republic started to adapt its legislation to the EU standards.¹⁸³ In the harmonization process Czech Republic implemented its own legal system regulations on the stay of the third country nationals in the country. This time the Czech legislator amended the regulations for TCN on employment¹⁸⁴ and small business.¹⁸⁵

To further positive developments belong the improvement of the visa application system by introducing new issuing procedures, visa types and validity schemes. Parallely to this development the external control was improved, because the visa and work permits or trade licences were issued separately in the Czech diplomatic representations in the country of the

¹⁷⁸ Drbohlav, Dusan (2003), *op. cit.* 20, pp. 9-10.

¹⁷⁹ *Ibid.*, p. 14.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, p. 16.

¹⁸² Drbohlav, Dusan (1997): "Imigranti v České republice (s důrazem na ukrajinské pracovníky a „západní“ firmy operující v Praze." [eng. Immigrants in the Czech Republic, with special respect to Ukrainian workers and western firms which operate in Prague], Výzkumná zpráva pro "Research Support Scheme", Středoevropská univerzita. Praha.

¹⁸³ Act 326/1999 Coll., On the residence of foreigners in the Czech Republic and amending certain Acts, being the most important one.

¹⁸⁴ Act No. 167/1999 Coll., amending Act No. 1/1991, on employment (amended in October 1999 to comply with EU standards).

¹⁸⁵ Act No. 356/1999 Coll., amended in March 2000 to comply with EU standards.

applicant.¹⁸⁶

Before entering the EU Czech Republic's Ministry of the Interior established an advisory commission which worked out the "Concept of immigration integration policy".¹⁸⁷ The concept was also the idea to implement a selection system, inspired by the Quebecois model with focus on skilled immigrants .

In the first years after the EU accession there was one major change. The number of foreigners was growing, the main source nations remained the same with some small percentage of people coming from the EU (other states than CEE) countries making up not a high percentage of all immigrants.¹⁸⁸

5. Post Financial Crisis

The financial crisis 2008 had a negative impact on foreigners in the country and in the period 2008-2010 their number decreased due to reactive and strict policy reflecting the key characteristic of the Czech immigration policy being a demand-driven policy and prioritizing the interest of the domestic population. In the pre-financial crisis period of economic prosperity, numbers of applications for visas submitted by Ukrainians oscillated around 20.000 each year. Then, in 2009, the number dropped to some 10.000, and the next year, in 2011, to only 3.000, i.e. to 1/6 of the number before the economic crisis.¹⁸⁹ In 2010, the most foreigners were citizens of Ukraine (134 281, i.e. 31 percent), followed by Slovaks (71.780, i.e. 17 percent), Vietnamese (60.289, i.e. 14 percent), Russians (31.807, i.e. 7 percent), Poles (18.242, i.e. 4 percent) and Germans (13.871, i.e. 3 percent).¹⁹⁰

The tightening of an already restrictive approach and the lack of more generous legal immigration channels in the aftermath of the financial crisis contributed to rising numbers of illegal immigrants (estimated number was in 2010 between 295.000-335.000).¹⁹¹ By 2000 only

¹⁸⁶ Cf. Drbohlav, Dusan (2003), *op. cit.* 20, p. 21f.

¹⁸⁷ *Ibid.*

¹⁸⁸ Prat, Sarka (2016), *op. cit.* 170, pp. 27-30.

¹⁸⁹ Drbohlav, Dusan / Seidlová, Markéta (2016): "Current Ukrainian Migration to Czechia Refuge for Economic Migrants Rather Than for Refugees", in Drbohlav, Dušan/ Jaroszewicz, Marta (2016): "Ukrainian Migration in Times of Crisis: Forced and Labour Mobility", Charles University Faculty of Science, Prague, p. 105, Available online: https://www.osw.waw.pl/sites/default/files/projekty/ukrainian_migration_in_time_of_crisis.pdf [last access 26.03.2020].

¹⁹⁰ Prat, Sarka (2016), *op. cit.* 170, p. 30.

¹⁹¹ This number consists of 165.000 illegal workers on Czech labour market, 30.000 dependants and transit

67 percent of economic immigrants in the Czech Republic were documented.¹⁹²

The restrictive measures led *inter alia* to termination of contracts of foreign workers, as has been described in the previous sub-chapter. This had an impact on the numbers of foreigners with permanent or long-term residence, which decreased. By the end of the year 2010, the Directorate of the Foreign Police and Ministry of Interior in the Czech Republic registered a total of 427.291 foreigners, of which 188.952 foreigners were with permanent residence and 238.339 foreigners were with some type of long-term residents over 90 days. The change of this trend came only in 2011.¹⁹³ At the end of 2012, some 438.000 foreigners lived in the Czech Republic legally. About 212.000 of them had a permanent residence permit, others had permanent residence permits over 90 days. The Ukrainians remained as the most represented nation among immigrants. Authorities registered 124.300 Ukrainians, 43 percent of foreigners living in the Czech Republic originating from countries outside of the European Union.¹⁹⁴ In the period 2009-2016 the total number of immigrants was increasing in the course of post-financial crisis recovery, but the number of Ukrainian immigrants was falling. It dropped in 2013 to 105.138, i.e. -6,6 percent per year.¹⁹⁵

6. 2016, 2017 up to date

The economic restoration of the country's growth started in 2014. By the end of March 2016, a total of 473.516 foreigners lived in Czechia accounting for 4.5% of inhabitants (based on citizenship). More than two thirds of them (68.3 percent) came from five countries (when comparing 1994 to 2016, only Russia replaced Poland among the top 5), whilst almost 25 percent came from just one country – Ukraine (106.788 persons, i.e. 22.6 percent).¹⁹⁶ In 2019 the GDP was growing and the country experienced good prosperity. The number of foreigners increased to 593.000 with 299.000 persons with permanent residency and 294.000

migrants that were estimated between 100.000-140.000. This estimate is based on interviews made with representatives of the Ministry of Work and Social Affairs of the Czech Republic and the Institute of Work and Social Affairs in June 2001, in Drbohlav, Dušan (2003), *op. cit.* 20.

¹⁹² Drbohlav, Dušan (2003), *op. cit.* 20, p.10.

¹⁹³ Prat, Sarka (2016), *op. cit.* 170, pp. 27-28.

¹⁹⁴ *Ibid.*, p. 30.

¹⁹⁵ Drbohlav, Dušan / Seidlova, Marketa (2016), *op. cit.* 189, p.100.

¹⁹⁶ *Ibid.*, pp. 120-122.

holding long-term residency.¹⁹⁷ Some 130.000 Ukrainian citizens worked in the country by the end 2019, with around 40 percent share of all foreign workers.¹⁹⁸ It was in the third year of the implementation of the schemes designed specifically for the purpose of attracting Ukrainian workers, but the correlation is unknown.

4.2.2 Immigration from Ukraine: a way how to remedy labour force shortages in the Czech Republic

Ukrainians have belonged since the transformation of 1989 to a picture of modern migration in the Czech Republic as can be illustrated by the fact that the first international agreement of Czechia regulating migration relations was the *Bilateral Employment Agreement* between the Czech Republic and Ukraine.¹⁹⁹ It was signed in 1996 and aimed to regulate and strictly limit the number of Ukrainians entering the Czech Republic through quotas and bureaucratization. The scheme can be considered as effective, since the number of valid work permits for Ukrainians dropped significantly by 2002.²⁰⁰ The restrictions (such as quotas system) enshrined in the Czech - Ukrainian Bilateral Agreement of 1996 reflected the key principle of the Czech migration policy - protection of the domestic market²⁰¹. However, such a restrictive approach towards migration management caused at the same time a shift to illegality through so called *trade licenses*. *Trade licenses* allow the foreigners (inclusively TCN) to start self-employment. As such, trade licences are an option, which is legal, but the scholarly literature describes them as a form of irregular economic activity carried out by immigrants.²⁰² The trade licenses system, because of its liberal design, has been used by Ukrainians as a workaround, i.e. a way to escape restrictive conditions and quotas introduced

¹⁹⁷ Czech Statistical Office (2021): "Foreigners: Number of foreigners", Source Directorate of Foreign Police Service MI CR, Available online: https://www.czso.cz/csu/cizinci/1-ciz_pocet_cizincu [12.04.2021].

¹⁹⁸ Kafkadesk (2019): „Czech Republic doubles quotas to attract Ukrainian workers“, Published 15.06.2019, Available online: <https://kafkadesk.org/2019/06/15/czech-republic-doubles-quotas-to-attract-ukrainian-workers/> [last access 12.01.2020].

¹⁹⁹ Drbohlav, Dusan (2003), *op.cit.* 20, p.7.

²⁰⁰ Cf. Prat, Sarka (2016), *op. cit.* 101, p.25.

²⁰¹ European Migration Network (2015): "Determining labour shortages and the need for labour migration from third countries in the EU. NATIONAL CONTRIBUTION OF THE CZECH REPUBLIC", available online: https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-06a_czech_republic_determining_labour_shortages_english.pdf [last access 20.04.2020], p. 12.

²⁰² Leontiyeva, Yana (2016): "Ukrainians in the Czech Republic: On the Pathway from Temporary Foreign Workers to One of the Largest Minority Groups" in Fedjuk, Olena/Kindler, Marta (2016): "Ukrainian Migration to the European Union", IMISCOE Research Series, Springer, pp. 133-149.

by the Czech - Ukrainian Bilateral Agreement from 1996.

Trade licences enabled Ukrainian (but of course also other foreigners) to establish public trading companies and companies with limited liability. However, people holding such a licence were often subcontracted and working as employees or more precisely - *de facto* hidden employees. The trade licences system enabled even unqualified people to work in many sectors of the economy as quasi normal employees. For Ukrainians determined to work in the Czech Republic, this system turned out to be the most advantageous way to stay legally in the country and to legally or semi-legally work in the Czech Republic. The scheme is another example and demonstration of the phenomenon of semi-compliance in the CEE countries. The years of prosperity in the Czech economy brought the implementation of new migration programmes and reactivated demand-driven approach²⁰³. The target group of these initiatives were again Ukrainian nationals.

a. “Projekt Ukrajina”

“Projekt Ukrajina” (Project Ukraine) is an immigration programme that was originally designed for migrants from the Ukraine. The main objective of this project was to fill the vacancies, which cannot be filled by domestic resources in the long-term. The aim was to attract highly skilled workers and to prepare them to take up the work requiring skills in production, services, and public sector. It was set up a simplified procedure for recruitment of possible candidates for the *Employee*²⁰⁴ or *Blue Cards*²⁰⁵ (working and residency permit). As of 2018, some 63 companies operating in the Czech Republic were involved in the pilot programme and 461 persons from the Ukraine were part of this project. The employment in this framework was linked to the IT industry especially software developers, programmers, and specialists from broadly understood IT, as well as healthcare professionals. Due to its success, the pilot programme was widened to highly skilled candidates from India.²⁰⁶

²⁰³ European Migration Network (2015): National Contribution Czech Republic, *op. cit.* 201, pp.24ff.

²⁰⁴ Ministry of the Interior (2019), Information on the official website <https://www.mvcr.cz/mvcren/article/employee-card-682810.aspx> [last access 20.12.2019].

²⁰⁵ Ministry of the Interior (2019), Information on the official website <https://www.mvcr.cz/mvcren/article/eu-blue-cards.aspx?q=Y2hudW09Mg%3D%3D> [last access 20.12.2019].

²⁰⁶ Holý, Dalibor (2019): “Foreigners in the Czech Republic” Ref. No: 03346, Labour Market and Equal Opportunities Statistics Department of Czech Statistical Office, Prague, p. 119, available online:<https://www.czso.cz/documents/10180/91605941/29002719.pdf/74e31838-8cfa-4e93-9aed->

b. “Režim Ukrajina”

“Projekt Ukrajina”, but also other programmes targeting specifically Ukrainians, prove that the Czech immigration policy makers considered Ukraine from the outset as one of the preferred source-countries for the labour force.

Another special programme aiming at attracting skilled employees from the Ukraine was established in 2016. “The Regime of Special Treatment for Skilled Employees from the Ukraine” - programme, known (and abbreviated) in the Czech discourse also as *Režim Ukrajina* (Regime Ukraine), has the objective to respond with Ukrainian immigration to labour force shortage in jobs requiring workers with low and medium skilled qualification. It is dedicated to areas of production, services and public sector listed in the International Standard Classification of Occupations.

By 2019 (and since 2016, when the *Režim Ukrajina* was launched), some 35.296 Ukrainian applicants and 1.780 companies in the Czech Republic were included in the project. The primary quota for this regime was set to 20.000 Ukrainian workers per annum. However, until the end of 2018 the quota was not exhausted, and the scheme was used for employing some 11.000 Ukrainians.²⁰⁷

c. “Projekt Zemědělec”

Within *Režim Ukrajina* a special *Projekt Zemědělec* [Farmer Project] has been implemented designed to attract the labour force in the agriculture sector. From 2018, workers classified according to major group 9 of the International Standard Classification of Occupations could be employed under the *Režim Ukrajina* scheme. Already in 2018, this specific project was used by 323 persons to apply for an Employee Card (work and residency permit).²⁰⁸

4771e13683a8?version=1.0 [07.06.2020].

²⁰⁷ Hospodářská komora České republiky [eng. Czech Chamber of Commerce], information about the programme available online: www.komora.cz.

²⁰⁸ Holý, Dalibor (2019), *op. cit.* 206, p.119.

5. Did it all work? Implementation of Polish and Czech (im)migration policies and the results of adopting immigration as a remedy to labour force shortages

Knowing that Ukrainian migrants since the fall of the Iron Curtain favourably migrated besides Russia to CEE (also known as V4 - Visegrad group) countries, which are Poland, Hungary, and the successor states of Czechoslovakia, which are the Czech Republic and Slovakia. Keeping in mind their policies it is worth mentioning that these countries before entering the European Union in 2004 did not have visa requirements for Ukrainians to cross their borders, the regime was a liberal one. But the accession process required legal adjustments so that the immigration laws were in line with the EU standards and this standard meant the introduction of visa requirements and more strict regulations of conditions of entering the country and the stay there for the foreigners.²⁰⁹ Even after the EU accession the legal regulation of mobility of Ukrainian nationals between their home country and CEE countries was liberal until the year 2007, when the Schengen acquis needed to be implemented.²¹⁰ The aim of this chapter is to have a closer look on how Poland and Czech Republic implemented their policies regulating the immigration and which outcomes, similarities, dissimilarities and problems can be identified.

5.1. Implementation of Labour Migration Policy in Poland

5.1.1 Implementation of Labour Migration Policy - Chronological Perspective

In the first phase of Poland's immigration policy, which was designed in 1991 and effective until 1997, the main aim was to direct Ukrainian migrants to work especially in the primary sector (agriculture) and other jobs that were easy to get, such as household services or construction. The country's regulations from 1994²¹¹ strictly regulated the immigration policy, bringing *officially* on the Polish labour market in the period 1990-1991 annually approximately 5.000 foreigners and in the period 1992-1996 some 10.000 per annum. The policy could be

²⁰⁹ Szulecka, Monika (2016), *op.cit.* 160, pp. 51f .

²¹⁰ *Ibid.*, p. 52.

