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**LABOUR IMMIGRATION POLICY IN A COUNTRY KNOWN FOR EMIGRATION:
Poland's policy towards economic immigration after EU accession**

Dissertation

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I declare that I wrote this dissertation independently on the basis of the mentioned sources and literature.

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List of abbreviations¹

BA	Biuro Administracyjne (Administration Office)
CSO	Central Statistical Office
DMI	Departament Migracji (Department of Migration)
EEA	European Economic Area
EU	European Union
GDP	Gross domestic product
GUS	Główny Urząd Statystyczny (Central Statistical Office)
ICP	immigration control policy
LIP	labour immigration policy
MG	Ministerstwo Gospodarki (Ministry of Economy)
MIA	Ministry of the Interior and Administration (Ministerstwo Spraw Wewnętrznych i Administracji)
MLSP	Ministry of Labour and Social Policy
MPiPS	Ministerstwo Pracy i Polityki Społecznej (Ministry of Labour and Social Policy)
OPZZ	Ogólnopolskie Porozumienie Związków Zawodowych
RP	Rzeczpospolita Polska
SOPEMI	Système d'observation permanente des migrations (the Continuous Reporting System on Migration)
TM	Team for Migration (Zespół do Spraw Migracji)
USSR	Union of Soviet Socialist Republics
WB	World Bank

¹ In a few cases the list includes abbreviations of both Polish and English name of the some institutions. This is because the notes refer to sources that were available once in English and once in Polish.

Preface

When doing a literature review, one can easily notice that issues of migration and migration policy not so often lie within the area of academic interest of political scientists. Among the best-known people that deal with issues of immigration policy and politics there are often sociologists, e.g. Grete Brochmann, Roger Brubaker, Douglas Massey, or Alejandro Portes, economists, e.g. George Borjas, or specialists in other areas, e.g. in urban planning, such as Saskia Sassen. This does not mean, of course, that political scientists do not deal with migration. Examples are Tomas Hammar, James Hollifield, or Anthony M. Messina. Nevertheless, international migration is not widely recognised as a subject of research of political science. This is an observation of e.g. Erik Bleich, who points out the marginalisation of immigration and integration issues within political science.² Gary P. Freeman suggests that there are several reasons for that.³ First of all, migration is considered too interdisciplinary. For this reason publications or journals devoted to the movement of people gather the works of scholars from many different disciplines. From the point of view of career prospects it is better to deal with a subject that is ‘more centrally rooted in a single discipline’.⁴ The lack of interest of other political scientists represents a serious obstruction to career development, and so is the lack of interest on the part of the main journals of political science: as Freeman notes, even if there are political scientists dealing with migration, their names are not widely known in the sphere of political science. Another thing is the lack of reliable statistical data, which are especially needed in sophisticated models of political economy, allowing cross-national comparisons.⁵ It is a problem of different definitions of an immigrant, including or not including asylum seekers in the whole number of immigrants, different naturalisation policies, gathering data on the flow of immigrants or on the stock of immigrants, on foreigners or on the foreign-born population etc. As a result, data from different countries are hardly comparable. Additionally, in many (if not most) countries in the world there are no statistics on migration at all. Despite all these problems, Freeman urges political scientists to take a greater interest in migration.⁶ The current study responds to that appeal.

The main goal of the study is to explain labour immigration policy, i.e. to explain how a state decides about the number, composition and category of economic migrants to be

2 Bleich 2008: 1-3.

3 Freeman 2005: 111-115.

4 *Ibid.*: 114.

5 *Ibid.*: 115.

6 *Ibid.*: 115.

accepted to the labour market. To achieve this aim, I was looking for the answer to the question of what factors shape immigration control policy towards legal labour immigration, and how they do that. I addressed the question by using an empirical-analytical approach, and, to be exact, a case study of Poland. I performed a qualitative analysis of the content of several dozen documents and – additionally – of records of several interviews I carried out with experts involved in policymaking.

A kind of starting point for the study was Eytan Meyers' *theory of the socio-economic and foreign policy factors shaping immigration control policy*, which I was inspired by.⁷

The study seeks to add another perspective to existing theories of immigration policies. This was one of the reasons why I chose Poland for the analysis. If there are studies which attempt to contribute to theory building, they are usually devoted to the immigration policies of countries which have been receiving various types of immigrants for decades. In contrast to those, I decided to research Poland, which is a country widely recognised as one of net emigration and which has started to accept immigrants only recently. Its labour immigration policy – and immigration policy as a whole – is still in its infancy. The study focuses on the period between the access of Poland to the European Union, which was an important turning point in Poland's recent history, and the middle of 2011. I believe that leaving Western European countries to search for determinants of labour immigration policy in other regions could throw new light on policymaking in questions of economic immigration.

The structure of the study represented a challenge for me. The development of labour immigration policy in particular years differed: whereas some years were rich in events concerned with policymaking, others did not bring many changes. This fact made it difficult to ensure the proportional size of particular parts of the study. Eventually, I decided to divide the study into six main chapters (apart from the conclusions).

The first one presents the theoretical basis of the study and research design. It demonstrates the goal and research question, Meyers' theory, which the study draws on, definitions of basic terms, description of the model of the study, hypotheses and research methods.

The second chapter introduces the context of the study, i.e. a review of the literature devoted to questions of immigration policy, together with a review of theoretical approaches to the issue.

⁷ Meyers 2004.

The third chapter presents the context of the labour immigration policy in Poland. It focuses specifically on structural factors that influence it, the development of the Polish migration situation before the year 2004, the development of immigration control policy in general, and the access of foreigners to the labour market before that year. Additionally, it presents the main actors in the immigration control policy and, finally, basic information regarding the rules for the admission of labour immigrants to Poland's territory.

The fourth and the fifth chapter, where the development of the labour immigration policy is presented and analysed, are crucial for the study. The first five parts of the fourth chapter are organised chronologically – they are devoted to the development of the policy in particular years. Then there are two parts dealing with special cases, i.e. the instrument of Polish immigration policy called an employer's declaration of intent to employ a foreigner and the Polish Charter, issued to people of Polish origin. The chapter that follows discusses findings about factors shaping labour immigration policy in Poland in the period under examination.

The last, sixth chapter brings selected recommendations of the strategic document 'Polish Migration Policy' which is to be the basis for policymaking in the area of migration in the immediate future.

Finally, one last remark should be added. In contrast to contemporary trends, I decided not to use in-text references in the study but footnotes instead. This is mainly because I often refer to particular articles of legal acts (sometimes with their original wording, sometimes as they became amended). Footnotes make the text neater and more readable.

1 INTRODUCTION

As communicated in the preface, the current study deals with immigration control policy (henceforth referred to as ICP), which is an area that has not been the centre of political scientists' interest. Despite the fact that a number of publications devoted to immigration policy exist (see 2.1), in the bulk of the output on political science they play only a marginal role. Additionally, studies which are not exclusively practically oriented but which at the same time treat immigration policies from a theoretical perspective constitute only a part of that margin.

The present study stems from a theory and its objective is to throw a new light on policymaking and theories explaining it. As already stated, it concerns the analysis of policy, and specifically, the analysis of labour immigration policy (henceforth referred to as LIP).

According to the classical definition of Thomas R. Dye, 'Policy analysis is finding out what governments do, why they do it, and what difference it makes,'⁸ in other words, it is about its content, determinants, and results.

The current study focuses on the content and determinants of a policy. However, when one is not examining the emergence of a single legal act but a range of acts which were issued over a period of a few years, it is impossible to ignore the results and impacts that the legal acts produce. This is because these impacts automatically become factors influencing further acts, amendments, or ministerial regulations. In this way the spiral of relationships, in which the impacts become factors affecting further impacts, is prolonged.

This chapter presents in detail the goals and research questions of the study. It demonstrates the theory that the analysis is based on and provides definitions of basic questions and some necessary clarifications. It then introduces the model of the study, together with the main hypothesis and a few sub-hypotheses which arise from it. Finally, the last section explains the methodology. It presents the data collection methods, as well as the method of analysis.

1.1 Goal and research question

Labour immigration - in its various forms - can be considered one of the crucial issues for government migration policies. This is because of the great proportion of economic immigrants among all immigrants. The arrival of foreign labour can help to solve some

⁸ Dye cited in Fiala and Schuber 2000: 13.

problems, but simultaneously it can bring other problems. For example, on the one hand it helps to fulfil vacancies in the secondary segment of the labour market, which are not appealing for domestic workers; on the other hand, however, foreign workforce demand is often met by irregular migrants, who do not pay taxes.

The current study has one main **goal** which is to explain how a state decides about the number, composition and category of economic migrants to be accepted to the labour market. In other words, the study seeks to account for immigration control policy regarding legal labour immigration; for the background of decisions, which in the end take a form of legal steps included in the act and ministerial regulations. By achieving that goal, the study will hopefully contribute to building a theory about factors shaping labour immigration policy outcomes.

Establishing the goal has led me to the following **research question**: What factors shape immigration control policy toward legal labour immigration, and how? It can seem that the only factor shaping policy pertaining to legal labour migration is the economic situation and in particular the situation on the labour market. It appears that the greater the labour force demand is, the more immigrant workers are accepted and – on the contrary - the greater unemployment among the domestic workers, the less migrant workers are accepted. In fact, the relationship is not so obvious. There are several reasons for that. I will point out a few examples.

Firstly, in many countries there is strong foreign labour demand for decades in spite of a high unemployment rate. This is for instance due to the appearance of the above-mentioned secondary segment of the labour market (i.e. the segment that can be characterised e.g. by low wages, not favourable working conditions, little job security, few opportunities for training or advancement, menial and repetitive works) or the maladjustment of labour force demand and labour force supply (e.g. because of education system deficiencies there are not enough specialists in some fields). Secondly, the experience of many Western European countries together with the United States reveals that - as the slogan says - *There is nothing more permanent than temporary foreign workers*. Hence, policy makers aware of that possibility have to take into account more determinants than only economic ones, whilst considering the access of foreigners on the labour market. Thirdly, immigration policy can serve as a foreign policy instrument and foreign policy considerations can shape the policy outcomes. Therefore, for instance, countries can prefer economic immigrants of particular origin. Fourthly, the relative effect of the economic situation on labour immigration policy can be modified by influencing variables such as activities of interest groups or public opinion. These are only

examples of possible policy determinants. The current study tries to challenge the question of determinants actually shaping immigration control policy toward labour immigration, thus deciding who is going to be accepted to the labour market.

1.2 Theory of the socio-economic and foreign policy factors shaping immigration control policy

To achieve the goal defined in the previous section and answer research question, which is presented there, I decided to use a few theses of Eytan Meyers' theory of the socio-economic and foreign policy factors shaping immigration control policy.⁹

There is a wide range of theoretical approaches that attempt to account for immigration control policy (see 2.2) but Eytan Meyers created a theory which put together various theoretical perspectives explaining immigration control policy. Unlike other theories, Meyers' approach does not focus on one particular type of immigration (economic immigration, permanent immigration, refugees etc.), but explains policy toward several types of immigrants. In addition, it accounts for other aspects of ICP. Because of that, it is more comprehensive than other approaches that were developed earlier.

Meyers' aim was to explain how governments decide about the number of immigrants to be accepted, the composition of this migration (ethnic, cultural, or other recognised proximity with the receiving society), and the decision on whether to favour permanent migration or temporary labour migration. The result of his attempt is a sophisticated theory with five arguments, a few independent variables, and as many as fourteen hypotheses. The present study draws on only a few of them. The others are not directly (or sometimes even indirectly) connected to what is analysed here. In spite of that, the whole of Meyers' theory is briefly presented in this section. Otherwise, the selected parts of the theory would lack the necessary context and its introduction could raise additional questions.

The first argument of Meyers' approach is that 'immigration control policy is determined by an interaction between: (a) socioeconomic and foreign policy factors (...); together with (b) the type of migration',¹⁰ i.e. temporary labour migration, permanent dissimilar immigration, permanent similar immigration, and refugees. Meyers takes into account five socio-economic and foreign policy factors: the state of the economy, the size of immigration of dissimilar composition, wars, and foreign policy reflections, along with ideological cycles, understood as general racist/liberal attitudes.

⁹ Meyers 2004.

¹⁰ *Ibid.*: 200.

The first argument is related to seven hypotheses explaining what kinds of relations exist between the factors and the type of migration. With regard to the state of the economy, Meyers claims that while recessions are reasons for restricting immigration policy, economic prosperity gives rise to the liberalisation of immigration control policy. With regard to the volume and composition of immigration, the hypothesis is that diverse cultural or ethnic composition in addition to large-scale immigration results in a restrictive immigration policy. According to Meyers, wars can influence ICP in a double way: they can contribute to establishing immigrant worker programmes; nevertheless, they can also result in restrictions of ICP, since dissimilar immigrants can be linked to external threats; at the same time, permanent similar immigration can be supported. It should be explained that similar immigrants mean here people of the same origin, of the same nationality (e.g. returnees). In spite of the fact that Meyers simply refers to *foreign policy considerations*, he actually draws a distinction between reflections of foreign policy towards immigrant-sending countries and the influence of regional integration schemes of which the country is a member. An example of the second one is the European Union. In Meyers' theory, foreign policy considerations regarding immigrant-sending countries usually facilitate the liberalisation of immigration control policies as regards both the size and the composition of immigration, since in this way states try to advance their political goals. In contrast, the influence of regional integration schemes is much more complex. They liberalise the policy of the country in the matter of immigration from other regional integration schemes' member states. In addition to that, they contribute to the harmonisation of their member states' immigration control policies, as well as to the development of a common policy towards nationals of third countries. The latter tends to be restrictive. Finally, as a result of the last hypothesis related to the first argument, the restriction or liberalisation of immigration control policies is determined by general racist or general liberal attitudes.¹¹

The second argument of Meyers' theory states that the set of ICP determinants is the same in different countries. Thus, the history of the country, its experience, the concept of citizenship or nationality, the perception of the need to protect the nation's identity, or, finally, social conflicts are not crucial for shaping immigration policy (contradicting the theoretical approach focused on national identity as the main factor shaping ICP, see 2.2.3). Dissimilarities in countries' ICPs can be explained by structural factors, such as their geopolitical position, economic structure, or population density. Countries' preferences for

¹¹ *Ibid.*: 201-205, 217.

permanent or temporary migration explain the variations in the immigration control policies of different countries.¹²

Meyers' third argument is that for over one hundred years there have been many similarities in the immigration control policies of the majority of Western countries. These similarities (except for the refugee regime and common EU immigration and asylum policy) can be accounted for by the interdependence between the socio-economic and political factors shaping immigration control policy (e.g. economic prosperity causes states to accept more immigrants, whereas recessions cause states to limit immigration). It is noteworthy that Meyers came to that conclusion after he had examined six alternative explanations for these similarities. Apart from the one mentioned above, the other five were a) the influence of a global hegemon, b) global or regional migration regimes or organisations, c) interdependence between the ICPs of various countries, d) the imitation of a particular country's ICP by other countries, and finally e) the world system approach.¹³

According to the fourth argument, the type of immigration determines the relative influence of the different socio-economic and political factors on immigration control policy. In other words: socio-economic factors influencing labour migration policy will be similar in ethnic (e.g. Germany, France) and settler (USA, Canada) countries but factors influencing labour migration policy or policy towards permanent migration in the same country will be different. This argument is again connected to several hypotheses. Firstly, labour migration policy is predominantly influenced by the economic situation of the country, but further by the '*war-migrant labour link*' and then by foreign policy reflections. To a lesser extent, it can be explained by a liberal (or racist) ideology, as well as the size and composition of immigration.¹⁴ Secondly, taking into account permanent immigration of dissimilar composition, immigration control policy is determined by all five factors, of which the significance is as follows: the size and composition of immigration, the economic condition of the country, liberal or racist approaches, and wars, along with external threats, as well as foreign policy considerations; liberal or racist attitudes determine the selection of immigrants

¹² *Ibid.*: 200.

¹³ *Ibid.*: 224.