²¹¹ Ustawa z 14 grudnia 1994 r. o zatrudnieniu i przeciwdziałaniu bezrobociu /Dz. U. z 2003, Nr 58, poz. 514. [eng. Act on employment and counteracting unemployment of December 14, 1994 (Journal of Laws of 2003, No. 58, item 514)].

considered as strict (with regard to the regime applicable to those who wanted to work legally in Poland), but the loose tourist-visa regime led to a high number of illegally working immigrants.²¹²

The national migration policy focused from its beginnings on two issues: 1. internal security and 2. measures stimulating flows based on ethnicity and facilitating mobility/migration from eastern neighbourhood, especially from Ukraine. The “liberal” visa policy for eastern neighbours was aimed at promoting circular patterns of mobility. The developments of the period 1995 - 2005 brought decline of irregular migration as an effect of stricter immigration policy, but according to the OECD data also an increase of legal immigration. First reasonable data on immigration to Poland were published in 1998. The number of immigrants working in Poland reached 5.000 people in 1998 and increased in the year 2001 to 21.500. At that time, the Ukrainians made up only approximately 20 percent of all labour migrants in Poland.²¹³ This proves a then existing lack of attractiveness of Polish labour market, which can be attributed to the above presented policies and the unfavourable condition of the Polish economy with high domestic unemployment. In 1998, only 900 Ukrainian workers held working visas, rising to 10.200 in 2004²¹⁴. After the EU accession as the economic situation was improving, the number of immigrants working in Poland rose to 34.000 in the year 2005.

The Ukrainian nationals’ share of all foreigners in Poland reached approximately 30%.²¹⁵ Since the 1990's, the Ukrainians have constituted the biggest group of immigrants in Poland²¹⁶. Compared to other immigration countries, Poland's number of foreigners (including Ukrainian nationals) were low. This can be attributed to high visa and intermediation costs.²¹⁷ Additionally, complex, and costly procedures created further obstacles.²¹⁸ Some of the scholars denote this phase in Polish policy on migration as *reactive*, because immigration was not perceived as a social or economic policy matter and consequently there was also no public debate on this topic. It has also been observed that the debates of that time on migration

²¹² Klimek, Dariusz (2015), *op. cit.* 101, p.55.

²¹³ *Ibid.*, p. 57.

²¹⁴ *Ibid.*, p. 58. As Poland was approaching the EU accession and the economic situation was improving, the number of immigrants working in Poland rose to 34.000 in the year 2005.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*, p. 58ff.

focused on protecting borders, human rights, and repatriation of ethnic Poles.²¹⁹

Already in this period, i.e. time prior to the EU accession, Poland had to implement EU law into its legal order, including regulations concerning immigration. However, besides implementation of EU regulations, Poland also created its own specific regulations concerning the admission of Ukrainian nationals (and nationals of some other selected countries) to the Polish labour market. Poland pursued a quite liberal approach in this matter, facilitating the procedures of the work permit application process and lowering the administrative fees.

Some changes were radical, such as the introduction of the *employers' declaration of intent to employ a foreigner scheme*, which enabled legal short-term work without work permit under the condition that a special employer's declaration of intent to hire a foreigner has been registered. The number of newly passed or amended regulations made the obtaining of Polish national visa, a basic precondition for legal work and stay in Poland, much easier.²²⁰ The harsher policy linked to the EU accession and Schengen requirements was implemented to discourage the mobility of Ukrainians. Strict border controls were by definition a form of barrier. Introduction of stricter visa regimes was motivated, among others, by the increased need for security. However, the created barrier was not as effective as expected. The successful economies of the V4 countries functioned as strong pull factors - strong enough to continue to attract significant numbers of the Ukrainians.²²¹

In the time after Poland's accession to the EU (post 2004) and a huge wave of emigration, Polish policy makers seem to have acknowledged the need for liberalization of the immigration policy. The applicable regulations²²² identified 27 professions, in which foreigners were allowed to work in Poland on the basis of employers' declarations (*employers' declaration scheme*), i.e. without the necessity to obtain a work permit. The employer had to make such a declaration at the local labour office and was allowed to employ a foreigner for 3 months in 6 months' time.²²³ The declaration system was a way that Polish legislator

²¹⁹ Iglicka, Krystyna (2008), *op. cit.* 163, p. 3.

²²⁰ Szulecka, Monika (2016), *op. cit.* 160, p. 54.

²²¹ Klimek, Dariusz (2015), *op. cit.* 101, p. 57.

²²² *Ibid.*, p. 60f.

²²³ Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (Dz. U. 2004, Nr 99, poz. 1001, z późn. zm.) [eng. Act of 20 April 2004 on employment promotion and labor market institutions (Journal Of Laws 2004, No. 99, item 1001, as amended)]; Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 30 sierpnia 2006 roku w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę (Dz.U. 2006, Nr 156, poz. 1116) [eng. Regulation of the Minister of Labour and Social Policy of 30 August 2006 on the performance of work by foreigners without the need to obtain a work permit (Journal of Laws 2006, No.

established to regularize the immigration flows and to establish quite simple conditions²²⁴ for legal employment of migrants from third countries. It was also a mechanism that was designed as a kind of workaround for the strict regulations that followed the accession to the Schengen zone. Stricter regulations on visas would without such a solution deepen the problem of labour force shortages in some sectors.²²⁵ The system was not designed specifically for the Ukrainians, but it can be considered as a policy shift in Poland - a country that co-shaped the Eastern Partnership.²²⁶ The fact that the Ukrainian nationals benefited most can be considered just as an unintentional effect of the changes.²²⁷ As the liberalization wave started in 2006 and in the period 2006-2013 the total number of non-EU foreigners rose 8 times from 34.000 to 274.700 in 2013. The number of accepted employers' declarations and work permits for Ukrainians at the same time rose 10 times: the number of declarations rose from 20.260 (92 percent of all applications) to 21.7571 (92,2 percent), that of work permits from 12.894 (35,2 percent) to 20.416 (52,2 percent). It is obvious that the dominant immigration mode was the circular migration within the employer's declaration scheme as the scheme preferred by the Polish state.

The employers' declaration scheme introduced in 2006 was however criticized for being insufficient already from the outset. The amendment to relevant regulations from 2008 brought little change.²²⁸ Employers were given the possibility to extend the period of employment of foreigners to 6 months in a 12 months period, however renewal of the declarations after 3 months of employment was still required.²²⁹ This policy worked as a propulsion for Ukrainian people because at that time the number of

156, item 1116)].

²²⁴ This scheme was labelled by the European Commission as a 'simplified procedure' (European Commission (2015), *op. cit.* 33, p. 21.

²²⁵ Szulecka, Monika (2016), *op. cit.* 160, p. 58f.

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ Klimek, Dariusz (2015), *op. cit.* 101, p. 60ff.

²²⁹ Rozporządzenie Ministra Pracy i Polityki Społecznej z 27 czerwca 2007 r. zmieniające rozporządzenie w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę (Dz. U. 2007, Nr 120, poz. 824); Rozporządzenie Ministra Pracy i Polityki Społecznej z 29 stycznia 2008 r. zmieniające rozporządzenie w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę (Dz. U. 2008, Nr 17, poz. 106) [eng. Ordinance of the Minister of Labour and Social Policy of 27 June 2007 amending the ordinance on the performance of work by foreigners without the need to obtain a work permit (Journal of Laws 2007, No. 120, item 824); Ordinance of the Minister of Labour and Social Policy of January 29, 2008, amending the ordinance on the performance of work by foreigners without the need to obtain a work permit (Journal of Laws 2008, No. 17, item 106)].

Ukrainians, who worked legally in Poland on the basis of the *employer's declaration scheme*, reached 118.000 people in the first 2,5 years of functioning.²³⁰ Also the work permit procedures were slightly simplified which had an effect on increasing the number of permits issued.

Poland can be regarded as an example of a country that even after the introduction of restrictions in the form of mandatory visas (introduction resulted from the Schengen zone accession) tried to maintain liberal approach towards Ukrainian immigrants. In practice, such a liberal approach materialized itself in liberal handling of short-term mobility of Ukrainian nationals, as well as in intentional non-observance of very often undocumented work of Ukrainians in Poland. The Polish way was a prime example of meeting the EU obligations while preserving the national interests of Poland. One of the national interests was to keep good relations with Ukraine, as the most important source of foreign workers for the Polish labour market.²³¹

In 2006, the liberalization wave was started and in the period 2006-2013 the total number of non-EU foreigners rose 8 times from 34.000 to 274.700 in 2013. The number of accepted employers' declarations and work permits for Ukrainians at the same time rose 10 times: the number of declarations rose from 20.260 (92 percent of all applications) to 21.7571 (92,2 percent), that of work permits from 12.894 (35,2 percent) to 20.416 (52,2 percent). It is obvious that the dominant immigration mode was the circular migration within the employer's declaration scheme as the scheme preferred by the Polish state.²³² The liberalization however lasted not long due to the pressure on approximation of Polish migration laws to the binding EU regulations (Poland joined the Schengen zone in 2007-2008). Also, the financial crisis that hit Poland first in 2009 and numerous cases of abuse of the employers' declarations scheme contributed to more restrictions. The abuse cases resulted in more and stricter controls by consulates and employment offices when accepting the declarations, whereas the introduction of the employers' declaration scheme was originally aiming at liberalizing the migration policy and thus at decreasing the scale of illegal work migration.

Liberalized approach of Poland towards migration from Ukraine enabled the migrants to

²³⁰ Klimek, Dariusz (2015), *op. cit.* 101, p.45.

²³¹ Szulecka, Monika (2016), *op. cit.* 160, p. 52.

²³² Klimek, Dariusz (2015), *op. cit.* 101, p. 66.

obtain relevant documents in an uncomplicated way. Because the good accessibility of documents, they turned into very valuable assets for Ukrainians, since the documents enabled Ukrainians not only to enter Poland and to pursue work legally or illegally (in case they entered on a tourist visa), but to travel hassle-free to other EU countries (and very often to pursue illegal work there). This shows that Poland is seen from the Ukrainian perspective not always as the final destination, but also as an easy entry gate and just a stopover on their way to economically stronger EU countries.²³³

Since 2014 attempts can be observed to improve the position of immigrants by sanctioning their abuse and illegal work. For this purpose a new Aliens Act was passed in 2013.²³⁴ Also the temporary residence in Poland got remodelled in favour of foreigners, but the procedure for application for the work permit (even if simplified) was kept in the system as a control mechanism.²³⁵ Furthermore, in January 2014 Poland introduced pension eligibility for Ukrainian workers.²³⁶

Since 2016, due to the increasing number of Ukrainian labour force entering the Polish labour market, Polish regulations provided a framework for the creation of *Ukrainian Workers' Trade Union* (orig. Międzyzakładowy Związek Zawodowy Pracowników Ukraińskich), a very positive common initiative of the Polish Association of Trade Unions and the Polish-Ukrainian Society.²³⁷ This organisation was providing for the dynamically growing number of Ukrainian workers on the Polish labour market legal support and safeguarding, as guaranteed by the Labour Act standards.²³⁸

Year 2017 and the introduction of the visa-free regime for Ukrainians entering the EU started a new era.²³⁹ As it was already explained in Chapter 4, it enabled the Ukrainian nationals to

²³³ Szulecka, Monika (2016), op. cit 160, pp. 58-59.

²³⁴ Ustawa z 12 grudnia 2013 roku o cudzoziemcach, Dziennik *Ustaw*, 2013, poz. 1650. [eng. Act of 12 December 2013 on foreigners, Journal of Laws, 2013, item 1650.]

²³⁵ *Ibid.*

²³⁶ On the basis of the bilateral agreement between Poland and Ukraine: Umowa między Rzeczpospolitą Polską a Ukrainą o zabezpieczeniu społecznym, sporządzono w Kijowie dnia 18 maja 2012 roku, Dz. U. 2013, poz. 1373, 1375. [eng. Agreement between the Republic of Poland and Ukraine on social security, drawn up in Kiev on May 18, 2012, Journal Of Laws 2013, item 1373, 1375].

²³⁷ All-Poland Alliance of Trade Unions (OPZZ) (2016): "Powstał związek zawodowy pracowników ukraińskich w Polsce" [eng. A trade union of Ukrainian workers in Poland was established], available online: <http://www.opzz.org.pl/aktualnosci/swiat/powstal-zwiazek-zawodowy-pracownikow-ukraińskich-w-polsce> [last access 09.30.2019]

²³⁸ *Ibid.*

²³⁹ European Parliament (2017): "Parliament approves Ukraine visa waiver", Press Release, Available online: <https://www.europarl.europa.eu/news/en/press-room/20170329IPR69065/parliament-approves-ukraine-visa>

stay in the EU for 3 months every 6 months.²⁴⁰ This however increased significantly the pressure on Polish employers, who on the one hand experienced a time of prosperity due to the good condition of Polish economy, but on the other hand they had to face a steadily intensifying problem of labour force shortage, which was at that time not remedied by any significant changes of the immigration policy. As the only positive change can be counted the extended period of seasonal work up to 9 months a year²⁴¹ Measures implemented in 2017 aimed at improving the immigrant workers' position through comprehensive minimum wage for all professions where foreigners worked, including seasonal jobs²⁴².²⁴³ The amendment also introduced a (symbolic) fee of 30 PLN (7,5 EUR) for seasonal work permit applications, as well as for the employers' declarations.²⁴⁴ The changes resulted in an increased complexity of procedures, often longer time for processing of applications and declarations, and wider authorization of regional authorities to deny the application.²⁴⁵ After introducing the new procedures, which shifted the registration duty from employer to employment office, officers made the procedure longer. Granting the permit in case of formal mistakes lasted up to 3 weeks²⁴⁶, which led to the decrease of employers declarations by 10 times²⁴⁷. In practice this issue translated into situations, when Ukrainian workers were performing the work, while their application was being processed by the respective employment office.

The development of the implemented policies shows that amendments and changes were numerous, which supports the argument of Polish immigration policy being denoted as

waiver [20.03.2020].

²⁴⁰ *Ibid.*

²⁴¹ Ustawa z dnia 20 lipca 2017 r. o zmianie ustawy o promocji zatrudnienia i instytucjach rynku pracy oraz niektórych innych ustaw/Dz.U. 2017 poz. 1543 [eng. Act of 20 July 2017 amending the Act on employment promotion and labour market institutions and certain other acts / Journal of Laws no. 2017 item 1543].

²⁴² Art. 88 of nowelizację ustawy o promocji zatrudnienia i instytucjach rynku pracy, której zmiany weszły w życie w dniu 1 stycznia 2018 roku (Ustawa, 2017).

²⁴³ The standards were adjusted to meet the requirements of the EU Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

²⁴⁴ Adamczyk, Anita (2018), *op. cit.* 146, p. 118.

²⁴⁵ *Ibid.*

²⁴⁶ Danielewicz, Marta (2018): "Powiatowy Urząd Pracy w Poznaniu: Pracodawcy czekają długie godziny w kolejkach", „Głos Wielkopolski”, Published 14.02.2018 r., Available online: <https://gloswielkopolski.pl/powiatowy-urzed-pracy-w-poznaniu-pracodawcy-czekaja-dlugie-godziny-w-kolejkach/ar/12932942> [12.02.2020].