¹⁴ The influence of the size and composition of immigration is weaker since economic immigrants are expected to stay only temporarily and to return to their home countries after some time. For that reason, their racial or ethnic characteristics are not so important for the policy. Meyers suggests there are only two cases where the volume and composition of labour immigration affect the policy with regard to economic immigrants. This is firstly when 'the state loses control over labour migration' and may try to regulate migration, and secondly, when it becomes evident that many temporary economic immigrants eventually stay in the host country (Meyers 2004: 18).

and their numbers. Thirdly, ICPs are usually more liberal in the case of permanent similar immigration than in the case of permanent dissimilar immigration. Fourthly, policy in the matter of permanent similar immigration can occasionally be influenced by wars and external threats, severe depressions, and doubts relating to the degree of similarity of the immigrants to the indigenous population. Fifthly, policy with regard to refugees is chiefly determined by foreign policy considerations (e.g. demonstration of opposition to the regimes of the refugees' countries of origin or establishing a good image of the receiving country on the international scene), but not that much by other factors.¹⁵

Finally, the last argument states that whether the receiving society is a settler or ethnic one determines ICP in an indirect way, through the type of immigration that is accepted.¹⁶

The theory represents a broad framework for the comparative analysis of various aspects of immigration policy. Meyers tests it on the immigration control policies of four liberal-democratic industrial countries that have already received significant migratory flows for many years: the United States, the United Kingdom, the Netherlands, and Germany. He explores the changes in the migration regulations of these countries over about one century. Then, on the basis of that analysis and comparison, he draws conclusions.

Meyers' approach is comprehensive and this feature distinguishes it from other theoretical approaches. Christopher Mitchell called the book *a pioneering work*¹⁷ and according to Douglas Massey *Eytan Meyers fills a major hole in the scientific understanding of international migration by theorizing the interests and actions of the state*.¹⁸ In addition, Gary P. Freeman – one of the most famous political scientists dealing with migration issues – values Meyers for the fact that he *is a striking exception who has taken calls for more scientific study of immigration politics altogether seriously*.¹⁹

A question that would enhance Meyers' study is illegal migration and policy towards it. The issue is omitted from his analysis. Nevertheless, Meyers makes some suggestions about that. He notes that immigration control policy with regard to irregular immigration looks for answers to four main questions: 'how many resources should be allocated in order to prevent such immigration, what means should be used in order to prevent illegal immigration,

15 Meyers 2004: 201, 203-213.

16 *Ibid.*: 201.

17 From the Meyers' book cover.

18 *Ibidem*.

19 Freeman 2004: 1567.

and whether to grant amnesty to the immigrants, and whether to grant or to deny them social services'.²⁰

The current study does not represent just one more case to be compared with Meyers' four cases. In spite of the fact that my analysis draws heavily on Meyers' theory, it is inspired by Meyers' thoughts, but it does not simply test them. There are a few reasons for that. Firstly, I focus on labour immigration policy and I ignore other aspects of immigration control policy, such as policy towards refugees or permanent immigrants. Even access to the territory is presented here only as long as it regards economic immigrants. Secondly, I treat my sub-hypotheses (that are based on Meyers' hypotheses) as related merely to labour immigration policy, whereas in Meyers' study similar hypotheses concern immigration control policy as a whole. Thirdly, in the case of Poland it would not be possible to examine immigration policy for one hundred years using Meyers' theory because for a few decades Poland was not a liberal-democratic country. Besides, I have decided to examine only the last seven years of the development of Polish labour immigration policy, i.e. since the moment when Poland became a member of the European Union.

The study could test some other theory, which mainly concentrates on economic immigration. Nonetheless, I decided to base it on Meyers because I find his arguments convincing. His theory is the most suitable for my idea of migration and migration policy. Unlike other theoretical concepts, Meyers' theory does not limit migration to only one type. Simultaneously, it highlights the fact that migration policy depends on a cluster of factors and the type of migration is one of them. Such an approach emphasises the perception of migration as a multidimensional phenomenon affected by various conditions. Even though in this study I deal only with temporary economic migration, I recognize that this type of migration – despite its significance – is not the only one and migration policies should remember about other types as well.

1.3 Clarifications and definitions of terms

Although **labour migration** is usually understood as a cross-border movement for the purpose of employment in another country, there is no widely accepted definition of it, neither of terms related to it. According to the 1990 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'the term *migrant worker* refers to a person who is engaged or has been engaged in a remunerated activity in a State of

²⁰ Meyers 2004: 24.

which he or she is not a national'.²¹ Simultaneously, however, one of the United Nations agencies, the International Organization for Migration, notes, despite the term, 'an economic migrant' is used as a synonym for 'a labour migrant' or 'a migrant worker' in fact the names can refer to different categories of arrivals. Whereas 'a labour migrant' can be applied to a person moving for employment, 'an economic migrant' can be applied either, in a narrow sense, to a person migrating for employment, or, in a larger sense to a person migrating with the purpose of undertaking other types of economic activities such as investors or business travellers. Similarly, labour migration classifications can contain or ignore persons who arrive in another country for job training.²² Additionally, some studies talk about migrants, even though they deal only with an inflow of foreigners, whereas others characterize 'migrants' in general as pertaining to both, immigrants and emigrants.

In this study, **labour immigration** is understood as an inflow of foreigners who are employed in Poland or who are members of companies' boards. The term does not encompass persons running their own businesses, because generally, in Poland foreigners can officially perform economic activities only in the form of a company, e.g. limited liability company. In case that foreigners undertake some economic activity different from regular employment, the activity is classified as performing work on the basis of a civil legal agreement. Hence, the general regulations regarding work permits pertain to such foreigners.²³ Besides, the scale of foreigners' self-employment in Poland is small.

I focused on inflows of nationals of non-EU or so-called third countries. When referring to them, I use all three above-mentioned terms and I treat them as synonyms. To highlight the direction of movement, however, I talk about 'an economic immigrant', 'a labour immigrant' and 'an immigrant worker'. I perceive it as especially important since Poland remains a net emigration country but the study neglects questions related to the economic emigration of Poles. Finally, the Polish legal system does not use the term 'an immigrant' but only 'a foreigner', a person without Polish citizenship.²⁴ Therefore, 'a foreigner' here is used as another synonym to the designation 'an economic immigrant'.

The next clarification needs to be made in connection with the period that a person called 'an immigrant' has spent in the receiving country. In Meyers' analysis, definitions of terms are based on the United Nations categorisation. 'Temporary migrant workers' are

21 United Nations 1990.

22 International Organization for Migration, not dated.

23 Zespół do spraw Migracji 2011: 28.

24 Dz.U. 2003, nr 128 poz. 1175: Art. 2.

therefore defined as people who are supposed to work in the receiving country for a limited period and then go back to their home countries.²⁵ The temporariness of their stay distinguishes them from ‘permanent immigrants’ that the receiving country perceives as settlers and potential citizens (Hammar calls them *denizens*²⁶). The definition does not determine the period for which temporary immigrants stay in the host country. There are authors who concentrate on so-called short stays of labour migrants (e.g. up to one year) but omit for example seasonal immigrant workers.²⁷ In the case of Poland, an analysis regarding short-term immigrants coming only for a period exceeding three months would bring a biased picture of short-term immigration in this country because a great number of foreigners working there are seasonal workers or even a few-days-workers (see 3.2). Labour immigration policy has to take into account all types of inflows related to immigrants’ work. Therefore, the present study refers to labour immigration regardless of the period of working in the Polish territory. The principal point is that the immigrants do not stay in Poland on the basis of a permit entitling them to permanent residence. Foreigners with permanent residence are not treated in this study.

The key term of the study is labour immigration policy. To specify it I should first clarify general definitions of **immigration policy** or possible **migration policy** of which labour immigration policy is a part.

There are many alternative ways of describing immigration policy. For instance, in the introduction to the *Dialogues on Migration Policy*, the editors define migration policy very broadly. To them it covers a few aspects, ‘the regulation of immigration flows (i.e. immigration control), the management of ethnic relations and the integration of minorities living in the host society (i.e. minority integration), together with antiracism and anti-discrimination policies including state intervention against the extreme right’.²⁸ As it is evident, although the defined term is ‘migration’ policy, in fact the definition is limited to matters concerning inflows of foreigners.

Another example comes from Andrea Baršová and Pavel Barša, who, for the complexity of migration issues, use the plural word. They do not talk about ‘immigration policy’ but about ‘immigration policies’ that constitute a part of ‘migration policies’. They understand immigration policies as policies whose aim is to determine which foreigners and

25 Meyers 2004: 26.

26 Hammar 1990: 15.

27 See e.g. Baršová and Barša 2005: 10.

28 Giugni and Passy 2006: 1.

under what conditions can – for a long term or permanently - settle in the host country. In their study, they encompass in this definition approaches pertaining to ‘labour migration’ since the experience of many European countries has shown that so-called temporary economic migration tends to transform into permanent migration. Nevertheless, they exclude from their definition seasonal work, training and other short-time stays.²⁹

A Polish academic, Magdalena Lesińska, talks about migration policy again in with the singular word. In contrast to the previous authors, in the definition she explicitly points at institutional structure as an important element of migration policy. Lesińska’s explanation for migration policy reads: ‘a system comprising a framework of legal regulations and political instruments (together with their anticipated and real outcomes), normative sources (as a rationale for the system) and institutional structure (as a functional basis for the system)’.³⁰

The classical definition of immigration policy can be recognized as the one brought by Tomas Hammar.³¹ For Hammar, immigration policy encompasses two parts: regulation of immigration flows and control of aliens along with immigrant policy. The first one means the rules and procedures that say, who - and under what conditions - can enter the territory of another country and who can stay there. It regulates selection and admission of aliens at the border, granting visas, resident and work permits as well as the whole mechanism of control until the actual crossing of the border by an alien, thus *external control*. It not only concerns the selection from among the volume and composition of immigration applications that the country receives but also the possible *active recruiting* of foreign citizens. Furthermore, immigration regulation and alien control refers to *internal control*. This is defined as regulations regarding the legality of the stay and residence as well as employment and deportation, thus control under which foreigners remain until their naturalisation or until leaving the territory of the country. In contrast, the second one, immigrant policy, pertains to ‘the conditions provided to resident immigrants’ thus, housing, working, education, language training, organisations, participation in trade unions or politics etc.³²

Drawing from the above-mentioned definitions of immigration policy, I understand **labour immigration policy** as the policy aimed at the selection and admission of economic immigrants to the labour market along with their possible active recruitment.

29 Baršová and Barša 2005: 10.

30 Lesińska 2010: 55.

31 Hammar 1985.

32 *Ibid.*: 7.

1.4 Model description

In the present section, I introduce a model which reflects the basic logic of the study and attempts to explain the rather complex matter under investigation. I explain particular elements of it – independent, influencing, and dependent variables, which are at the core of the model, as well as pre-conditions, together with impacts, which belong to the model extension. I also present the relations among these elements.

Public policy is developed in particular circumstances, which compose a framework for decisions and actions that are undertaken. These include structural factors, such as geopolitical position, economic structure, population density, the existence of ethnic or national minorities, the political system, etc. They are relatively stable and hard to change. If any change comes, it is usually a long-term one. In the study, they are called **pre-conditions** or pre-factors. Their influence on policy, here labour immigration policy, is – as Meyers says - strong but indirect, because they determine how socioeconomic and foreign policy factors, i.e. these which are *direct* factors, shape labour immigration policy.³³ For example, the geopolitical position of the country is a pre-condition for the influence of foreign policy considerations: because of Poland's geopolitical position, its LIP would be more affected by considerations of its relations with Ukraine rather than by those with Malaysia (the situation could be different if Malaysia was a former colony of Poland). This, along with other pre-conditions affecting Polish policy, is elaborated in 3.1.

Factors influencing immigration control policy towards economic immigrants act as independent variables in the present study. Looking for an explanation of what lies behind labour immigration policy, I determined four socioeconomic and foreign policy factors. As this study draws on Meyers' hypotheses accounting for policy towards labour immigration the factors resemble those of Meyers. Nonetheless, I made a few modifications.

Firstly, I excluded wars from the group of factors since there has been no war to influence Poland's ICP in recent years. I replaced them with security considerations. Secondly, I neglected ideological cycles because the period of seven years that the study examines I consider as being too short for that. Hence, the set of factors taken into account in the analysis comprises the state of the economy, the volume and composition of labour immigration, security considerations as well as foreign policy reflections.

33 Meyers 2004: 225.

The first factor, the state of the economy, is the main one for the development of the labour immigration policy. It consists of many elements. Nevertheless, to simplify a complex process, in the study the state of the economy is evaluated on the basis of a few macroeconomic indicators. These are mainly the level of the unemployment rate and the gross domestic product (further referred to as GDP), but I also refer to the level of investments (including foreign investments), which can be connected to labour force demand, and to foreign turnover.

A government develops its labour immigration policy in response to demands from interest groups, and from political parties. Depending on the economic situation of the country, they attempt to influence the government to adopt a particular course of action. Usually, trade unions pressure the government to restrict economic immigration in times of economic decline. In contrast, employers' organisations call on the government to liberalise the policy when the economy is on the rise and a labour force is needed.³⁴ As Meyers observes, when the government loses control, the LIP is in fact shaped by the employers.³⁵

³⁴ Nevertheless, the role of trade unions in influencing ICP does not always seem to be that clear.
³⁵ Meyers 2004: 17.

MODEL OF THE ANALYSIS³⁶

Pre-conditions
Structural factors, e.g.:

- demographic situation,
- geopolitical position,
- economic structure,
- political system,
- the level of centralisation,

(factors that are relatively stable and hard to change)

Causal pathway		
Independent variables	Influencing variables	Dependent variables
<p>Shaping factors:</p> <ul style="list-style-type: none"> • the state of the economy, • foreign policy reflections, • the volume and composition of labour immigration, • security considerations, <p>(factors that change slowly; a state has to take them into consideration while creating its LIP since they determine the state's national interests; they are reflected in the migration strategy)</p>	<p>Intervening factors:</p> <ul style="list-style-type: none"> • interest groups' activities (e.g. trade unions, employers' organisations, immigrant organisations, NGOs, political parties) • public opinion <p>(soft flexible factors; a state can but does not have to take them into consideration while creating its ICP)</p>	<p>Labour immigration policy, outcomes that take the form of laws and ministerial regulations concerning (desired):</p> <ul style="list-style-type: none"> • volume and composition of legal labour immigration, • categories of legal labour immigration

Other factors responsible for a policy gap, e.g.

- flawed policies;
- macro-structural factors which had not been taken into consideration;
- domestic and international political constraints;
- ambiguous policy intentions

(Actual)

- volume and composition of labour immigration as well as permanent immigration
- proportion between the number of highly and low-skilled migrants

36 This illustration was adapted from a picture drawn by my supervisor, Gaudenz Assenza.

The next variable – the volume and composition of labour immigration – refers to how many (temporary) economic immigrants, who are neither EU/EEA citizens nor EU-citizens' family members, and from which sending countries, have already worked in the receiving country. Here immigrants are treated as a mass, as a subject of governments consideration. This remains in contrast to the moments, when they are taking actions as immigrant organisations and become an object, one of the players. The size of legal labour immigration (as an independent variable) is measured by the number of documents entitling the bearer to employment in Poland that were issued to foreigners in particular years.

Another factor is security considerations. These relate to the situation when the introduction of some labour immigration policy measures results from the fact that foreigners – all, or particular types of foreigners or foreigners of a particular origin – are believed to endanger the host country and host society in some way. For instance, some restrictions can be set up because of the fear of foreigners' criminality or terrorism (so-called hard threats) or the fear that they endanger the position of native workers on the labour market (soft threats).

Finally, the last factor, foreign policy reflections, can deal with several things: reflecting relations with immigrants' sending countries, relations with other countries (including particular EU member states), and e.g. the state's image as a receiving country on the international scene.

As elaborated elsewhere (2.2.2), there are many linkages between international relations and migration. On the one hand, migration policy can affect international relations; on the other hand, migration policy can be shaped by relations between states. Additionally, immigrants themselves (as an interest group, as an object) can affect the politics of both the host and home countries. These relations can pertain to various issues. Examples include economic cooperation, political relations, and the problem of the *brain drain*, together with other consequences of the state immigration policy. Every country is vulnerable to the migration policies of others. For instance, setting a more restrictive policy in one country can increase the migration pressure on another country.³⁷ Therefore, policymakers should consider what kinds of consequences for the neighbouring countries particular ICP measures could bring.

In contrast to the pre-conditions (structural factors) presented earlier, the socioeconomic and foreign policy factors, which are independent variables in the study,

³⁷ Examples of that situation are given *inter alia* in Brochmann 1999: 17.

influence labour immigration policy directly. A state has to consider them when making decisions regarding its foreign workforce.

At the core of the model, in addition to independent variables, there are also *soft* and easily-changing **influencing variables**, which can – but do not have to – affect the formation of immigration control policy with regard to economic immigrants. These are the activities of interest groups (employers' organisations, trade unions, immigrants' communities, and non-governmental organisations) and particular political parties. To distinguish them from the pre-factors and shaping factors, they can be called intervening factors. Another influencing variable may be the attitude of public opinion with regard to immigration. This is, however, mainly important in crises or unusual situations.