²⁴⁷ Adamczyk, Anita (2018), *op. cit.* 146, p. 121.

reactive - a trend, which has been criticized already before Polish accession to the EU.²⁴⁸ Taking the numbers it might be stated that Poland underwent a strong increase in hosting international labour migration. What makes Poland interesting in the context of migration is the immigration growth tempo. After the armed conflict in Ukraine the number of Ukrainians in Poland being granted work permits rose from 20.000 work permits in 2013 to 50.000 in 2015. The number doubled in 2016 and again almost doubled in 2017, reaching approximately 192.500 permits. The number of accepted declarations however was demonstrating even higher dynamics. In 2013 the number of issued declarations was 217.000, in 2014 372.000, in 2015 762.000, in 2016 1.262.000 and finally in 2017 more than 1,7 million declarations. The question for further research is if the short-term immigration boom that started in the years 2014-2016 will remain. The scale of increase was impressive. In the years 2014-2016 the immigration grew by 100% annually and from 2016 to 2017 “only” by 40 percent (meaning an increase from 1,3 mln do 1,8 mln). The tempo proves the flexibility of Polish immigration policy, which was able to react in a relatively swift way to the needs of the labour market (labour force shortages), while still insisting on and keeping the short-term (circular) migration as a preferred mode.

Another positive effect, showing the success of the employers’ declaration system, is the share of *irregular* Ukrainian migrants, which dropped from 56 percent in 2008 to 18,8 percent in 2017.²⁴⁹

As can be observed from the data presented above, the employer's declaration scheme as a specific scheme of temporary migration became the most important and *prima facie* a successful tool of the Polish immigration policy. First, it helped to attract Ukrainian workers to perform jobs that Polish employees were (are) not willing to perform, thus not causing unemployment of the domestic population.²⁵⁰ Moreover, the Ukrainian immigrants were filling the gaps on the Polish labour market that were created due to the fast ageing population, demographic low, early retirement age and the unwillingness of some social

²⁴⁸ Iglicka, Krystyna (2008), *op. cit.* 163, p.4.

²⁴⁹ Jaroszewicz, Marta (2018): „Migracje z Ukrainy do Polski Stabilizacja Trendu” [eng. Migrations from Ukraine to Poland the Stabilization of the Trend], Centre for Eastern Studies in Warsaw, p. 15ff, available online: https://www.osw.waw.pl/sites/default/files/Raport_PL_Migracje-z-Ukrainy_net.pdf [last access 20.12.2019].

²⁵⁰ Brunarska, Zuzanna/ Grotte, Malgorzata/ Lesinska, Magdalena (2012): “Migracje obywateli Ukrainy do Polski w kontekście rozwoju społeczno-gospodarczego: stan obecny, polityka, transfery pieniężne”, Centre of Migration Research Warsaw, pp. 28-30, available online: http://www.migracje.uw.edu.pl/wp-content/uploads/2016/11/WP60118_2-1.pdf [last access 20.04.2021].

groups in Poland to work due to the increase of social programmes for families having children such as the „Rodzina 500 plus” programme.²⁵¹ In addition to that Ukrainian workers, who are relatively young, well-educated and motivated to work, became net fiscal contributors in Poland²⁵² and a factor driving the economic growth of some sectors, services and business.²⁵³

5.1.2 The Polish immigration policy and its critique

a. The problem of semi-compliance

The goals and the liberal design of the Polish immigration policy are determined understandably and primarily by Polish national interests, ie. labour demand because of the booming economy and priorities of the Polish foreign policy towards Eastern Europe. However, equipping third country nationals with Schengen visas means admitting the Ukrainian migrants to enter the whole EU territory and the European labour market. Practically speaking Polish authorities grant quite easily the Ukrainians visas so that they can perform work in Poland, but it is sometimes the case that the Ukrainian citizens having Polish visas perform work in various other countries of the EU, such as Italy, Spain, or the Czech Republic. This appears highly problematic, since these countries, in which Ukrainian workers on Polish visas work, did not officially issue any permit to pursue employment on their territory.²⁵⁴ This creates a situation, which is complex and problematic from many perspectives, including legal and political.

Analysts and scholars developed the term of *semi-compliance*, denoting the administrative and legal situation of such workers.²⁵⁵ It addresses the situation in which a migrant is in possession of a valid permit and other legally required documents granting him/her the right

²⁵¹ Gazeta Prawna (2017): “Rok 2017 na rynku pracy: obniżenie wieku emerytalnego, wyższa płaca minimalna, zmiany w 500 plus (2017)” [eng. 2017 on the labor market: lowering the retirement age, higher minimum wage, changes in 500 plus (2017)], Published 30.12.2017 r., Available online: <http://serwisy.gazetaprawna.pl/praca-i-kariera/artykuly/1094793,rok-2017-na-rynku-pracy-obnizenie-wieku-emerytalnego-wyzsza-placa-minimalna.html>. [last access 20.01.2020].

²⁵² Cf. Kaczmarczyk, Paweł (2015): “Burden or Relief? Fiscal Impacts of Recent Ukrainian Migration to Poland” MPC, European University Institute, CMR, University of Warsaw and IZA Discussion Paper No. 8779, January 2015, p.33, Bonn, available online: <https://www.iza.org/publications/dp/8779/burden-or-relief-fiscal-impacts-of-recent-ukrainian-migration-to-poland> [last access 20.04.2020].

²⁵³ Adamczyk, Anita (2018), *op. cit.* 146, p. 124.

²⁵⁴ Szulecka, Monika (2016), *op. cit.* 160, p. 57-66.

²⁵⁵ *Ibid.*, p.61.

to stay, but performs labour in the territory of a state other than the one which issued the visa. Semi-compliance in contrast to clear non-compliance means that the migrants have some authorization to stay and work in the EU states.

The character of irregularity of Ukrainian migrants varies from country to country because its extent is different, because the countries possess different regulatory status on admission of third country nationals, take different approaches towards illegal work and demonstrate different levels of enforcement of the laws. In the case of Poland, the problem becomes visible through the example of abuse of visas and of the employers' declarations system. However, the problem occurs, in different settings and with different parameters, also in other countries of the region, e.g. in the context of trade licenses system in the Czech Republic (creating the so called *Švarc systém*).²⁵⁶ This will be further elaborated on in Chapter 5.2, which is dedicated to the implementation of migration policies in the Czech Republic.

- b. How much of the State's regulatory intervention is needed? The lack of a complex long-term policy

Well-designed policy on managing circular migration governed for example by special programmes and promoted by policy makers as a scheme benefiting sending and receiving countries, as well as the migrant himself, is regarded as a “win-win-win” scenario.²⁵⁷ The circularity of the Ukrainians to Poland however is predominantly of the opposite character. The deficiencies of the immigration policy, which would target the labour force shortage problem, become visible when dwelling into facts and analysing how the spontaneous circular migration looks like in practice.

The immigration is organized by Ukrainians themselves, depending on their financial means and other resources. Willing to migrate, people tend to use their social networks in the Ukrainian diaspora in the respective country of destination or reach out for resources of the “migration industry”, i.e. the recruitment or employment agencies arranging for their clients

²⁵⁶ *Ibid.*, p. 62.

²⁵⁷ European Migration Network (2011): “Temporary and Circular Migration: empirical evidence, current policy practice and future options in EU Member States”, Synthesis report, pp. 9f, available online: https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/0a_emn_synthesis_report_temporary_circular_migration_final_sept_2011_en.pdf [last access 20.01.2021].

accommodation, accompanying for document collection, etc.²⁵⁸ The immigration was thus rather in the hands of private persons, networks²⁵⁹ and commercial agencies, seemingly lacking strategic moderation and/or regulation by the state²⁶⁰ in the form of long-term immigration and integration policies, and relying instead more on self-initiative of immigrants²⁶¹ or Polish NGOs, which often substituted the Polish state in questions of integration or accommodation policy.²⁶²

One must be reminded of the fact that the Polish immigration policy was from the beginning oriented on short term circulation migration and thus rather reactive in its making and design. This also became a point of critique from the side of the European Commission.

A study commissioned by the European Commission stated explicitly that Poland failed to develop a strategic vision of labour migration as a tool for addressing labour force shortages. For Poland, the link between economic migration and attempts to counter labour shortages is thus indirect: the admission of third-country nationals for the purpose of employment (i.e. their right to apply for a work permit and/or residence permit) was left up to market forces and especially up to individual employers, who can recruit third-country nationals under the employers' declaration scheme.²⁶³

The numbers of incoming Ukrainian workers and their contribution to Polish economic boom prove (at least) partial success of Polish migration policy. However, some argue that the numbers were not high enough, since despite the workers immigrating from Ukraine helped to respond to labour force shortages and were thus supportive for economic growth, they were not able to sufficiently compensate for the Polish labour emigrants that left their home country for the wealthier states of the EU.²⁶⁴

²⁵⁸ Jaroszewicz, Marta (2018), *op. cit.* 249, p. 9-15.

²⁵⁹ Brunarska, Zuzanna/ Grotte, Malgorzata/ Lesinska, Magdalena (2012), *op. cit.* 250, pp. 8, 19.

²⁶⁰ Interpreted on the basis of Brunarska, Zuzanna/ Kindler, Marta/ Szulecka, Monika/ Torunczyk-Ruiz, Sabina (2016), *op. cit.* 134.

²⁶¹ In the Polish literature to determine the status of a Ukrainian migrant the grade of integration is used as litmus paper of migrants accommodation with polish labour market and social life. That is why terms like "surface accommodation", "assimilation" and "transnational social spaces" are used as constructs to assess the migrants' position in Poland and migrants' ties to the home country (cf. Grzymała-Kazłowska, A., & Okólski, M. (2003). Influx and integration of migrants in Poland in the early XXI century. CMR Working Papers No. 50. Warszawa: OBM WNE UW, P.24ff Available online: <http://www.migracje.uw.edu.pl/publikacje/influx-and-integration-of-migrants-in-poland-in-the-early-xxi-century-2/> [last access 19.04.2020].

²⁶² For example, Fundacja Ocalenie (Foundation): <https://ocalenie.org.pl/> (last accessed 13.04.2021).

²⁶³ European Migration Network (2015), *op. cit.* 7, p. 15.

²⁶⁴ Sokołowicz, Mariusz E./Lishchynskyy, Ihor (2018), *op. cit.* 15, p.56.

5.2. Implementation of the Labour migration Policy in Czech Republic

5.2.1 The implementation of the labour migration policy - chronological perspective

When describing the implementation of labour migration policy in the Czech Republic, the period from 1990 to 2020 can be divided into six phases.

- First phase (1990 - 1992): Establishing the framework and foundations

The first phase of the implementation of immigration policies in the Czech Republic can be determined as the period from 1990 to 1992. The time until 1992 was characterized by implementation of various economic and legal reforms due to the transformation to democracy and free market economy. It was the time when the authorities, legislation and procedures regulating immigration were established.²⁶⁵ Also the first legislative acts regulating the presence of foreigners on the territory of the Czech Republic was introduced.²⁶⁶

- Second phase (1993 - 1996):

In this period, the Czech Republic was a well-developing country attracting a high inflow of immigrants. The scale of immigrants' inflow was larger than in other CEE countries.²⁶⁷ Between 1993 and 1996, the Czech Republic was experiencing a dynamic increase of immigrants, especially of Ukrainians, Slovaks, Vietnamese, and Polish. In the first two phases of the immigration to the Czech Republic the number of long-term residence permits increased enormously. In 1991 only 9.000 such permits were issued. Interesting is the increased tempo of such permits in the following phases. In 1995 the number increased by 68

²⁶⁵ Drbohlav, Dusan (2003), *op. cit.* 20, p.7.

²⁶⁶ Legal framework for the entry and stay of foreigners on the Czech territory consisted of the Aliens Act No. 123/1992 Coll., Law No. 190/1994 Coll., Law No. 150/1996 Coll., and several further amendments. The employment of foreigners was regulated mainly by the Law No. 1/1991 Coll., as well as the Law No. 9/1993 Coll. Czech regulations on business activities of foreigners included the Law No. 455/1991 Coll., but also the Trade Code (Law No. 513/1993 Coll.), also with several amendments.

²⁶⁷ Drbohlav, Dusan (2003), *op. cit.* 20, referred in his paper to the state of 2003.

percent and in 1996 by 27 percent. In 1996 there were already 153.000 foreigners being granted the long-term permit.²⁶⁸

In the 1990s', the Czech Republic started to regulate the migration policy, among others, through bilateral international agreements. The most relevant for this paper is the agreement, which was concluded between the Czech Republic and Ukraine in 1996.²⁶⁹ The effects of the agreement are described below.

- Third phase (1997 - 1999): Taking control, but with unwanted consequences

The phase 1997 - 1999 can be characterized as a period of economic difficulties in the Czech Republic. The poor state of economy with increasing unemployment²⁷⁰ enforced changes in regulations on immigration. The Czech scholarly literature claims that until 1999 the Czech immigration policies were lacking stability and instead the focus was set on implementing impromptu measures and amendments, claiming the prevalence of passive attitude in migration management (wide prevention) instead of moderation and problem solving oriented active policy.²⁷¹ The immigration policy started to become more restrictive, and demand driven, as the Czech - Ukrainian Agreement of 1996 shows. Such behaviour of the Czech regulator demonstrates that the protection of the domestic labour market was the main interest. The number of foreign workers who were legally admitted to the Czech labour market decreased.²⁷² As mentioned in the previous chapter (Chapter 4.2), this agreement introduced bureaucratic procedures and strict quotas, which significantly narrowed the opportunities for Ukrainians to work legally in the Czech Republic. As a consequence, the number of valid work permits for Ukrainians decreased to 22.000 in 2002²⁷³ and a significant part of Ukrainians moved to illegality or semi-legality by using the trade licences system as the way how to circumvent the quotas and strict conditions for obtaining a work permit.²⁷⁴

The number of trade license Ukrainian holders grew by 16,000 in the same period (i.e. until

²⁶⁸ *Ibid.*, p. 12.

²⁶⁹ *Ibid.*, p. 7.

²⁷⁰ *Ibid.*, p.11 ff.

²⁷¹ *Ibid.*, p. 19.

²⁷² *Ibid.*, p. 11.

²⁷³ Prat, Sarka (2016), *op. cit.* 170, p.25.

²⁷⁴ Drbohlav, Dusan (2003), *op. cit.* 20, p. 17.

2002).²⁷⁵ From the rapid increase of illegal employment it is thus apparent that the regulatory aim of the 1996 Czech - Ukrainian Agreement failed, since it did not prove to be an effective measure to regulate the number of Ukrainians in the Czech labour market.²⁷⁶ It is also proof of a failure of the migration policy, since the illegal migration was hardly controlled.²⁷⁷ It might be noted that the share of foreigners working on the Czech territory legally was higher than in Poland or Slovakia²⁷⁸, but the number of illegal or irregular migrants working in the shadow economy was similar or comparable to the other countries of the CEE region.²⁷⁹

In 1999 the Czech migration policy maker decided to adapt the applicable regulatory framework to EU standards.²⁸⁰ Already in 1999, the national legal regime was amended. The new Act No. 326/1999 Coll., on the stay of foreigners (which came into force on 1 January 2000) was implemented.²⁸¹ It was intended to moderate the number of new migrants. Such regulatory action might be interpreted as a first sign of a conscious policy making process aiming at shaping the labour migration.