An **outcome** of the effect of the above-mentioned factors is immigration control policy in the matter of labour immigration. The outcome takes the form of decisions regarding the volume, composition, and categories of legal labour immigration. Here these elements represent **dependent variables**. The following sections discuss them in detail.

The volume of accepted labour immigrants indicates whether the policy is restrictive or liberal: when the policy is liberal, then the number of immigrants to be accepted is high; in the case of a restrictive policy, the situation is the opposite.

It seems it is easy to talk about the volume in the case of states which set some system of quotas. If labour immigration is not connected to such a system, it is also possible, however, to judge the restrictiveness of the policy. Even though the size is not expressed in a concrete number, the evidence of it can be the width of the channel through which labour immigrants can get into the labour market of the receiving country. This means, for example, the number of cases excluded from the obligation to have a work permit and the number of cases in which a simplified procedure can be applied, but also the general complexity or simplicity of the work permit issuing procedure or visa procedure (in the case of a visa connected to access to the labour market).

The composition of labour immigration is related to which countries the state favours labour immigration from and whether economic immigration from some countries is facilitated, e.g. if there are some special conditions or programmes for the workforce from particular states.

It can seem that the composition of a foreign workforce (which is expected to be temporary) is not as important as in the case of permanent immigrants (who will affect the character of the receiving society). Nonetheless, first, having in mind the experience of Western European countries or the United States (the already-mentioned *illusion of the return*

of guest workers), governments need to take into account the possibility that one day temporary immigrants can settle in the host country. Second, immigrants and immigration policy affect the host country's relations with the immigrants' home countries. Therefore, the composition of immigration, including labour immigration, is important from the point of view of foreign policy issues. Third, citizens of particular states can have some added value in comparison to citizens of other states. For instance, they may know the market in the home country, be able to work on the same production facilities as these used in the host country, or speak a language similar to that used by the receiving society.

The categories of legal labour immigration are another matter. This is connected to immigrants' qualifications; to whether, for the destination country, it is more important that they bring their *heads* or their *hands*. A state can liberalise access to the labour market for highly skilled immigrants but restrict it for low-skilled foreign workers. However, it may also need foreigners with low skills, or at least these who are willing to do jobs which do not require high qualifications and which are avoided by native workers. This is especially the case of labour force demand in the secondary segment of the labour market.

The **impact** of labour immigration policy can be different from what is planned. The actual state of foreign labour – its volume and composition, along with the number of immigrants possessing particular skills, the proportion between the numbers of highly skilled and low-skilled immigrants – is influenced by another set of factors. These are responsible for a policy failure or policy gap, which is examined by, for instance, Wayne A. Cornelius et al. Among them there can be for instance: flawed policies, macro-structural explanations, which had not been earlier taken into consideration (Cornelius points e.g. at 'structurally embedded' demand for foreign workers), then domestic and international political constraints as well as ambiguous policy intentions.³⁸ The last one refers not only to difference between declared and actual intentions of policymakers. It also covers issues such as relationship between national and local governments and the fact that local authorities often enjoy substantial discretionary power in the implementation of national policy as it is noted *inter alia* by Tiziana Caponio.³⁹ Their analysis, here put only in the model extension, goes beyond the scope of this study. Nevertheless, it is important to add it here for at least one reason. The model is dynamic, and all factors interplay and influence one another (arrows on the model). The impact influences further policymaking. For example, the actual size and composition of labour immigration

38 Cornelius et al. 2004: 7-14.

39 Caponio 2010: 178.

again becomes an independent variable for subsequent decisions, whereas possible problems with achieving planned policy goals provide important experience which can be used during the preparation of later amendments.

Similarly, the dynamics are present at other places in the model. The activities of interest groups or political parties can directly influence the shape of the policy and indirectly influence its impact,⁴⁰ etc. The possible results of one group's activities can be modified by the activities of other groups. Immigrants' presence on the labour market can affect the state of the economy (investments, foreign turnover, GDP etc.), as well as foreign policy considerations, as stated earlier. Even pre-conditions change. This change is very slow. However, after some time immigrants can substantially affect the demographic structure of the receiving society. These are just some of the possible dynamics taking place in the web of the above-mentioned elements.

Immigration control policy and its outputs, outcomes, and impacts form a spiral of relations: the enforcement of every regulation affects the immigration situation and brings new experience for policymakers.

1.5 Hypotheses

If the state needs to decide about the shape of its labour immigration policy, three basic questions need to be answered. First, how many economic immigrants will we accept? This is a question concerning the volume of labour immigration. Second, what particular skills are most needed and how can immigrants provide these? For example, does the state need low-skilled workers or highly skilled migrants (or possibly also semi-skilled ones)? What professions are most needed? Finally, the third question is: where will we get them? In other words, are there any countries of origin that we prefer? If yes, which are they? Here I omit the issue of the general need for a foreign labour force, since I recognise that a liberal-democratic country cannot simply ban this kind of immigration.

To identify the factors influencing decisions regarding all these questions, the study challenges one main hypothesis, together with several sub-hypotheses. Whereas the hypothesis explain what factors shape the policy, the sub-hypotheses show the way in which particular factors do that.

The hypothesis reads:

⁴⁰ E.g. trade unions as gatekeepers to organised branches, trade unions influencing working life – Brochmann 1999: 16.

The policy towards legal labour immigration is mainly determined by the state of the economy. It is also shaped by foreign policy considerations. Labour immigration policy is influenced to a lesser degree by the volume and composition of immigration or by security considerations. The influence of these factors may be modified by pressure from interest groups, political parties, and public opinion.

The main factor shaping labour immigration policy is the state of the economy. In practice, it may affect labour immigration policy through interest groups, such as employers' organisations and trade unions, who may function as carriers of the factor. Besides, the policy depends on the relations of the state with other states, mainly the economic immigrants' countries of origin and on the policy of the relevant regional integration scheme (e.g. the European Union). Additionally, economic immigration itself, and its volume and composition, affect the policy, but this impact is rather small. The last influencing factor is security considerations, although their effect is much smaller than it would be in the case of policy aimed at access to the receiving country' territory.

The relative effect of all these factors can be modified by the activities of interest groups such as employers' organisations, trade unions, or immigrant communities, or – in particular in some extraordinary situations – by public opinion. Therefore, the final version of particular measures may differ from the one formulated in a bill. Whether the interest groups act as carriers of the factors or modifiers of them depends on which stage of the legislative process they start to become involved at.

The four factors affect labour immigration policy in various ways. The sub-hypotheses presented below explain that interdependence.

Concerning the state of the economy, there are two sub-hypotheses. The first one, taken from Meyers' theory, states:

a) Recessions cause a host country to accept fewer immigrants (i.e. to restrict immigration), whereas economic prosperity causes them to accept more immigrants (i.e. to liberalise the policy).

The hypothesis regards the overall size of labour immigration to be accepted. In general, the higher the growth of GDP, the lower the unemployment rate and the more vacancies there are, and thus the more economic immigrants the state is willing to accept. In contrast, in the case of low growth of GDP, a high unemployment rate, and a small number of vacancies, the state limits the number of labour immigrants.

While making a decision, the policymakers (can) take into account the voices of employers' organisations or trade unions. The former usually, but in particular in times of economic prosperity, lobby for the liberalisation of the ICP towards economic immigrants. The latter usually want to restrict it.

The demand for foreign labour results from the lack of a sufficient number of native workers ready to take particular positions. There can be at least three reasons for such a lack. Firstly, these jobs may require qualifications that nationals do not have. Secondly, these may be badly paid positions labelled as 3D jobs (dirty, dangerous, and demeaning). Thirdly, in times of economic prosperity labour demand overrides labour supply. In such a situation, trade unions silently accept the liberalisation as it lets native workers move up the social ladder (immigrants would take the worst jobs). In contrast, recessions cause trade unions to oppose labour immigration (at the same time there is no pressure from employers to maintain the level of acceptance of a foreign workforce).

Apart from these two, there are also other interest groups which can be involved in the issue. These include, for instance, political parties and especially those from the extreme right, which can try to misuse a possible economic crisis to gain public support. They blame immigrants for the worsening economic situation of native workers and the government for *allowing that*.

The second sub-hypothesis states:

b) The situation on the labour market determines the state's policy towards particular categories of economic immigrants.