It is interesting that from the beginning of the immigration in the Czech Republic the cities were attracting most immigrants (including Ukrainians).²⁸² This fact supports the concept of IOM (Chapter 3) that modern migrations are rather urban affairs. Due to increasing labour demand in the Czech Republic the immigrations concentration in the capital city of Prague decreased but in 2000, the capital region alone accounted for over 40 percent of all immigrants. The immigration shifted partly to other highly urbanized areas of the Czech Republic.²⁸³

Immigration to the Czech Republic since the 1990s' originated predominantly from European countries. With the beginning of the new immigration phase in 2000 the immigrants were mainly Ukrainians (41.438), Slovaks (33.136), Poles (5.281) and the other numerous non-European nationals, such as Vietnamese (15.318). In 2000, some 86 percent (115.000 of

²⁷⁵ Prat, Sarka (2016), *op. cit.* 170, p.25.

²⁷⁶ Drbohlav, Dusan (2003), *op. cit.* 20, p.18.

²⁷⁷ *Ibid.*, p.22.

²⁷⁸ *Ibid.*, p.4.

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*, p. 20.

²⁸¹ Act no. 326/1999 Coll.

²⁸² Drbohlav, Dusan (2003), *op. cit.* 20.

²⁸³ *Ibid.*

134.060) of immigrants were labour migrants and 80 percent of these were of European origin.²⁸⁴ The year 2000 shows partly the impact of restrictive measures i.e. the introduction of the 1996 bilateral agreement between Ukraine and the Czech Republic, because as of 2000 already 21.402 Ukrainians were holders of the trade license.²⁸⁵ Especially between 1993 - 1997, the Czech Republic experienced an inflow of Poles, Vietnamese and Ukrainians. The most intensive inflow however was done by Slovaks that were treated as a special migrant category addressed with preferential migration conditions. Until 2000 over 70.000 Slovak citizens were in Czech statistics on labour, but since the economic situation in Slovakia improved the number decreased.²⁸⁶ In 2000 the Ukrainians made the biggest group of immigrants in the Czech Republic, considering long-term visas 41.000 Ukrainians and the approximately 40.000 of illegal workers.²⁸⁷

In general, the phases 1,2 and 3 can be described as a time of positive migration balance.²⁸⁸ The years 1990-92 were a rapid growth period, which stabilized in the years 1993-2000 at approx. 10.000 immigrants per year.²⁸⁹ But the years 1998-2000 after the implementation of the restrictive measures and decrease of immigration tempo.

- Fourth Phase (2000 - 2008): Adaptation to EU standards and increase of migration flows

²⁸⁴ *Ibid.*, pp. 10 and 14. Drbohlav quotes the data from Horáková, Milada, Macounová, Ivana (2001): "Mezinárodní pracovní migrace v ČR." [eng. International labour migration in the Czech Republic] Bulletin č. 6., Výzkumný ústav práce a sociálních věcí, Prague.

²⁸⁵ *Ibid.*, p. 14f.

²⁸⁶ *Ibid.*; also two Czech scholars predicted the decline of number of Slovaks in the Czech Republic see: Winkler, J., Žižlavský, M. (2004): KDS. Český trh práce a Evropská strategie zaměstnanosti. 1. vyd. Brno: Masarykova univerzita v Brně, 2004. 241 p.

²⁸⁷ Drbohlav, Dusan (2003), *op. cit.* 20, pp. 10 and 14-17.

²⁸⁸ Czech scholar *Aleš Franc* considers the last decade of the twentieth century, which brought the transition to democracy and the establishment of a free market economy, both having contributed to the increase of attractiveness of the Czech Republic as an emigration destination. Cf. Franc, Aleš (2006): "Hlavní tendence ve vývoji pracovních migrací v České republice. Centrum výzkumu konkurenční schopnosti České republiky". *Working paper No.22/2006*, P. 7. Available Online: <http://is.muni.cz/do/1456/soubory/oddeleni/centrum/papers/wp2006-22.pdf> [04.05.2020]; Also, other Czech scholars argued that at that time the Czech Republic existed not only as a destination for temporary migration, but rather as a permanent migration destination, emphasizing the power of attraction of Prague on immigrants. Cf. Baršová, Andrea and Barša, Pavel (2005): "Přistěhovalectví a liberální stát." 1st edition. International Institute of Political Science of Masaryk University in Brno, Brno. P.308.

²⁸⁹ Czech Statistical Office (2021): "Foreigners: Number of foreigners", available online: https://www.czso.cz/csu/cizinci/1-ciz_pocet_cizincu [last access 05.05.2020].

The fourth phase was a time of economic improvement in the Czech Republic. As of 2000, labour migration was the dominant form of migration and accounted for 86% of all migrations.²⁹⁰

The year 2000 brought regulatory changes. A second important amendment was introduced on 1 July 2001 and led again to controlled increase of settled foreigners.²⁹¹ In the course of the harmonization process the Czech Republic implemented its own system regulations on the stay of third country nationals in the Czech Republic. The regulations on employment of third country nationals²⁹² and small businesses were amended.²⁹³ The trade license system became a frequently used option to take up temporary employment.²⁹⁴ Another possibility established within the Czech regulatory system²⁹⁵, enabling to legally enter the country and be granted the work permit, was an application for asylum. This path was also used by the people from Ukraine. Their work permit was effective also during the investigation procedure period, i.e. prior to being officially granted asylum. This system was reformed in Act No. 2/2002 to weaken the abuse.²⁹⁶ The pre accession period (until 2004) was also the time when public institutions started to focus on immigration, because the future EU accession required new standards in immigration policy. The Czech visa system has been improved by introduction of new procedures for issuing visas, visa types and validity regulations. The application procedure was replaced by a scheme, in which visa and work permit or trade licences were issued separately at the Czech embassy or consulate of the country of applicant's residence.²⁹⁷ Already before the accession to the EU, the Czech Ministry of the Interior established an advisory commission that produced the *Concept of immigration and integration policy*.²⁹⁸ The concept also included the idea of implementing a selection system for skilled foreign migrants inspired by the Quebecois model.²⁹⁹ This can be considered as an interesting fact, since until 2003 the immigrants were performing mainly jobs not requiring high skills. Such jobs were

²⁹⁰ Drbohlav, Dušan (2003), *op. cit.* 20, p. 9.

²⁹¹ Prat, Sarka (2016), *op. cit.* 170, p. 22.

²⁹² Act No. 167/1999, which was amended in October 1999.

²⁹³ Act No. 356/1999 as amended in March 2000.

²⁹⁴ Cf. Prat, Sarka (2016), *op. cit.* 170, p. 22.

²⁹⁵ Asylum Application procedure was regulated in Refugees Act No.498/1990 Coll.

²⁹⁶ Drbohlav, Dusan (2003), *op. cit.* 20, p.17.

²⁹⁷ *Ibid.*, p. 21.

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*, p.22.

prevailing with a share of 75-85 percent of all jobs occupied by foreigners. The workers came mostly from Central and Eastern Europe. The Czech Republic's goal to attract highly skilled workers translated in 2003 into implementation of a new government "Selection of Qualified Foreign Workers" programme targeting specifically highly skilled labour force.³⁰⁰ With the time the trend started to change and in prior to the EU accession the Czech Labour Offices reported that among the migrants 44 percent were skilled workers, 36 percent was on the level of assistants, 12 percent of workers were employed in positions requiring higher education, and 9 percent in jobs where full secondary education was required.³⁰¹ The fourth phase (from 2000 to 2008) was characterized by the fastest increase of the immigration. In the period 2001-2005 immigration increased to 233.000.³⁰² A milestone that had an impact on the Czech Republic politically, socially, and economically was the 2004 accession of the Czech Republic to the European Union. It had obviously an influence also on migration flows in Europe and in the context of the Czech Republic it led to an increased immigration.³⁰³ After the EU accession the number of immigrants on the territory of the Czech Republic was rising from 254.000 in 2004³⁰⁴ to according to the data of the Czech Republic's Directorate of Alien Police from 2008 the recorded number of foreigners was 438.000. Foreigners share with permanent residence was 39%.³⁰⁵ Experts dealing with the migration topic in the Czech Republic provide that until 2005 the migrants having permanent residency did not form a significant group of workers on the Czech labour market and even after the opening the country towards migration after the EU accession the foreigners, according to the data, did not exceed 1 percent of the total labour force of the country.³⁰⁶ Despite that the majority of labour migrants in the Czech Republic occupy positions in the blue-collar sector.³⁰⁷ The data from 2006 show that over 60 percent of immigrants in the Czech Republic were performing jobs requiring low and middle

³⁰⁰ Ministry of Interior of the Czech Republic, description of the programme available on the website of the ministry <https://www.mvcr.cz/mvcren/article/migration.aspx?q=Y2hudW09Mw%3D%3D> [20.04.2020].

³⁰¹ Horáková, Milada (2005): "Zpráva o vývoji pracovních migrací 1993-2006." Výzkumný ústav práce a sociálních věcí. Available Online: www.vupsv.cz (last accessed 10.01.2021).

³⁰² *Ibid.*

³⁰³ Czech Statistical Office (2021): "Foreigners - Number of foreigners", available online: https://www.czso.cz/csu/cizinci/1-ciz_pocet_cizincu [last access 01.05.2021].

³⁰⁴ *Ibid.*

³⁰⁵ Prat, Sarka (2016), *op. cit.* 170, p. 27.

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*, p. 29.

qualifications.³⁰⁸

As to immigrants holding temporary residency permits, their share increased to 3.2 percent (compared to 1994 when it was only 1,7 percent).³⁰⁹ The reason for this growth was however not a policy shift motivated by opening the country towards labour migration and reflecting the need of the domestic labour market, but it was rather dictated by the government's fears of a shortage of skilled labour in the future.³¹⁰

- **Fifth phase (2009 - 2013): Post financial crises implications**

Further phases in the Czech immigration history started with the economic crisis 2008 that affected the economy, led to decrease of GDP and increase of unemployment. Due to the economic crisis the Czech government passed a resolution on maintaining security. This resolution included termination of contracts of foreign workers, for whom even programmes to support their return after losing jobs were put in place.³¹¹ Such measures can be interpreted in the light of the key values of the Czech immigration policy, which should be demand-driven and protect the domestic population in the first place. In 2009 the number of the Ukrainian labour force reached its peak and since then it was on decline.³¹²

In 2009 also the new *visapoint* system was implemented by the Czech policy maker. Until 2009, the system of issuing visas was suffering from insufficient numbers of staff operating in Czech embassies and consulates, which caused long queues and long waiting times for appointments and interviews (as a necessary part of the visa application process). Since 2009 the system has allowed reservation of appointments only on-line with the aim to remedy the situation. However, the reform of the immigration management failed completely. The queues on the streets transformed into online queues. As soon as the pool of free appointments was released in the online system it was nearly entirely taken by intermediation agencies. Such agencies were then selling the appointments, creating a system, in which the intermediary *had* to be used to go through the application procedure.³¹³ The Czech system

³⁰⁸ Pořízková, Hana (2008): "Analýza zahraniční zaměstnanosti v České republice" p. 48, available online: http://praha.vupsv.cz/fulltext/vz_251.pdf [last access 20.04.2019].

³⁰⁹ Český Statistický Úřad. Trvale a dlouhodobě usazení cizinci v ČR (1995 – 2012). Available online: http://www.czso.cz/csu/cizinci.nsf/tabulky/ciz_pocet_cizincu-001#.U3B35VcyB55 (last accessed: 10.01.2021).

³¹⁰ HORÁKOVÁ, Milada (2005), *op. cit.* 301.

³¹¹ Government of the Czech Republic, Resolution No. 171/2009, dated 9 February 2009.

³¹² Prat, Sarka (2016), *op. cit.* 170, p.30.

³¹³ Lazarová, Daniela (2018): "Czech Consulate in Lvov improves visa system after allegations of corruption",

partly benefited from the activity of intermediaries because the labour force employed via intermediary was easier to terminate. It forced the applicants to look for other ways to access the Czech labour market, including loopholes, such as the Polish visas. This issue will be exemplified by the 2015 *Rohlik.cz case*, which will be described and explained in chapter 5.4.³¹⁴

The restrictive trend was continued in the year 2010, when the government imposed via recommendation a requirement to sensibly observe the labour market development and all labour offices across the Czech Republic were advised to approve and issue the employment permits to immigrants with special vigilance.³¹⁵ Moreover, the advice was extended to prevent issuing employment permits if a position, that has been offered to a foreigner, might be filled with domestic labour resources.³¹⁶ This approach was to be applied regardless of integration level and length of stay of a foreigner. The side effect of the restrictions was the abuse of the trade license system, which was denoted in the Czech language as the *Švarc system*. The so-called *Švarc system* was present in the Czech Republic since the beginning of migration due to evasion of the regulations but in 2013 it reached a new level. The phenomenon started to intensify in 2010 when the nationals of the biggest immigration group, the Ukrainians admitted participating in these practices. Their share in the *Švarc system* reached in 2010 of 5 percent but already in 2013 reached 8 percent.³¹⁷ It might be noted that the trade license system was not only a way preferred by Ukrainian immigrants attempting to access the Czech labour market, but also by the Czech employers due to tax optimization and easier termination reasons.

The year 2012 brought new restrictions, which the Ministry of Labour and Social Affairs implemented to impede immigration. The reason for the controversy was an instruction from 25th January 2012, when the regional labour offices were asked to stop providing

Radio Prague International, Available online: <https://english.radio.cz/czech-consulate-lvov-improves-visa-system-after-allegations-corruption-8158642> [01.12.2020].

³¹⁴ Drbohlav, Dusan (2016), *op. cit.* 189, pp. 104f.

³¹⁵ Čížinský, Pavel/ Čech Valentová, Eva/ Hradečná Pavla/ Holíková Klára/ Jelínková Marie/ Rozumek Martin/ Rozumková Pavla (2015): "Foreign workers in the labour market in the Czech Republic and in selected European countries", Association for Integration and Migration Organization for Aid to Refugees Multicultural Center Prague, p.48, available online: https://www.migrace.com/docs/141115_simi-zamestnanci-en-nahled.pdf [last access 20.03.2020].

³¹⁶ *Ibid.*, p.78.

³¹⁷ Leontiyeva, Yana (2016), *op. cit.* 202, p. 140.

employment permissions to migrants with lower than secondary education³¹⁸. Also, the extension of existing permits was limited to 6 months only.

In the same year, the Czech regulator introduced another bureaucratic burden on immigrants - a validated proof of professional qualification. This condition was quickly recalled as a consequence of immense criticism from the employers' associations.³¹⁹ After this take-back of the regulation the labour offices across the country were again instructed to issue employment permits for low-skilled foreigners very carefully and only in the cases if the Czech based employer might experience economic implications, such as loss of jobs and dismissal.³²⁰ Other restrictive regulations, such as the directive No. 19/2012 of the Ministry of Labour and Social Affairs³²¹, continued to apply despite harsh criticism.

The financial crisis 2008 had a negative impact on foreigners in the country and in the period 2008-2010 their number decreased due to reactive and strict policy reflecting the key characteristic of the Czech immigration policy being a demand-driven policy and prioritizing the interest of the domestic population. In the pre-financial crisis period of economic prosperity, numbers of applications for visas submitted by Ukrainians oscillated around 20.000 each year. Then, in 2009, the number dropped to some 10.000, and the next year, in 2011, to only 3.000, i.e. to 1/6 of the number before the economic crisis.³²² In 2010, the most foreigners were citizens of Ukraine (134 281, i.e. 31 percent), followed by Slovaks (71.780, i.e. 17 percent), Vietnamese (60.289, i.e. 14 percent), Russians (31.807, i.e. 7 percent), Poles (18.242, i.e. 4 percent) and Germans (13.871, i.e. 3 percent).³²³

The tightening of an already restrictive approach and the lack of more generous legal immigration channels in the aftermath of the financial crisis contributed to rising numbers of illegal immigrants (estimated number was in 2010 between 295.000-335.000).³²⁴ By 2000 only 67 percent of economic immigrants in the Czech Republic were documented.³²⁵

³¹⁸ Čížinský, Pavel/ Čech Valentová, Eva/ Hradečná Pavla/ Holíková Klára/ Jelínková Marie/ Rozumek Martin/ Rozumková Pavla (2015), *op. cit.* 315, p.47-48.

³¹⁹ *Ibid.*

³²⁰ *Ibid.*

³²¹ Čížinský, Pavel/ Čech Valentová, Eva/ Hradečná Pavla/ Holíková Klára/ Jelínková Marie/ Rozumek Martin/ Rozumková Pavla (2015), *op. cit.* 315, p.48.

³²² Drbohlav, Dušan (2016), *op. cit.* 189, p.105.

³²³ Prat, Sarka (2016), *op. cit.* 170, p.30.

³²⁴ Drbohlav, Dusan (2003), *op. cit.* 20, p. 16.

³²⁵ *Ibid.*, p.10.

The restrictive measures led *inter alia* to termination of contracts of foreign workers, as has been described in the previous sub-chapter (5.2.1). This had an impact on the numbers of foreigners with permanent or long-term residence, which decreased. By the end of the year 2010, the Directorate of the Foreign Police and Ministry of Interior in the Czech Republic registered a total of 427.291 foreigners, of which 188.952 foreigners were with permanent residence and 238.339 foreigners were with some type of long-term residents over 90 days. The change of this trend came only in 2011.³²⁶ At the end of 2012, some 438.000 foreigners lived in the Czech Republic legally. About 212.000 of them had a permanent residence permit, others had permanent residence permits over 90 days. The Ukrainians remained as the most represented nation among immigrants. Authorities registered 124.300 Ukrainians, 43 percent of foreigners living in the Czech Republic originating from countries outside of the European Union.³²⁷ In the period 2009-2016 the total number of immigrants was increasing in the course of post-financial crisis recovery, but the number of Ukrainian immigrants was falling. It dropped in 2013 to 105.138, i.e. -6,6 percent per year.³²⁸

- **Sixth phase (since 2014)**

In 2014, Act No. 101/2014 Coll. became effective, amending the Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of the Czech Republic, as the most important legal regulation with regard to immigration. Through this amendment also the Employment Act from 2004³²⁹ and Act on recognition of professional qualifications³³⁰, as well as other pieces of legislation were amended. This changes became necessary due to transposition of the EU Directive 2011/98/EU³³¹ and introduced a single application procedure for work and residency. The introduced single permit guaranteed the third country nationals the right to reside and work in the territory of the respective EU member state, but also equipped third country nationals with a set of rights (provided the third country national has been working

³²⁶ Prat, Sarka (2016), *op. cit.* 170, pp.27-28.

³²⁷ Prat, Sarka (2016), *op. cit.* 170, p.30.

³²⁸ Czech Statistical Office (Český statistický úřad) (2019): Cizinci: Počet cizinců – datové údaje. Available online: <https://www.czso.cz/documents/10180/91605941/29002719.pdf/74e31838-8cfa-4e93-9aed-4771e13683a8?version=1.0> (last accessed 14.03.2021).

³²⁹ Act No. 435/2004 Coll.

³³⁰ Act No. 18/2004 Coll.

³³¹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on 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 a Member State, *OJ L 343*, 23.12.2011, p. 1–9.

and residing in the member state legally). The single permit led to the implementation of new permission schemes. The first one was an employment permit paired with a visa/residency permit, the so-called *Green Card* or *Blue Card*, providing residency and employment permits for special purposes of employment (mainly well to people with higher education and specialists).³³² The single permit was designed as a solution favourable for the migrant, but it led to controls and further bureaucracy (for example administrative burden by the issuance of biometric IDs).³³³ The system was however soon amended and in 2014 the *Green Cards* were changed into *Employers Cards*.³³⁴

The number of Ukrainian immigrants in the Czech Republic reached despite the decline in 105.000 in 2015.³³⁵ The outbreak of the armed conflict in Eastern Ukraine in 2014 became another strong push factor for Ukrainians in addition to the dismal socio-economic situation of the country. Ukraine continued to constitute the biggest source of (cheap) labour forces for the Czech labour market.³³⁶ Ukrainian labour force was admitted to the Czech labour market in the “so called 3d-sectors (demanding-dirty-dangerous)”, i.e. mostly in construction, industrial production, agriculture and services, and other jobs that were weakly remunerated, manual, and not requiring high skilled workers.³³⁷ The economic restoration of the country's growth started in 2014. By the end of March 2016, a total of 473.516 foreigners lived in Czechia accounting for 4.5% of inhabitants (based on citizenship). More than two thirds of them (68.3 percent) came from five countries (when comparing 1994 to 2016, only Russia replaced Poland among the top 5), whilst almost 25 percent came from just one country – Ukraine (106.788 persons, i.e. 22.6 percent).³³⁸

For the post-financial crisis period was characteristic also the shift from long-term residency

³³² Čižinský, Pavel/ Čech Valentová, Eva/ Hradečná Pavla/ Holíková Klára/ Jelínková Marie/ Rozumek Martin/ Rozumková Pavla (2015), *op. cit.* 315, p.65.

³³³ *Ibid.*, p.66.

³³⁴ Czech Republic, Ministry of Interior of the Czech Republic (2020), Employee Card, explanation available online: <https://www.mvcr.cz/mvcren/article/employee-card-682810.aspx> [last access 20.12.2019].

³³⁵ Drbohlav, Dusan/ Seidlova, Marketa (2016), *op. cit.* 189, p. 99.

³³⁶ *Ibid.*, p.98.

³³⁷ Drbohlav, Dusan / Džúrová, Dagmar (2015): Co ovlivňuje velikost remitencí ukrajinských migrantů v Česku? In: Drbohlav, Dusan (ed.): Ukrajinská pracovní migrace v Česku. Migrace – remittance – (rozvoj). Karolinum, Praha, 139–160, as cited in Drbohlav, Dusan/ Seidlova, Marketa (2016), *op. cit.* 189, p. 99.

³³⁸ Drbohlav, Dusan/ Seidlova, Marketa (2016), *op. cit.* 189, p.98.

to short-term residency³³⁹, since the short-term residency was - because of the Polish visa-loophole - significantly better accessible path to Czech labour market than the application for Czech visa application system, which after the changes in 2009 became complicated, time-costly and fostering corruption. This behaviour shows on the one hand the flexibility of immigrants³⁴⁰, on the other hand the inflexibility of the Czech system to properly design and run the visa application system. The problem with the visapoint system was well known at the time and despite the engagement of the Czech Police, the Czech Public Defender of Rights and even court rulings it remained in this problematic design.³⁴¹

Since 2014 Czech economy has started to recover, and the unemployment rate has declined. Low unemployment and growth of the economy lead to increased labour demand from outside.³⁴² This development animated the Confederation of Industry of the Czech Republic to promote wider opening of the Czech Republic to highly skilled and even low skilled Ukrainian labour force. On the other hand, the Czech-Moravian Confederation of Trade Unions lobbied for the opposite. Both sides tried to put pressure on the system to attract or prevent the inflow of immigrants.³⁴³

From June 2017 Ukrainians with biometric passports are allowed to travel to Schengen Area countries visa-free for up to 90 days for short-term non-profit purposes. In this context semi-legal or irregular migration from Ukraine became a hot topic for Czech Republic's Labour Inspections since the visa-free regime applies only to short visits for non-profit purposes and thus does not encompass employment.

The developments of the post 2017 period also brought the termination of the Visapoint application system, which despite some changes continued to be heavily criticised by employers, as well as by the applicants because of several controversies, such as registration of a limited number of applications or the sale of vacancies for a fee.

Several changes in the Czech migration regulatory system were done under the pressure of the Czech employers' associations. First, the Czech Republic joined in 2015 the competition

³³⁹ *Ibid.*, p.100.

³⁴⁰ *Ibid.*, p. 109-110.

³⁴¹ *Ibid.*

³⁴² Dębiec, Krzysztof (2019): „Kraj bez bezrobocia”, Centre for Eastern Studies in Warsaw, [eng. A country without unemployment], pp.14-16, available online: https://www.osw.waw.pl/sites/default/files/Raport_PL_Kraj-bez-bezrobocia_net_0.pdf [last access 20.12.2019].

³⁴³ Drbohlav, Dusan/ Seidlova, Marketa (2016), *op. cit.* 189, p. 116.

for attracting Ukrainian labour force.³⁴⁴ *Projekt Ukrajina*, as described in the previous chapters (4.2.2), being a system for attracting highly qualified workers, then in 2016 *Režim Ukrajina*, which was addressing mid and low qualified labour force. The programmes related to many restrictions, such as nostrification of documents, requirement of full-time employment, minimum salary for professions, and passing the “labour market test”.³⁴⁵

Currently these two schemes for foreign workers from Ukraine continue, one for qualified and second for partly qualified workers of certain professions³⁴⁶. The programmes up to 2019 attracted annually xxx workers. The capacity of the programmes was very quickly exhausted, which indicates that the expected number of candidates was miscalculated and not sufficient. (10 170 skilled workers and 680 highly qualified workers³⁴⁷) (mention the time in which they run out of visa places). Unfortunately, there has been no successful immigration scheme targeting low-skilled workers despite they continue to be demanded by the Czech labour market.³⁴⁸

When attempting to evaluate the implementation of the labour migration policy in the Czech Republic, attention must be paid to the problem as it was identified in labour market studies. These studies show that the procedure of labour migration of Ukrainians into the Czech

³⁴⁴ Work Service S.A. (2019): “Migracje Zarobkowe Cudzoziemców z Ukrainy i Azji do Polski”, p.20, available online: <https://www.workservice.com/pl/Centrum-prasowe/Raporty/Raport-Migracyjny/Migracje-zarobkowe-cudzoziemcow-z-Ukrainy-i-Azji-do-Polski> [last access 12.12.2020].

³⁴⁵ Described in Rutland, Monika (2018): “Special visa application procedure for highly qualified employees from Ukraine and India”, website of Rutland&Partners, published 29.10.2018, available online: <https://rutlandandpartners.com/en/special-visa-application-procedure-for-highly-qualified-employees-from-ukraine-and-india/> [last access 20.12.2019]. In more detail in Urad Vlady Ceske Republiky (2019): “National Reform Programme of the Czech Republic 2019”, available online https://ec.europa.eu/info/sites/info/files/2019-european-semester-national-reform-programme-czech-republic_en.pdf [last access 20.12.2019].

³⁴⁶ More information (in Czech) about the project can be found on the webpage of the Czech Chamber of Commerce: <https://www.komora.cz/obchod-a-sluzby/zamestnanciukrajina/zarazeni-do-rezimu-ukrajina/> (last accessed 13.02.2021).

³⁴⁷ The data from the Ministry of Labour and Social Affairs on the integration platform organised by the City of Prague: Boušková, P., Mařová, B. (2017). “Zahraniční zaměstnanost v číslech”. Praha, 14. 11. 2017, in Trčka, Michal/ Moskvina, Yuliya/ Leontiyeva, Yana/ Lupták, Milan/ Jirka, Luděk (2018): “Employment of Ukrainian Workers with Polish Visas in the Czech Republic: From the Main Patterns of Labour Exploitation towards Points of Intervention”, Multicultural Centre Prague, p. 6, available online: https://www.solidar.org/system/downloads/attachments/000/000/841/original/Employment_of_Ukrainian_Workers_through_Polish_visas.pdf?1542195590 (last accessed 05.05.2021).

³⁴⁸ Staszkiwicz et al. stated that although there is labour demand in low-skilled sector in Czech Republic, the chances of obtaining Czech work visas for unskilled workers are rather limited (Staszkiwicz, Maria/ Trlifajová, Lucie/ Votavová, Vladka (2012): “Visa policy of the Czech Republic and the European Union towards the Eastern Partnership Countries and the Ways of its Improvement”. Available at: <https://www.amo.cz/wp-content/uploads/2015/11/amocz-RP-11-2012.pdf> [last access 12.04.2020]).

Republic, including visas, travel, accommodation or work, is organised by legal work agencies, but also by semi-legal agencies.³⁴⁹ This quasi-legal system is often described in the literature as a client-system run on exploitative practices³⁵⁰. The term describes employers that hired the workers but are (or the job agencies) at the same time responsible for getting the permits and residence documents for their workers. Such a dependence of Ukrainian workers on employers was abused and constitutes simply an illegal practice towards not only the labour market in the Czech Republic, but also towards the workers.³⁵¹ In 2018 the unemployment in the Czech Republic was hitting record lows and the number of unfilled vacancies exceeded the number of unemployed people, which led to situations of Czech companies refusing the orders, because of unavailable production capacities.³⁵² As a consequence of this situation, the Czech Government increased the quota for Ukrainian workers to 40.000.³⁵³ In 2019 the GDP was growing and the country experienced good prosperity. The number of foreigners increased to 593.000 with 299.000 persons with permanent residency and 294.000 holding long-term residency.³⁵⁴ Some 130.000 Ukrainian citizens worked in the country by the end 2019, with around 40 percent share of all foreign workers.³⁵⁵ It was in the third year of the implementation of the schemes designed specifically for the purpose of attracting Ukrainian workers, but the correlation is unknown.

³⁴⁹ LABCIT (Country report): Čaněk, Michal et al. (2016): "Subcontracting and EU mobile workers in the Czech Republic: Exploitation, liability, and institutional gaps". Praha: Multikulturní centrum Praha. Available at: http://migrationonline.cz/czech_republic_country_report.pdf (last accessed 13.05.2021); cf. also Leontiyeva, Yana (2016), 'Ukrainians in the Czech Republic: On the Path-way from Temporary Foreign Workers to one of the Largest Minority Groups.', in: Fedjuk O., Kindler, M. (Eds.), *Ukrainian Migration to the European Union*. London: Springer, pp. 133–149.

³⁵⁰ This term was applied in this context already in analysis in 2006 - cf. Nekrojak, Michal (2006): "Klientský systém a ukrajinská pracovní migrace do České republiky" [eng. Client System and Ukrainian Labour Immigration to the Czech Republic] in *Sociální studia* 1/2006: Svět v pohybu, pp. 89-109.

³⁵¹ *Ibid.*, cf. also Malynovska, Olena (2013): "Migrace z Ukrajiny (s důrazem na Česko jako cílovou zemi)" in: Drbohlav, D. (Ed.) *Nelegální ekonomické aktivity migrantů (Česko v evropském kontextu)*. Praha: Karolinum, pp. 211–212.

³⁵² Hospodářská komora České republiky, Kvůli rekordnímu počtu neobsazených pracovních míst dojde letos k obrovským škodám v české ekonomice, published 10.05.2018, available online: https://www.komora.cz/tiskova_zprava/kvuli-rekordnimu-poctu-neobsazenych-pracovnich-mist-dojde-letos-k-obrovskym-skodam-v-ceske-ekonomice [last accessed 13.05.2021].