The aforementioned changes in the economic cycle affect labour immigration policy only in a general way. Sub-hypothesis a) considers the effect of the state of the economy on the general size of labour immigration. In fact, the relations between the state of the economy and the labour immigration policy are much more complex since the term 'state of the economy' encompasses many other elements in addition to those mentioned above.

Sub-hypothesis b) shows that the state of the economy affects the policy with regard to immigrants representing particular professions (both highly skilled and low-skilled). It can help to understand circumstances when – e.g. because of the above-mentioned emergence of the labour market secondary segment – despite a high unemployment rate, a demand for a foreign labour force occurs. Furthermore, it is applicable when the demand for a foreign workforce appears because of the existence of structural unemployment. In situations of this kind, the liberalisation of labour immigration policy affects only selected professions.

A second most important shaping factor is considerations of foreign policy. Like Meyers, the study examines the hypothesis that states:

c) Considerations of foreign policy tend to facilitate the liberalisation of labour immigration policy (in terms of the size and composition of immigration).

It has already been noted that immigration control policy can serve as a foreign policy instrument.⁴¹ In the case of labour immigration policy, a state can mainly use it to improve its relations with its allies.

The interdependence between the volume and composition of labour immigration and LIP is expressed by the hypothesis:

d) The more labour immigrants are considered as similar to the domestic workforce, the more the state is willing to liberalise its policy towards them.

The effect of the volume and composition of labour immigration is smaller than the influence of the state of the economy or foreign policy considerations. Nevertheless, it is taken into account in LIP formation. This is because the experience of many countries with ‘temporary economic migration’ which eventually became permanent caused receiving countries to be more cautious in the matter of labour immigration and to take into consideration the fact that every temporary worker can indeed become a permanent inhabitant of the country. Therefore states can pay attention to similarities between potential migrant workers and domestic workers. These similarities can pertain to the culture they represent or the language they speak, but also to things such as the educational system they graduated from, and other issues facilitating inclusion into the labour market.

Finally, the relationship between security considerations and labour immigration policy is as follows:

e) Security considerations tend to hinder the liberalisation of labour immigration policy.

Certain instruments of a liberalised labour immigration policy can be misused by some foreigners to get into the country legally. Considerations of possible threats they can bring (such as criminality, but also not paying taxes) may reduce or even block LIP liberalisation.

The four factors – the state of the economy, foreign policy considerations, the volume and composition of labour immigration, and security considerations – are the main ones, which shape ICP regarding legal labour immigration.

41 See e.g. Mitchell 1989 or Weiner 1985.

Overview of goals, research questions and hypotheses

GOAL

To explain immigration control policy regarding legal labour immigration.

RESEARCH QUESTION

What factors shape immigration control policy towards legal labour immigration, and how?

HYPOTHESES

What does influence LIP?

Policy towards legal labour immigration is mainly determined by the state of the economy. It is also shaped by foreign policy considerations. Labour immigration policy is influenced to a lesser degree by the volume and composition of immigration or by security considerations. The influence of these factors may be modified by pressure from interest groups, political parties, and public opinion.

How does it influence LIP?

- a) Recessions cause a host country to accept fewer immigrants (i.e. to restrict immigration), whereas economic prosperity causes them to accept more immigrants (i.e. to liberalise the policy).
- b) The situation on the labour market determines the state policy towards particular categories of economic immigrants.
- c) Foreign policy considerations tend to facilitate the liberalisation of labour immigration policy (in terms of the size and composition of immigration).
- d) The more labour immigrants are considered as similar to the domestic workforce, the more the state is willing to liberalise its policy towards them.
- e) Security considerations tend to hinder the liberalisation of labour immigration policy.

1.6 Research methods

Before the methods used for the purposes of the current study are presented, it is worth underlining that an important characteristic of the analysis of the policy is its methodological pluralism. There are no concrete methods or procedures which are prescribed for it. It means that the policy analysis is based on a multimethodological approach. From the spectrum of research methods, academics choose those which are appropriate for their particular research goals, as well as for the content which is to be analysed.⁴²

In the present study, I am using an empirical-analytical approach,⁴³ which is currently the most common one in political science. This approach attempts to draw a strict distinction between what there *is* (and therefore can be identified) and what there *should be* (or what somebody could perceive as desirable). It deals only with *objective* and *subjective* aspects of political reality.⁴⁴ While *objective* aspects can be defined as structures and processes that actually exist in the external world and are describable, *subjective* ones relate to the meaning that people additionally give to them.⁴⁵ The assumption of the approach is neutrality and impartiality.

Out of the four most commonly used methods in empirical-analytical approaches, i.e. an experiment, a statistical method, a comparative method, and a case study,⁴⁶ I have opted for the last one. Next, I define more concretely what a case study is. Afterwards, I present the methods of data collection and methods of data analysis.

Case study methodology. A case study represents a frequently used research method in contemporary political science. It is acknowledged as a *distinctive form of empirical inquiry*, useful for both the development and evaluation of public policies. Additionally, it is important for developing explanations as well as testing theories accounting for political phenomena.⁴⁷ Buttolph Johnson, and Reynolds assume that case studies may have great value in many circumstances. They may help to understand the causal processes better, to clarify a general explanatory theory, and to develop hypotheses regarding phenomena which are difficult to

42 Fiala and Schubert 2000: 39.

43 The others are ontological-normative and historical-dialectical approaches.

44 Berg-Schlösser and Stammen 2000: 87.

45 *Ibid.*: 51.

46 *Ibid.*: 130.

47 Yin, Robert in Buttolph Johnson and Reynolds 2005: 84.

observe.⁴⁸ Buttolph Johnson, and Reynolds find case studies to be especially helpful for testing hypotheses which are deduced from existing theories of politics.⁴⁹ It is worth mentioning that interestingly, this perception differs from the approach of Fiala and Schubert. According to them, the role of the case study lies mainly in generating hypotheses or in gaining additional detailed knowledge; they are useful rather for formulating questions than for answering them.⁵⁰

In general, there are three purposes for which a case study may be applied. These are exploratory, descriptive, and explanatory purposes. An exploratory case study may be used when the knowledge about a particular political phenomenon is limited. A descriptive case study is conducted when the aim of the study is to find out and describe what happened in a particular situation. Finally, an explanatory case study – such as the current one – addresses questions of ‘how’ and ‘why’. As Buttolph Johnson, and Reynolds point out in that regard, ‘(t)he strongest case studies start out with clearly identified theories that are expected to explain the events’.⁵¹

Despite the above-mentioned advantages of case studies, it must be acknowledged that they have some serious limits which make their critics question case studies as a research method. The most often-repeated reproach is the inability to draw generalisations from a single case or to apply the knowledge gained from the examination of a particular case to other cases. As Berg-Schlosser and Stammen point out, there is one great dilemma connected to case studies; on the one hand, they attempt to capture the nature of the case being examined, while, on the other hand, they try to deal with variables in a way which would permit comparisons with other cases.⁵²

As already stated, the current study examines the case of Poland and, specifically its labour immigration policy in the period from May 2004, i.e. Poland’s accession to the European Union, to June 2011.

Data collection. For the purposes of the study, out of the three basic techniques usually used in empirical research, i.e. survey research, participant observation, and content analysis,⁵³ I opted for the last one. Specifically, I made a qualitative analysis of the content of documents

48 Buttolph, Johnson, and Reynolds 2005: 88.

49 *Ibid.*: 85.

50 Fiala and Schubert 2000: 45.

51 Buttolph, Johnson, and Reynolds 2005: 85.

52 Berg-Schlosser and Stammen 2000: 134.

53 Fiala and Schubert 2000: 41.

and – additionally – of records of interviews carried out with experts. The following paragraphs present the actual sources and methods of data collection.

The main and invaluable source of the documents analysed in the study was the website of the lower chamber of the Parliament (Sejm, *Sejm*), www.sejm.gov.pl. It is perfectly structured and it gives easy access to a number of documents.

For me, the most important was access to ‘Works of the Sejm’ for various terms of the Sejm, where I could follow the legislative process regarding acts and their amendments. From the particular parliamentary print (*druk sejmowy*) I had access to the bill and its justification, the opinions of experts regarding the bill, records of the commissions’ sessions, and reports from them. I also found there the number of the particular parliamentary session where the act was discussed. On the basis of the numbers of the parliamentary sessions, I was able to find written records of the entire debates at another place on the Sejm website.