³⁵³ For six other countries cf. Prague Morning (2019): "Czech Republic Increases Quote for Ukrainian Guest Workers", Published 27.08.2019, Available online: <https://www.praguemorning.cz/czech-republic-increases-quote-for-ukrainian-guest-workers/> [last accessed 12.12.2019].

³⁵⁴ Czech Statistical Office (2021): "Foreigners: Number of foreigners", Available online: https://www.czso.cz/csu/cizinci/1-ciz_pocet_cizincu [last access 20.04.2021].

³⁵⁵ Kafkadesk (2019): „Czech Republic doubles quotas to attract Ukrainian workers“, Published 15.06.2019, Available online: <https://kafkadesk.org/2019/06/15/czech-republic-doubles-quotas-to-attract-ukrainian-workers/> [last access 12.01.2020].

5.2.3 The Czech immigration policy and its critique

This part relies in its first part on the views of the Czech scholarly literature having sufficient expertise on the topic and thus providing substantial insight. The views of scholars developed in time, as will be shown on the critique of the Czech immigration policy by one of the most prominent experts on Czech migration, *Dušan Drbohlav*.

In his article from 2003 on Czech immigration policy he argued that “the Czech migration policy and practice suffer from some weaknesses”.³⁵⁶ Among the weaknesses of the Czech immigration policy he counts the lack of clear objectives. He implied that the Czech system changed its migration policy because of the determination to join the EU and other western structures and organisations, and this was the real accelerator for harmonization of the migrations policies in order to comply with western standards. Thus, as the only independent objective in Czech migration policy practice was to address illegal immigration. However even in this area the Czech policy maker failed according to *Drbohlav*, since the state failed to develop a strategic idea on how to fight illegal migration and lacked the determination to effectively address the problem.³⁵⁷ With regard to the profile of the immigrant there was no archetype of the preferred immigrant defined, as a result no vision of the economic, demographic, cultural, social or geographic background was concluded.

Another problematic point was identifying the staging of the immigration topic. *Drbohlav* sees a dissonance between the Czech defensive attitude towards immigration and the incorporation into the western democratic structures because these structures and their values are de facto predetermined by geopolitical interests.³⁵⁸ Such an attitude of the Czech authorities contributed to a negative image of immigration and international migration, disregarding the positive sides of these. Discussion on these topics was nearly non-existent, which, according to *Drbohlav*, translated into the nonappearance of any reasonable systematic solution on immigration. The topic of migration was neglected by the responsible actors due to other priorities. Moreover, among the actors responsible for the Czech migration policy and implementation was lack of cooperation, which was partly a consequence of the non-available data on migrations (which in consequence made the

³⁵⁶ Drbohlav, Dusan (2003), *op. cit.* 20, pp. 19-20.

³⁵⁷ *Ibid.*

³⁵⁸ Drbohlav, Dusan (2003), *op. cit.* 20, p.19.

handling of the migration topic lack awareness of the status quo). Lacking cooperation also predetermined the absence of integral, complementary and holistic practices concerning policy making. Immaturity of the system demonstrated itself through simplified, delayed policies and practices ruling migration. The way how the Czech Republic has handled labour mobility (but also forced migration) in the times of crisis was analysed by *Drbohlav* and *Seidlová* some 13 years ago.³⁵⁹ The article is focussed on the dominant immigration group - Ukrainians and the conclusions are based, among others, on semi-structured expert interviews with 15 Czech experts, representing governmental organizations, non-governmental organizations, the academic sphere, international organizations, trade unions and small businesses. The publication thus provides a very valuable insight into how the Czech migration policy was translated into practice. From the interviews it became evident that there is a high awareness of gaps of the Czech system, which demonstrated itself in the awareness of the evasion possibilities e.g. via the "Polish visa"³⁶⁰ or claim that the system remained having structural problems with the introduced visa application mechanism that was corruption-fostering, slow and costly (due to intermediation agencies).³⁶¹

Based on the interviews the authors concluded critical suggestions to Czech approach and system managing immigration. The authors confirmed that there is a continuing lack of vision, the Czech migration policy being unclear, unpredictable in a longer perspective than 5 years, and lacking transparent conceptual strategies. As a consequence of this, security measures and other restrictive factors prevail over a long-term vision. The lacking vision was linked to the missing vision on quantity and purposefulness of immigration.³⁶² Another point, which was continuously criticised not only by scholars, but also by practice (representatives of employers and of immigrants), was the lack of "functioning channels for labour and family migration".³⁶³ The solutions developed by the relevant regulatory Czech authorities to manage the immigration system, such as the *Visapoint*, have proven to be rather a barrier than in improvement. This experience has been interpreted as a call for more efficient, quicker and easier models on how to get foreigners into the Czech labour market.

³⁵⁹ Drbohlav, Dusan /Seidlová, Marketa (2016), *op. cit.* 189.

³⁶⁰ *Ibid.*, p.109.

³⁶¹ *Ibid.*, p.110.

³⁶² *Ibid.*, p.119.

³⁶³ *Ibid.*, p. 123.

Furthermore, the failed conception of immigration programmes led to development of uncontrolled immigration patterns, such as the use of Polish visas, which are outside of the scope of influence of the Czech system.³⁶⁴

The scholars joined the representatives of practice in criticizing the bureaucracy and its amount, paired with insufficient dissemination of information on employment possibilities, and lacking assistance in the bureaucratic procedures. These problems can be linked to another significant deficit, which was unsatisfactory data/statistics quality on migration and integration.³⁶⁵

Based on findings from the chapter 4.2 and 5.2. and on the views expressed by the Czech scholarly literature, it can be stated that the Czech immigration policy and Czech immigration management system is not based on the identification of future labour shortages and neglect of the importance of skill shortages in its economy. There are two values that remained stable since the beginning of the immigration policy making - the defensiveness of the immigration system as the default setting, and the unfavourable attitude towards illegal migration.

At the center of the immigration policy making is the national interest of Czech Republic and the protection of the domestic population. As it was already stated, the key value of the Czech migration policy is thus the protection of the domestic labour market. The main regulatory instrument for immigration inflow, which has been applied for the last three decades of the existence of the Czech immigration policy, is a labour market test. The test has to be carried out for every vacancy regardless of sector, profession or skills that is offered by a Czech based employer to a TCN. It is an instrument to control and regulate the inflow of foreign labour force. Only if the test finds that no suitable resource on the Czech labour market can be found (i.e. identifies a qualitative labour force shortage), then the position can be offered to a TCN. The system was from the outset failing to create a strategy and vision on immigration. The consequences of such an approach became strongly visible in the times of economic stagnation (1997-1999 and post 2008 crisis), when the system was managed reactively by introduction of numerous restrictive measures that have been amended in an ad-hoc manner. This contributed undeniably to the unpredictability of the system and uncertainty, which in

³⁶⁴ *Ibid.*, p.122.

³⁶⁵ *Ibid.*, p.123.

turn had the potential of preventing the foreign labour force to apply for work and residence in the Czech Republic. Sticking to protectionism and strict policy proved in practice to be incompatible with the robust and successful development of the economy, i.e. a trend, which the Czech Republic certainly wishes to continue. This can be demonstrated on the consequences of the introduction of quotas through the Ukraine-Czech Republic Bilateral Agreement from 1996, which shifted the immigrants to semi-legality (via trade licences) or illegality. The incompatibility of strict approach and wish for economic growth can be exemplified by the fact that in 2018 had more available job positions than available labour force with activation potential. Such a behaviour as presented in sub-chapter 5.2 can have a negative impact on future development of the Czech economy. The lack of strategy is furthermore visible in the approach in handling quantitative shortages, which have been monitored and analysed, but no list of specifically needed “shortage occupations” or any other evidence of existing shortages in form of shortage lists followed yet. Besides the lack of comprehensive immigration policy its inconsistency can be seen as problematic. Conservative and very (as for a country of the European Union) restrictive visa policy, aiming at strong control over the inflow of the future, is clashing with the quite liberal trade license system, which leads to the *Švarc System* phenomenon (described in previous chapters). Such contrariness of the vectors within the system forces the immigrants being unable to legally enter the Czech Republic and therefore to choose semi-legality or illegality via abuse of trade licences. It might be added that lack of reform of the trade license system, the abuse of which is an identified and well known problem, constitutes a further proof of lacking appropriate strategy.

If changes in favour of a more liberal approach were made in the (labour) migration policy, then such changes were conducted under significant external or internal pressure and not as a result of proper policy making and planning. The most significant external factor was certainly the obligation to adapt the national policy to the EU standards to fulfil the accession criteria. An example of internal pressure was the strong campaign of entrepreneur associations during the time of recovery from the consequences of the financial crisis period, which resulted in the introduction of immigration schemes like *Projekt Ukrajina* and *Režim Ukrajina*.

Režim Ukrajina and *Program Ukrajina* quotas were meant to be programmes that open a Czech Republic for regulated and specific immigration. It is however debatable how effective

the implemented programmes were. They introduced the system of (miscalculated) quotas and have been strongly criticized by the Czech Employers Association and the Czech Chamber of Commerce. Furthermore the “opening to migration” programmes are actually very restrictive, because they require high bureaucratic efforts for both, the applicant (nostrification of the qualification documents, requirement to find a full time position that offers salary over defined threshold) and for employers that have to fulfil numerous conditions, such as labour market test or the condition of having employed in the past sufficient number of Czech nationals before employing an immigrant. As it was delineated by Czech scholarly literature, the Czech immigration policy fails also to address the labour force shortages appropriately also due to missing data on many aspects of the labour market:

- the employers’ surveys are not being sufficiently used as a data source for immigration policy, also qualitative studies are missing,
- the Czech system does not conclude any sectoral analysis,
- the Central Register of Vacancies cannot reflect the current situation on the labour market appropriately since the employers inform the Labour Office about the created vacancies only on a voluntary basis. Since public employment services are not informed by employers about all unfilled vacancies, the lacking information constitutes a challenge for policy making when trying to target labour force shortages of the Czech labour market.

To sum up, the philosophy behind the Czech (labour) immigration policy has proven to be misdirected, as it fails to address problems of the Czech labour market (the labour force shortages) in a well-regulated, predictable, and effective way.

5.4. The Rohlik.cz Case

5.4.1 Introducing the “Polish-Visa-Workers” problem

The favourable macroeconomic figures in the Czech Republic, paired with an in the European context lowest unemployment rate, created demand for labour forces immigration in the Czech Republic. However, the Czech immigration policy and relevant legal framework offered only limited possibilities to attract foreign workers, especially due to existence of quotas,

which were considered as deeply insufficient and were consequently heavily criticized.³⁶⁶ The employers had thus to look for a suitable solution. Since the Czech immigration policy was restrictive and the demand for foreign workers high, the strategy of *posting workers* has often been used.

Posting of workers, as regulated by the Directive 96/71/EC of 16 December 1996, is often used as a strategy to allow access to the Czech labour market. According to this Directive, the term “posted worker” refers to a worker who, for a limited period, carries out work in the territory of a Member State other than where he is normally employed.³⁶⁷

Compared to regular labour migration, posting workers is a different mechanism. *Regular labour migration* takes place within the framework of freedom of movement (as the applicable legal framework). The regular migrant employee is subject to the legislation and social system, as well as other regulations and taxation in the country where they work.

Posting of workers takes place in the framework of the freedom to establish and to provide services. It means that the employees are subject to legislation, as well as other regulations of the *sending* country from which they are posted. Nevertheless, in the receiving country the posted workers are still entitled to a set of fundamental rights.³⁶⁸

The posting has to conform with the definition of posting worker, as stipulated by the Directive 96/71/EC: (a) to have a direct employment relationship in the country of posting; (b) the sending company should be the actual enterprise normally operating in the EU Member State of which the worker is employed; and (c) the posting is temporary, and the posted

³⁶⁶ Dębiec, Krzysztof (2019): „Kraj bez bezrobocia” [eng. A country without unemployment], Centre for Eastern Studies in Warsaw, pp.26ff, available online: https://www.osw.waw.pl/sites/default/files/Raport_PL_Kraj-bez-bezrobocia_net_0.pdf [last access 20.12.2019].

³⁶⁷ EU Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, *OJ L 18, 21.1.1997*; The Directive was further amended in 2014 by Directive 2014/67/EU, which aims to improve the practical application of the rules; in October 2017 proposals for its revision were adopted. The purpose of this revision is to encourage companies to comply with the rules on posting and at the same time change certain conditions, e.g. posted workers are no longer entitled only to a minimum wage but to the same remuneration as other employees working in the same place and performing the same job; collective agreements will be implemented in all sectors of the economy; long-term posted workers (living abroad for more than two years) will be protected under the labour law of the host Member State.

³⁶⁸ Trčka, Michal/ Moskvina, Yuliya/ Leontiyeva, Yana/ Lupták, Milan/ Jirka, Luděk (2018): “Employment of Ukrainian Workers with Polish Visas in the Czech Republic: From the Main Patterns of Labour Exploitation towards Points of Intervention” P.10, available Online: https://www.solidar.org/system/downloads/attachments/000/000/841/original/Employment_of_Ukrainian_Workers_through_Polish_visas.pdf?1542195590 [last access 10.05.2021].

workers remains subordinate to the posting officer.³⁶⁹

On the basis of the regulation laid down in the Directive 96/71/EC the following categories of posting can be distinguished:

- *regular posting*, which according to Joklová, Ryšavá et al. occurs when a specialized subcontractor provides its services temporarily in another EU member state with qualified staff who belong to a core workforce of a posting enterprise. It is necessary to mention that posting TCN workers is generally not an issue, if the TCN worker is a long-term EU resident³⁷⁰,
- so-called “*false*” (or *wrong*) *posting*, which includes false A1 forms, non-verifiable invoices for service provision, recruitment of posted workers already in the host country, and others.³⁷¹

Posting to Czechia of Ukrainian workers, who are holders of Polish visas (which enable the person to travel in the Schengen area, but to work only in Poland), is often perceived by the relevant Czech authorities as such *false* or *wrong posting*. The extent of such practice led to the creation of a specific socio-economic and socio-political category denoted in the Czech Republic as “Polish visa workers”. These are in majority low-skilled workers, whose visas were issued by Polish authorities, allowing them to work in Poland for a time of around three months. The very liberal visa regime of Poland and very strict and limited labour migration in the receiving countries, such as the Czech Republic, contributed to the popularity and fast increase of use of such visas.³⁷²

The “Polish visa”-posting-workers-system can be perceived either as a strategy for enterprises and job intermediation agencies to ensure a sufficient supply of labour or as a strategy of the workers themselves to be able to enter the Czech Republic and begin their residence there. However, the incoming Ukrainian workers often fail to comply with certain posting conditions, such as duration of stay (i.e. 90 days of work) or providing services that have no non-

³⁶⁹ Cremers, Jan (2017): “Posting of workers – some practical experiences. Praha: Multikulturální centrum.” available online: https://www.solidar.org/system/downloads/attachments/000/000/837/original/Conference_further_reading_Jan_Cremers.pdf?1541517880 [last accessed 12.05.2020].

³⁷⁰ Cf. Joklová, K., Ryšavá, J. et al. (2009). Zaměstnávání cizinců a vysílání pracovníků do zahraničí. Praha: ASPI.

³⁷¹ Cremers, Jan (2017), *op.cit.* 369.