Next important source of documents was the Internet System of Legal Acts, also available from the Sejm website. The system offers the complete sounding of laws, ministerial regulations (ordinances), announcements, dispositions, international agreements etc. In general, it consists of everything that was published in two sources. The first one is the Journal of Laws of the Republic of Poland (*Dziennik Ustaw Rzeczypospolitej Polskiej – Dz. U.*), which – in its paper version – is the only official source of law for promulgation of Polish laws. The second one is the Official Gazette of the Republic of Poland (*Monitor Polski – M. P.*), a journal of the Polish Prime Minister, which publishes legal acts in Polish law that are not a source of further laws, as well as various decisions and information which it is required to make public.

A great advantage of the Internet System of Legal Acts is that it is easy to find there not only the actual sounding of the laws but also their previous versions, including those which are not in force any more, or particular amendments. Moreover, from each legal act it is possible to get to all the executive acts connected to it and also to further references.

Additionally, but to a much lesser extent, I used the website of the upper chamber of the Parliament (Senate, *Senat*), www.senat.gov.pl, when I was looking for records of the Senate sessions.

The second type of data was documents coming from the part of the legislative process before the bill is sent to the Parliament. Thanks to the kindness of employees of the archives of the Ministry of Labour and Social Policy as well as the Department of the Labour Market of the Ministry, I got many opinions regarding particular bills given by various authorities, institutions, and stakeholders. Furthermore, I received from them several dozen documents

related to the executive acts, i.e. their drafts and justifications (which are not available on the website after they are issued), as well as the commentaries and opinions of authorities and stakeholders about them.

The main legal act which is analysed in the current study, along with all the above-mentioned documents accompanying it, is the 2004 Act on the Promotion of Employment and Labour Market Institutions⁵⁴ and its four most important amendments (2005, 2007, 2009, and 2010),⁵⁵ together with ministerial regulations that are relevant for immigrants' labour. Another act examined here is the 2007 Act on the Polish Charter that opened Polish labour market to people of Polish origin.⁵⁶ In addition to these acts, I became acquainted with several other acts and ministerial regulations (ordinances), where I searched for rules related to the topic of the study. Eventually, they were not taken into account in the study as I considered them irrelevant. This was true, for example, of the 2004 Act on Freedom of Economic Activity⁵⁷, which I decided to exclude from the analysis because, in general, foreigners can perform economic activities in Poland only in the form of a company, as it was said earlier.

Finally, the third additional source of data consists of interviews with experts. All of them were authors or co-authors of particular bills or of amendments to the acts. To keep their anonymity, I use the abbreviation I1, I2 and so forth.

I chose elite interviewing as the data collection method for several reasons. Firstly, I tend to believe that it would be difficult to uncover the actual factors influencing immigration control policy outcomes by only conducting document analysis. I wanted to ask people who have direct influence on the creation of rules regarding immigrants in Poland what factors they took into account when they were preparing or cooperating on the formulation of the original texts of the bills, which were sent to all the other actors for comments only afterwards. I supposed that there could be some factors influencing policymaking, which are not mentioned in any written document. I was curious about the experts' own interpretation of policymaking.

The key for choosing particular persons for interviews was their direct involvement in the creation of immigration regulations in recent years. Their participation in the process meant writing the original phrasing of the bills, cooperation on the elaboration of the drafts of the bills, or giving opinions about them before they were sent to stakeholders. My colleagues

54 Dz. U. 2004, nr 99 poz. 1001.

55 Dz. U. 2005, nr 164 poz. 1366; Dz. U. 2007, nr 176 poz. 1243; Dz. U. 2009, nr 6, poz. 33; Dz. U. 2010, nr 257 poz. 1725.

56 Dz. U. 2007, nr 180 poz. 1280.

57 Dz. U. 2004, nr 173 poz. 1807.

from the Centre of Migration Research at the University of Warsaw provided invaluable help with choosing and contacting the experts.

Altogether, I interviewed seven people. Three of them were from the Department of the Labour Market of the Ministry of Labour and Social Policy; two were from the Department of Migration Policy of the Ministry of Interior and Administration, and two were academics who at the same time belonged to the Team of Strategic Advisors of the Prime Minister of Poland. Three of the interviewees were simultaneously members of the interministerial Team for Migration, which worked out the strategic document called Polish Migration Policy that was passed to stakeholders in April 2011. Since the group of people directly involved in the creation of labour immigration policy in Poland has been quite small for a few years, the interviews covered a relatively large part of it.

The interviews took place in Warsaw, at the workplaces of my interviewees, in the first half of June 2010. All of them were carried out in Polish. With one exception, when the interviewee preferred me to take notes, they were recorded on a dictaphone. None of my interviewees asked me to send them the rewritten text of the interview for verification.

Each interview started with a general question about factors influencing labour immigration policy. Further questions were asked in a non-standardised, individual way, depending on the answers of the interviewees. It must be underlined that unlike the document analysis, which brought findings regarding particular acts, the interviews were of a more general character. I asked about factors influencing the policy in general and only when the interviewee referred to the particular act or instrument I asked additional questions that were more concrete. I chose that way for two main reasons. Firstly, even though I met many of the people involved in the preparation of bills or ordinances, I did not meet all of them. I had problems with finding some of the key persons, e.g. because they had retired or left for a diplomatic post. Besides, in the case of some older acts, nobody remembered who the author of the original version of the passage regarding foreigners was. Consequently, if I asked questions concerning each amendment and ministerial regulation, the interviewees' answers would not cover all of those documents. Secondly, I expected that today, a few years after working on the original version of the bill or the ordinance, the people involved in that would not remember the exact factors they took into account in particular cases, apart from some exceptional situations.

After I had analysed the content of the interviews, I contacted a few of my respondents again by email and asked them further questions. Only one of them answered in writing and one answered the questions by phone.

As far as statistical data are concerned, in the case of migration data I used the Continuous Reporting System on Migration (known by its French acronym, SOPEMI), which is prepared under the auspices of the Working Party of the Organisation for Economic Co-operation and Development. Apart from that, I used data directly taken from the websites of the Polish Central Statistical Office, the Ministry of Labour and Social Policy and – in the part presenting macroeconomic data – the World Bank. Additionally, I received by email some data from the Ministry of Labour and Social Policy, the Office for Foreigners, as well as from the Ministry of Foreign Affairs.

Analysis. For the purpose of the current study, altogether I went through several hundred assorted documents. In this I was greatly helped by the possibilities that the computer gives in relation to searching within a document. Thanks to that, while going through the records from the meetings of the parliamentary commissions, parliamentary debates, governmental justifications for the bills, etc., I was able to get directly to the paragraphs related to foreigners which I was looking for. With regard to paper documents which I received by regular mail from the Ministry of Labour and Social Policy, I had to skim them without using any tools.

In the case of electronic sources, the analysis proceeded as follows. I collected all the sources regarding a particular act or its amendment. I found all the paragraphs that mentioned the employment of immigrants and I copied them into one document, while carefully describing the source from which I had taken them. I read them once more, marking all those sentences that gave reasons for the introduction of particular rules regarding immigrants' work. Then, next to the sentences I placed boxes in which I briefly put the names of particular reasons, more or less as they were formulated in the document. In this way, there were boxes with phrases such as *shortages on the labour market, new economic challenges, decreasing supply of the domestic labour force, or long procedure for the issuing of work permits*. At the end, I added other boxes with more general categories, such as *economic factors, or experience with applying previous rules*. Some of the categories copied the names of factors which the hypotheses of the current study mention; others, however, e.g. *experience with applying previous rules or demographic considerations*, were completely different.

I proceeded in a similar way in the case of paper documents received from the Ministry of Labour and Social Policy (henceforth referred to as MLSP), but this time I made the annotations directly onto the documents themselves.

Proceeding in that way, I identified a spectrum of factors that were raised during debates about foreigners' employment on the Polish labour market or that were referred to by

various authorities or stakeholders. Nevertheless, the particular factor, e.g. *economic situation*, could be raised simultaneously as an argument both for and against the liberalisation of access to the labour market, depending on who was pointing it out. For this reason, I had to take into account the context in which the argument was indicated. To do that, in other boxes, I named the question that the argument referred to, for example, *simplification of the procedure for the issuing of work permits* or *the fee rates decreasing*.