³⁷² Čaněk, Marek (2017): “Country study Transnational Monitoring and Enforcement of Posted Work: The Case of Czech Republic”. Praha: Multikulturální centrum Praha. Available online: https://www.solidar.org/system/downloads/attachments/000/000/831/original/TNC_Report_-_Country_Study_Czech_Republic.pdf?1541517466 [last accessed 21.05.2020].

dependent features.³⁷³ Such bending of the posting mechanism, known as semi-legality, is manipulatively applied towards legal restrictions on the labour migration of non-EU workers to achieve the potential for social security payments savings (but is not necessarily limited to social security).³⁷⁴

Some of the scholars however underline the wrong focus on only labelling the workers as illegal, but not mentioning or ignoring the fact that the people are still well allocated and highly needed on the Czech labour market. They point out that several Ukrainian workers, even if wrongfully posted, still adheres to certain rules, such as returning home after the expiration of the visa. This is also one of the main arguments why the term “semi-legality” is more appropriate.³⁷⁵

5.4.2 The Case “Rohlik.cz”

Czech employers approached Polish work agencies to get the Ukrainian workers on Polish visas posted in the Czech Republic as the strategy to fight the lack of local labour in the Czech Republic. This practice became controversial because in 2017 the Czech Labour Inspectorate declared that few thousands of people (mainly from Ukraine) were employed via “unlawful” mediation and another thousands of people were employed even without the necessary documents. Workers originating from the Ukraine became the main target of inspections carried out by the Labour Inspections Office in cooperation with the immigration officers from the Alien Police Department of the Czech Police.³⁷⁶

Such an inspection was carried out also in the premises of one of the most popular online grocery platforms, Rohlik.cz. This company was one of many in the Czech Republic, for which it was difficult to hire enough staff. Since the company could not find the required work force on the Czech labour market (with the lowest unemployment rate in the EU) and getting labour force directly from Ukraine was very problematic due to the bureaucratic limitations (monthly work permit quotas or length of procedure among others), Rohlik.cz took advantage of the

³⁷³ Trčka, Michal/ Moskvina, Yuliya/ Leontiyeva, Yana/ Lupták, Milan/ Jirka, Luděk (2018), *op. cit.* 368, p. 5.

³⁷⁴ Čaněk, Marek (2017), *op. cit.* 372.

³⁷⁵ Trčka, Michal/ Moskvina, Yuliya/ Leontiyeva, Yana/ Lupták, Milan/ Jirka, Luděk (2018), *op. cit.* 368, p. 3.

³⁷⁶ Czech News Agency. (2017): “Checks Reveal Illegally Working Foreigners”, Prague Monitor, published 14.03.2017, available online: from <http://praguemonitor.com/2017/03/14/checks-reveal-illegally-working-foreigners> [last accessed 20.03.2020].

Ukrainian workers with Polish visas, who were posted in the Czech Republic. The abovementioned raid on Rohlik resulted in the arrest of 85 Ukrainian workers holding Polish work permits.

Myroslava Keryková, a Czech migration expert, expressed her observations about the Ukrainian workers that have been employed by Polish agencies and posted to work in the other countries in an interview for the Czech news website *info.cz*.³⁷⁷ The issue with the visa in her opinion was that this posting system might work well, but the agencies didn't pay the workers directly and notoriously exceeded the allowed time period of employment. She stressed however, that the Ukrainian workers were not instructed about such regulations, and this might be the reason why so many of them worked longer periods, failing to comply with the regulatory requirements.

The Rohlik.cz case made brought to the light legal (but also connected political and social) issues, as well as the broader context which was the labour force shortage and uninterrupted need for retaining foreign workers in Czech Republic, that arose as the outcome of the long period of economic prosperity (resulting *inter alia* in almost elimination of unemployment among the domestic population).

The case of Rohlik.cz shows how desperate the Czech companies were needing the foreign workforce, because although the CEO of Rohlik.cz, Mr. Tomáš Čupr after the intervention of the police in March 2017 stopped engaging the Ukrainian staff via Polish mediation agencies, still expressed his opinion that according to him employing Ukrainians on the basis of Polish visas was legal. He also said in an interview that he was waiting for a final interpretation of the conflict between the needs of the labour market and foreigners' residence laws.³⁷⁸ Mr. Čupr after few weeks after the intervention supported his statement on the legality of the employment of Ukrainians on Polish visas with a decision of the European Court of Justice on Turkish citizens given German visas and being allowed to perform work for a Dutch

³⁷⁷ Interview by Žižková, Marketa (2017): "Ukrajinská expertka: Migranti získají v Polsku pracovní víza snadno, pak jdou do Čech." *info.cz*, Published 12.05.2017, Available online: <http://www.info.cz/cesko/ukrajinska-expertka-migranti-ziskaji-v-polsku-pracovni-viza-snadno-pak-jdou-do-cech-9356.html> [last accessed 20.04.2020].

³⁷⁸ Pokorný, M. (2017): "Rohlik.cz po razii nestíhá, ač nabral dost zaměstnanců. Devět z deseti je k ničemu, stěžuje si Čupr." *aktualne.cz*, Published 27.03.2017, Available online: <https://zpravy.aktualne.cz/domaci/rohlik-uz-porazii-nabral-nove-zamestnance-devet-z-deseti-je/r~e159cf8813a711e782e8002590604f2e/?redirected=1518707964> [last accessed 20.04.2020].

entrepreneur.³⁷⁹

5.4.3 The view of Czech authorities

Czech authorities have been tolerant or at least had an unclear position towards posting workers via Polish visas. However, during numerous inspections, cases of false posting of Ukrainians on Polish visas were detected, whereat the posting agencies were Polish companies³⁸⁰. Such practice was perceived as *false posting* for a variety of reasons:

- Polish companies practiced delegating Ukrainian workers to work in the Czech Republic, but the condition of temporariness of the stay was very often significantly violated (the allowed period of 3 months was exceeded on a regular basis),
- violations often resulted from the fact that intermediators sent the workers to carry out not specialized work but did the work that usually Czech workers have done.
- Another reason that indicated false posting was failing to inform the responsible Czech authorities about the beginning and the end of the posting, which made for example the determination of the de facto number of Ukrainian workers impossible.
- Transferring recruited in the Ukraine workers directly from the Ukraine to the Czech company
- Transferring the Ukrainians workers from one Czech company to another.³⁸¹

The number of inspections carried out by Czech authorities in 2016 was 9.308.³⁸² In the course of these inspections, altogether 997 Ukrainians were detected as performing irregular work. Based on unclear or undeclared employment situation the Czech Alien Police issued 1.207 expulsion orders.³⁸³

In the eyes of the Czech labour inspectors the Ukrainians were falsely posted because they were not being employed regularly but working on civil contracts (pol. umowa zlecenie). This

³⁷⁹ Interview in Černý, Ales (2017): "Policie vyhošťuje, Rohlik.cz se brání". Mladá fronta DNES, Published 13.03.2017, available online https://www.idnes.cz/ekonomika/domaci/zatah-cizinecke-policie-v-rohlik-cz.A170312_205622_ekonomika_rny [12.05.2021].

³⁸⁰ Státní úřad inspekce práce [State Labour Inspection Office] (2017): Roční souhrnná zpráva o výsledcích kontrolních akcí provedených inspekcí práce za rok 2016. Available online: www.suip.cz/_files/suip-3f221754366f01e240f10778f21fe5fa/rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-provedenych-inspekci.pdf [last access 21.04.2021].

³⁸¹ Trčka, Michal/ Moskvina, Yuliya/ Leontiyeva, Yana/ Lupták, Milan/ Jirka, Luděk (2018), *op. cit.* 368, p.9.

³⁸² Státní úřad inspekce práce [State Labour Inspection Office] (2017), *op. cit.* 380.

³⁸³ Boušková, P., Maťová, B. (2017), *op. cit.* 347.

type of contract is not regulated by Polish *labour law*, but by Polish *civil*. Consequently, the Czech labour law does not apply to such a contract and therefore the Ukrainian workers could be considered by the Czech authorities as regular employees with the consequence that the employment regulations and regulations for posting of foreign employees cannot be applied. It might be noted that there is no obligation to possess a work permit in the Czech Republic when an employee (a third country national) is posted from another EU state.³⁸⁴ Legal interpretations of the situation may vary from country to country, but several ECJ judgements consider the requirement for third country nationals to obtain an additional work permission if posted by a company from another EU member state as a restriction limiting the exercise of the freedom to establish and to provide services.³⁸⁵

5.4.4. Interim conclusions

As of 2018 some 70 percent of the Ukrainians found a way to have free access to the labour market in the Czech Republic and the role of the job agencies intermediating the jobs thus decreased significantly.³⁸⁶ However, there are still some sectors where the job demand for unskilled labour (in jobs with unfavorable conditions, intense workload and changing shifts, worker fluctuation, etc) is very high. It might be also noted that Polish visas are just one of the channels for entering the Czech labour market. Other favourite ways are the use of European passports (e.g. from Romania or Bulgaria), entry based on family reunification, and others. Due to its popularity Polish-visa grew to a labour-law category in the center of which is the controversial posting method. Between 2015 - 2017 in the Czech Republic the number of posted Ukrainians increased 14 times from 500 in 2015 up to 7.000 in 2017.³⁸⁷

6. Comparison and Evaluation

Poland and the Czech Republic are CEE countries sharing similar historical developments in the latest history. Both countries went through the process of transition from centrally

³⁸⁴ Cf. § 98 k Act No. 435/2004 Coll., Employment Act.

³⁸⁵ C-113/89 Rush Portuguesa, C-43/89 / 93 Vander Elst.

³⁸⁶ Trčka, Michal/ Moskvina, Yuliya/ Leontiyeva, Yana/ Lupták, Milan/ Jirka, Luděk (2018), *op. cit.* 368, P.7.

³⁸⁷ Čaněk, Marek (2017), *op. cit.* 372, p.7.

planned economies under socialist regimes to free market economies under liberal democracies. As a consequence, they had to face a phenomenon inherent to rapidly developing economies - the labour force shortage. The question of how each of the two countries responded to this challenge and what were the peculiarities of having used immigration as a tool or measure adopted to respond to the labour shortage problem, has been described in previous chapters. The previous chapters also explained that there are certain common milestones of and challenges for further development (such as the accession to the European Union in 2004 or the need to face the decline of the national economy in the aftermath of the 2007-2008 financial crisis), and the post-crisis economic restoration phase, which create a basis and justify the need for comparison of the paths taken by both countries. The main common points/milestones (the EU accession and financial crisis) are clearly identifiable in time, consequently they serve as suitable cornerstones of time periods, which provide the framework for comparative analysis.

6.1 Pre-accession period

The start of transformation into liberal democracies with free market economy (with demand and supply as the decisive market factors) in 1989 was the moment when Poland and the Czech Republic decided to open to the world and consequently started a radical and complex change of their regulatory systems. At the same time the newly gained freedom brought to people from both countries the possibility to emigrate, which many used, but it also meant openness to tourism and immigration, including labour immigration. This proved to become a challenge for the countries, since both lacked experience with immigration of a larger scale. Consequently, Poland and the Czech Republic had to set up their migration policies and the respective regulatory framework. Already from the outset, both countries perceived Ukraine as constituting a suitable (even favourite) source of labour immigrants. Poland experienced until 1994 uncontrolled immigration, but the number of immigrants was rather low. Nevertheless, it was the illegal migration which led to introduction of a new legislative act in 1994 - the Act on Employment and Counteracting the Unemployment. This law, reactive in its character, established restrictive measures for immigration to the country, as the main goal of the immigration policy at that time was to assure internal security and to animate the mobility from Eastern Europe. In this period Poland succeeded to control the

legal migration and the number of immigrants until 1996 stabilized around 10.000 people annually. On the other hand, Poland maintained very liberal tourist-visa regime that continued to foster illegal immigration and thus counteracted the objective of the 1994 Act on Employment and Counteracting the Unemployment. The policy objective was clear, and it was met, however the illegal migration challenged the country's ability to control the immigration flows.

Symmetrical development took place in the Czech Republic, where the inflow of immigrants predominantly from Central Eastern and Eastern Europe took place, however the dynamics of these migrations was higher than in Poland and the highest in the CEE region. To prevent uncontrolled immigration Czech Republic started to regulate its immigration policy through bilateral agreements with respective countries, introducing quotas and bureaucratic burdens, however lacking a comprehensive and future oriented national migration strategy. The number of legislative acts regulating migration and their changes was high in the Czech Republic, which demonstrates higher dynamics of developing the respective legal framework for migration when compared to Poland.

As a result of the attempts, the end of the 1990' brought a decrease of legal immigration in both countries. However, the reasons differed. In the Czech Republic, the decrease was a delayed effect of the restrictive immigration policy (the Czech immigration system answered the worsening condition of the Czech economy with the introduction of restrictive measures), whereas Poland in this time simply failed to attract larger numbers of people migrating for work. The Czech Republic has focused from the outset on preventing immigration. In contrast to this approach, Poland focused on the maintenance of a policy corresponding with its national interests, among which were protection of the domestic population hurt by high unemployment, but also good (also economic) relations with neighbouring countries, including Ukraine. This constituted an objective of Polish foreign policy and led to tolerant handling of immigration from that region. The approaches adopted in this period might be seen as a starting point of creation of policy patterns, which developed further in the following periods.

Until the accession to the European Union, both countries focused primarily on preventing and managing the immigration rather than shaping the migration with the vision of the future goals. Consequently, during EU accession, they had to adjust their national systems to implement and to comply with EU (legal) standards. The accession however did not change

the (different) general approach of Poland (more liberal) and the Czech Republic (more restrictive). It might be noted that despite this difference both countries experienced an increasing number of third country immigrants. Ukrainian immigrants used the *more liberal attitude* of Polish immigration policy, but also the paths existing under the more systematic approach of the Czech Republic (especially the *trade licence system*) to enter the labour markets of both countries. The flow of Ukrainians however continued to grow also due to relatively low quality of life, lacking economic prosperity in Ukraine, as well as because of the attractiveness of the rapidly developing economies of Poland and Czech Republic.

6.2 Post-accession period until arrival of the financial crisis

The post-accession period brought different developments in both countries. Poland was facing a significant emigration wave of the labour force of the productive age triggered and facilitated by the possibility of free movement of persons under EU law. Poland had thus to address the problem of how to remedy the void the Polish emigrants left behind. The situation in the Czech Republic was different as there was no such gap translating into the problem of labour force shortages. Consequently, the applicable policy and legal framework did not experience any significant changes. These were not deemed necessary for three reasons: first, as already mentioned, the Czech labour market did not suffer from labour force shortages, second, the intra EU migration helped to prevent the emergence of labour force shortages, and third, the existing legal and policy framework, as adopted during EU accession, was deemed sufficient to remedy the possible emergence of labour force shortages once they will occur.

Poland, facing the reality of missing skilled workers, continued to stick to a rather rigid general approach towards labour force immigration, but decided to implement a new liberal immigration regime that would enable the inflow of the labour force.

The immigration scheme *Employer's Declaration* was designed for third country nationals from predefined countries and enabled short-term work without the necessity of obtaining a work permit. The decision to enable short-term labour migration was a result of a more open, but still risk-averse attitude to migration (since it includes the possibility to terminate work permissions, once their holders - work immigrants are not needed, and thus provides for a high system flexibility). It might be noted that due to numerous cases of abuse the conditions

of the *Employer's Declaration scheme* were tightened, but the granting process remained liberal.³⁸⁸ The liberality of this policy manifests itself in the lack of administrative quotas, leaving the numbers of the immigrants up to the private market that declared the demand for foreign labour force. The *Employer's Declaration scheme* is an example of immigration policy measure that even after Poland's accession to the Schengen zone (which imposed restrictions and mandatory visas for entering the Schengen zone) provided a solution for quantitative labour force shortages caused by the outflow of Polish people to the Western Europe. Because of this, the number of immigrants residing in Poland *legally* increased to approximately 50.000. This number appears low not only if considering that the policy was designed as liberal, but also if this number is compared with the situation in the Czech Republic.

The Czech Republic, relying on the (rather restrictive) policy and legal framework established in the course of EU accession, witnessed constant growth of the number of foreigners living and working on the state's territory. The number of immigrants after the EU accession almost doubled breaking the 400.000 mark.³⁸⁹ Out of this total number of immigrants, Ukrainians constituted a significant group - their number rose by 50.000 in the period between 2004 - 2008. It seems that despite no significant change of official immigration policy taking place in this period, the Czech Republic became more open to immigration.

6.3 Financial crisis and post-financial crisis period

The financial crisis of 2008 impacted both countries, but in a very different way. The negative impact on Czech economy was significant, including the decrease of GDP and rising unemployment. Poland however remained largely unaffected. Consequently, Poland did not adopt any changes in the immigration policy (except the attempt to stop the abuse of the immigration system). The Czech Republic, on the contrary, responded to the consequences of the financial crisis with measures aiming at protection of its labour market by preventing the inflow of labour force from third countries. This goal translated into significant changes of the legal and policy framework applicable to immigration. Moreover, the Czech Republic adopted several legal acts, which enabled, among others, to terminate or not to prolong work

³⁸⁸ The liberal approach included in this period also intentional over-looking of undocumented work performed by Ukrainians in Poland and abuse of the system.

³⁸⁹ Prat, Sarka (2016), *op. cit.* 170, p.28.

permits³⁹⁰, or to actively support the return of foreigners to their home country. Restrictive measures were introduced, for example in the form of labour market tests or increasing the requirements for immigration applicants. Such an approach may be regarded as a continuation of the approach adopted in the 1990's when the Czech Republic's labour market faced its first economic difficulties and in response to them decided to privilege the domestic labour force by preventing labour immigration from abroad.

As one of the side effects, the restrictive policy led to an increase of irregular migration. The time after the crisis was marked by an increase of attractiveness of trade licences through which many foreigners succeeded to stay and to work in the Czech Republic, however in a semi-legal or illegal way - even if formally subcontracted, they were not providing services, but performing jobs as regular employees. The illegality of such practice gave it its name - *Švarc system* [Black system]. Also, since 2009 Czech Republic installed the controversial Visapoint system that was complicating the visa application system and in consequence forced the TCN to apply for employment through intermediation agencies.

Meanwhile Poland did not undergo such turbulent development in the financial crisis years and was even able to achieve GDP growth in 2008 of 2.8%³⁹¹. Polish labour market reflected this situation and the number of foreigners entering the country with visas and the numbers of foreigners entering through the *Employers Declaration scheme* were constantly growing. The declaration system itself was a sharp course change in the Polish migration policy, shifting the focus and applying a more liberal and open approach to labour migrants from the post-soviet states. The declaration system, although adapted over the years, became a constant in the immigration and labour immigration policy.

As was demonstrated in this subchapter, the developments in both countries in this period were significantly different. The difference was determined by the varying consequences of the financial crisis in the Czech Republic and Poland. Whereas Poland retained the *Employers Declaration Scheme* as a liberal part of its otherwise rather rigid policy, the Czech Republic decided to adopt restrictive measures to labour immigration and immigrants, aiming at

³⁹⁰ Prat, Sarka/ Bui, Thu Minh (2018): „A Comparison of Ukrainian Labor Migration in the Czech Republic and Poland”, East European Politics and Societies and Cultures, Sage Publications, pp. 1– 29, p. 28, available online: <https://journals.sagepub.com/doi/10.1177/0888325418764609> [last accessed 20.03.2020]; Čížinský, Pavel/ Čech Valentová, Eva/ Hradečná, Pavla/ Holíková Klára/ Jelínková Marie/ Rozumek Martin/ Rozumková Pavla (2015), *op. cit.* 315, p.47.

³⁹¹ Data of The World Bank, “GDP growth (annual %) - Poland”, Available online: <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=PL> [last access 04.04.2020].

decrease of unemployment through favouring domestic labour force. Such restrictive approach forced immigrants to find other ways to enter the country, which led to abuse of the system and growth of illegal migration.

6.3.1 Post-2014 period

The year 2014 marked a start of a period of economic prosperity or even a boom (2015) in both countries, which consequently faced the challenge of how to remedy the labour shortages resulting from the positive developments of economies of both states. In the post-financial crisis years Poland implemented many incentives for Ukrainian workers to work in Poland, such as the eligibility for pensions. The Polish immigration system was also enriched by the introduction of the *Ukrainian Workers Trade Union*. Despite the fact that Poland retained a simplified, but otherwise strict visa system, the numbers of immigrants increased. Since 2014 (until 2018) the number of granted declarations increased drastically from 372.000 to 1,7 million declarations. The flexible circular migration as a short-term migration pattern suitable for work migrants was the dominant migration form. This gave Poland the needed labour and “saved” it from the necessity to design a long-term immigration concept. Circular migration was established as the preferred mode and led also to a decrease of irregular immigration. Interestingly the mode of immigration and the temporariness has a side effect like lack of integration policies within the immigration policy framework. Similar to Poland, the Czech Republic looked at how to remedy the steadily growing problem of labour force shortages. The Czech migration management system was put under pressure by the Czech Chamber of Commerce and the Czech Employers Association, which promoted a controlled but more intensive inflow of TCNs to the Czech Republic for work. The result was the establishment of dedicated immigration schemes specifically for Ukrainian workers to target the labour force shortages. One programme was addressing high qualified labour force and the second mid- and low qualified workers. The quota-based programs were however from the beginning miscalculated and thus could not satisfy the developing labour force shortage. Compared to Poland’s demand driven *Employers Declaration Scheme*, in which the employers determined the quantification of labour forces needed, the Czech quota-based programs were significantly less flexible and thus less effective as a measure adopted in response to labour force shortages.

The mismatch of the needs of the Czech labour market and the capability and capacity of programs introduced to remedy labour force shortages, was demonstrated in the previous chapters. The case of the Rohlik.cz company provides an example of self-help practice of Czech employers, who tried to remedy the situation with insufficiently working immigration programs by hiring foreign workers, who entered the EU with “Polish visa”. The “Polish Visas” refer to a situation, when Poland as an EU and Schengen area country issued visas enabling immigrants to move freely in the Schengen area, even if limiting their possibility to work only to Polish territory. Once the Ukrainians were granted the Polish visa, they were able to become posted workers and in such a way without the necessity to engage with the Czech administration to enter the Czech labour market. Such a practice was seen in Poland as legal, while the Czech labour inspectorates (being known for their restrictive approach) declared such methods to be a violation of applicable law. This phenomenon was facilitated by a common point of the two countries - their EU and Schengen area membership. At the same time, it originated from the different approaches adopted by Poland (liberal entry conditions and higher flexibility approach) and the Czech Republic (strict immigration policy not able to satisfy the needs of the Czech labour market).

The incapability of measures adopted by the Czech Republic in response to labour force shortages created by the post-financial crisis rapid development of economy was proven however not only by the occurrence of the “Polish Visas” problem, but also by the scale of irregular immigration of Ukrainians in the post 2014 period. Poland, which maintained the very liberal approach towards short-term labour immigration, succeeded in reducing the number of irregular Ukrainian nationals on Polish territory from 56,2% in the 2000s to 19,4% in 2017.³⁹² In contrast the restrictive Czech policy and inflexible quota-based programs led to the increase of irregular immigration from 14,8 in 2008 up to 19,7% in 2017.³⁹³

As an interim conclusion it can be argued that immigration flow from Ukraine has behaved very differently in Poland and in the Czech Republic. The most apparent contrast could be identified in the post-financial crisis period, which substantially affected the Czech Republic, but not Poland.

³⁹² Jaroszewicz, Marta (2018), *op. cit.* 249, p. 15.

³⁹³ According to estimates by the Czech Statistical Office (2016): “Employment and residence of foreigners by citizenship as of 31 December 2016”, Available online: https://www.czso.cz/documents/10180/67292846/29002717_t3-01.pdf/6b869934-2304-416f-baab-9e03d980be81?version=1.1 [last access 20.12.2019].

7. Conclusions

Migration has been in the last decade in the centre of heated debates on all levels of society, including political or academic debates at the national, European and international level. Consequently, the exploration of migration attracted the attention of scholars and policy makers. Migration patterns continue to change in the globalized world, and it would be an oversimplification to argue that countries sharing cultural, geographical, and economic similarities experience the same migration patterns.

In general terms, this thesis aimed at adding to the knowledge on one of the most important migration streams from Eastern Europe - the immigration from Ukraine to the Czech Republic and Poland. Migrants from Ukraine constitute not only one of the largest groups of foreigners within both countries but were identified at the outset of the journey of both countries to market economies as a favoured source of labour force. This predominant perception of Ukrainian immigrants filling the gaps, which rapid economic development and several other factors (such as emigration facilitated by the EU accession) left behind in the form of labour force shortages, justifies the focus of this thesis on the use of immigration from Ukraine as a measure or tool for responding to labour force shortages in the period 1989 - 2019.

The thesis aimed thus to explore how Poland and the Czech Republic shaped their migration policies to use the Ukrainian immigration to remedy the problem of labour force shortages.

As a preliminary question, the term "labour force shortage" needs to be defined. As it was shown, this is an uneasy undertaking because of the many existing approaches. In this thesis the term "labour force shortage" refers to labour market disruptions, i.e. to situations in which labour demand exceeds labour supply. Considering notable differences between the flows and varying incentives for migration to Poland and the Czech Republic, also the causes for existence of labour force shortages were identified, including the need for replacement, lack of specifically skilled workers, emigration, lack of mobility and low labour market participation. As the review of relevant primary and secondary sources has shown, there are different strategies on how to respond to the phenomenon of labour force shortages and immigration is considered one of them.

From the very outset the immigration from Ukraine was a potential source of labour force to counter the shortages. However, the way, how the Ukrainian immigration was handled by both countries differs in adopted approaches and in the results.

The differences resulted, among others, from the fact that it was only since 1989, when both countries started to experience significant increase of intensity of migration flows (incoming and outgoing), creating the need to develop relevant migration policy and legislation. Both countries decided to apply a rather restrictive approach towards migration and thus favouring short-term circular mobility as a mode, which allows both countries to preserve flexibility, to influence the number of foreigners staying and performing work in the countries, and it also eliminates the potential for the abuse of the social systems.

In the subsequent years, the changes related to the accession to the EU provided a structured framework for development of migration policy in the Czech Republic and in Poland. Nevertheless, the policies have converged only partially, and Ukrainian migration patterns cannot be considered as synchronised. Various factors, such as demographic shifts, employment opportunities, emigration into other EU states, and economic stability, continued to influence and to shape the migration policy of both countries. Consequently, despite sharing the risk-averse attitude towards immigration, both countries implemented their policies with different dynamics and demonstrated varying approaches regarding implementation measures. As a result of this, notable differences between the flows and varying incentives for migration (not only from Ukraine) can be identified.

All the facts are leading us to the conclusion that the steadily increasing immigration dynamic in both countries and (in case of Poland) the transformation from emigration experiencing to immigration states is a fact. It may be even said that the countries of the CEE region like Poland and the Czech Republic are undergoing rather gradual transformation into immigration-receiving countries.

Despite the increasing numbers of labour immigrants and development of specific incentives and procedures to bring workers to Poland and the Czech Republic (in the case of Czech Republic specifically tailored to immigrants from Ukraine) there are several voices from the academia, as well as from the business sector that the state of migration policies in Poland and Czech Republic is not satisfactory.

Over the years Poland became a main target country of Ukrainian immigration in the EU, due to many advantages offered for the Ukrainians, such as the liberal entry procedure under the Employers Declaration Scheme. The efforts that have been made to address the immigration have been acknowledged but the Polish initiatives are missing the coordination, systematic

concentration, and long-term vision.³⁹⁴

The Czech Republic, which started a rapid recovery and steady growth in the aftermath of the financial crisis, introduced as a response to increasing labour force shortages special programmes for labour migrants from Ukraine. However, because of inflexibility of such quota-based programs, insufficient planning, and high degree of protectiveness of the domestic labour market, the measures proved not to be effective. The Czech Republic decided to (continue to) use immigration as a tool to remedy labour force shortages, but the design of the policy and adopted measures did not bring the desired outcome. This was reflected in the critique from experts, who described the Czech immigration system as based on a defensive and non-static model, free of clear objectives and suffering from several weaknesses, such as adopting ad hoc measures.³⁹⁵ Moreover, the different attitude of Poland and the Czech Republic towards work immigration gave rise to situations, when third country nationals (mainly Ukrainians) entering the EU through the liberal Polish visa system, are being hired by Czech companies, which the Czech authorities however consider as illegal.

As it was demonstrated, both countries included (Ukrainian) immigrants as a source of labour force to remedy labour force shortages. However, this policy lacks to certain extent effectiveness because of skills mismatch, since Poland and the Czech Republic are often not able to benefit from the education of immigrants, who face problems with nostrification and validation of their qualifications and diplomas. The percentage of Ukrainians occupying professional positions corresponding with the level of qualification was in Poland in 2010 - 2012 only around 7%.³⁹⁶ Such a skill mismatch prevents both countries from benefiting from education of immigrants and prevents filling the skill gaps on their labour markets.

Moreover, it can be argued that both countries are still not open to permanent migration and prefer to find solutions over the mode of the short-term temporary migrations of circular

³⁹⁴ In the same direction goes the critique of the Polish Supreme Audit Office, which issued a report titled "Country is not ready for the foreigners" [pol. Państwo niegotowe na cudzoziemców] Published 07.08.2019. This report is concretely addressing the (many) ministries among which the competence to service the foreigners are dispersed. Available online <https://www.nik.gov.pl/aktualnosci/panstwo-niegotowe-na-cudzoziemcow.html> [last accessed 20.04.2021].

³⁹⁵ Drbohlav, Dusan (2003), *op. cit.* 20, p. 19.

³⁹⁶ International Labour Organization (2014): "*Report on the methodology, organization and results of a modular sample survey on labour migration in Ukraine*". Budapest: Decent Work Technical Support Team and Country Office for Central and Eastern Europe, International Labour Organization, p.50, available online: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_244693.pdf (last accessed 08.05.2021).

character. Migrants moving in such mode stem predominantly from Ukraine, which was described as “a hallmark of the Polish and Czech policy”. Based on the experience of other countries, which became targets of work immigrants it can be argued that for many migrants the circular migration becomes a long-term strategy. This fact should be reflected and addressed when shaping the policies of both Poland and Czech Republic.

It is apparent that there is still significant room for improvement and for steps to be taken so that Poland and the Czech Republic can effectively use the existing immigration flows (from Ukraine) to counter labour force shortages, improvement of nostrification of qualification procedures and diplomas, improved procedures coordination, or higher transparency in proceedings being just some of the examples.

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