Then I still had to solve the question of which of these factors were the ones that actually affected the final shape of the particular act or the amendment. The analysis did not have a quantitative character because the number of times that the particular factor was referred to does not need to relate to the real importance of the factor. For instance, some argument might be mentioned only once in the governmental justification for the bill, and no one had to refer to it again later. This fact, however, did not reduce the significance of that factor on the law. Conversely, the fact that a member of the parliament raised a certain argument during a plenary session did not necessarily have to mean that the factor eventually modified the act.

Keeping these notions in mind, while examining the real effects of the factors I paid attention to the moment and the place where they emerged as arguments and whether, after their appearance, the act was modified in the spirit of these arguments. The most important arguments were those which were mentioned in the governmental justifications for the bills sent to the Parliament together with the bills. The justifications not only revealed factors that the government took into account while preparing the original versions of the bill but also referred to the main opinions of stakeholders which were or were not considered in the version sent to the Parliament. Arguments different from those included in the governmental justifications were important for the current study as long as after they were raised, the bill was modified. Therefore, I compared various versions of the act to find out what amendments were introduced into the bill before it was accepted.

In the case of ministerial regulations that were not sent to the Parliament together with the bill but were issued by the minister separately, I proceeded in a similar way as in the case of the legal acts. I paid the greatest attention to the arguments that appeared in the ministerial justifications for the ordinances; then I went through the reactions and opinions of various authorities and stakeholders and I examined what possible changes in the ministerial regulations themselves they contributed to.

An attempt to identify the factors influencing labour immigration policy in the above-mentioned way has some limitations regarding the very first steps of the preparation of the

bill. This relates to the intentions of the people who wrote the original versions of the bills or ordinances before they were sent to the stakeholders for consultation. Furthermore, it regards various factors that might have influenced the texts when they were discussed behind the closed doors of ministerial rooms. Referring to this, I recall the theses of Wayne A. Cornelius, who is interested in the *policy gap*, i.e. the difference between the intentions accompanying the introduction of a particular legal act and the actual impact that it has on the migration situation. According to Cornelius, one of the explanations for the policy gap is ambiguous policy intentions and, specifically, a difference between the declared immigration policy and the actual intentions.⁵⁸ Attempting to minimise the above-mentioned limitation, I decided to carry out interviews with people writing those parts of the laws that regulate foreigners' access to the labour market or who take part in the preparation of the bill at the very beginning and to ask them about factors shaping labour immigration policy.

To analyse the interview contents, I re-wrote them and I attached similar boxes to the text as in the case of the document analysis.

Finally, I need to add that all the documents that were analysed were in Polish and the interviews were carried out in Polish as well. Similarly, the analysis was performed in that language and in the study only its results were translated into English.

58 Cornelius et al. 2004: 14.

2 RESEARCH CONTEXT

Immigration and immigration policies are areas which are gradually gaining greater and greater attention from academics. The current chapter demonstrates some examples from the body of literature devoted to these topics. Additionally, it presents theories explaining the formation of immigration policy which are alternatives to the theory that the current study draws on.

2.1 Literature review

The academic output in the area of immigration and immigration policy is rich. There are many publications devoted to various aspects of the two. Not many of them are interested exclusively in the access of foreigners to the labour market. Nevertheless, those dealing with immigration control policy in general usually give at least some consideration to questions of the openness of the labour market to foreigners or the protracted stay of temporary economic immigrants who eventually become permanent immigrants. This section presents examples of some authors and some publications to which other academics frequently refer.

There are a few interesting and simultaneously important volumes presenting overviews and comparisons of immigration control policies in selected countries. Something of a classic is *European Immigration Policy: A Comparative Study*, edited by Tomas Hammar. It was published for the first time in 1985, but recently, in 2009, it was republished in its original version. The book provides an analysis of the immigration policies of six Western European countries. Hammar introduces a definition of an immigration policy that is often referred to by other authors (it is recalled here in 1.3). His comparison is concentrated around questions of economy and ideology, immigration regulation and the control of aliens, immigrant policy, and the policymaking process. One of the conclusions he reaches (as early as in the middle of the 1980s) pertains to the end of divergence in immigration policy and the beginning of the trend towards its convergence.

An interesting set of case studies appears in the publication *Regulation of Migration: International Experiences*, edited by Anita Böker et al.⁵⁹ The book introduces the regulation of migration in a few Western European countries and the United States from a historical perspective, as well as contemporary migration policies in these regions, but also in Eastern European countries. Particular chapters deal with the policies of selected countries but

⁵⁹ Böker, Groedendijk and Havinga 1999.

simultaneously they generally concentrate around three main questions. When do states try to regulate migration and what are their aims? What instruments do states use for the regulation of migration? Finally, what are the possibilities for regulating migration in a liberal-democratic state? The book raises many various interesting issues dealing with the regulation of migration, and therefore only a few examples can be given here. For instance, with regard to the first question, the authors examine the origin of the regulation of migration. Whereas one author attributes it to the growing number of labour immigrants and to the changing political situation before and after the First World War,⁶⁰ another one attributes it to the rise of the welfare state.⁶¹ An example regarding the second question can be the main conclusion from the chapter on sanctions against employers employing irregular immigrants. The analysis revealed that such sanctions are ineffective and the factor that decides who works where is simply developments on the labour market.⁶² Concerning the last matter, i.e. possibilities for regulating migration, an interesting aspect that arises in the book is the counterproductive effects of barriers against immigration. For instance, strict immigration controls in the European Union countries prevent many immigrants from returning to their countries of origin, because the immigrants are afraid they would not be able to go back to the EU.⁶³

At the end of the 1990s Tomas Hammar, this time together with Grete Brochmann, edited another publication on immigration control policy, *Mechanism of Immigration Control: A Comparative Analysis of European Regulation Policies*.⁶⁴ The book demonstrates the immigration policies of eight European countries. It provides a deep analysis of various aspects of immigration control, e.g. its determinants, preconditions, stages, types, and instruments, and the relation between control efficiency and the labour market. The authors conclude that since the end of the 1980s, European states have become regularly more focused on controlling immigration. The authors observe a few general tendencies in immigration policies, e.g. the effectivisation of control, its clandestinisation, the tendency to over-administration and bureaucratisation, concentration on *flows* rather than on individuals, the politicisation of immigration, the externalisation of control, the emphasis on preventive measures, and the growing interrelations between the labour market structure and control mechanisms, as well as the conditional convergence of immigration control in Europe.

60 Caestecker 1998.

61 Lucassen 1998.

62 Snowden 1998: 169.

63 Thränhardt 1998: 267.

64 Brochmann and Hammar 1999.

In his work *The Politics of Migration and Immigration in Europe* Andrew Geddes provides one more set of chapters devoted to the migration policies of selected EU countries. Each one is divided into sections dealing with immigration policy, immigrant policy, and European integration and this division makes further comparisons easier. With regard to the Europeanisation of the immigration policies of Central and Eastern European countries, the author concludes that the EU policy was simply exported to the candidate states and that this export was based at the same time on three things, i.e. coercion, willingness, and mimicry.⁶⁵

Another publication worth referring to here is *European Migration Policies in Flux: Changing Patterns of Inclusion and Exclusion* by Christina Boswell.⁶⁶ In it the author demonstrates the evolution of post-war immigration policy in Western Europe and deals with approaches towards asylum seekers and irregular migrants, questions of integration, and the international context, as well as new policies on labour migration, which means the more liberal approach toward labour immigrants that has been observable e.g. in the UK and Germany since the beginning of the new millennium.

An important volume examining immigration control policies is *Controlling Immigration. A Global Perspective*, edited by Wayne A. Cornelius et al.⁶⁷ The publication focuses on the limits of government intervention in immigration control issues and reveals and explains cases of policy failures together with cases of undeclared intentions to attract immigrants who are officially considered unwelcome, such as undocumented workers. It introduces findings from various countries. Apart from the examples of some European countries and the United States, the book covers experience with policy enforcement and policy impacts in Australia and Canada but also in South Korea and Japan.

The next volume, which contains case studies of immigration control policies in Germany, France, the United Kingdom, and the United States, is a book by Christopher Rudolph, *National Security and Immigration. Policy Development in the United States and Western Europe since 1945*.⁶⁸ As the title indicates, the analysis of these policies is focused around the question of security and its relationship with immigration and immigration policy. Rudolph concludes that immigration control policy is chiefly shaped by security considerations and by the desire of the states to maximise national security interests in terms of their three main components, i.e. stability, wealth, and defence.

65 Geddes 2003: 189.

66 Boswell 2003.

67 Cornelius 2004.

68 Rudolph 2006.

A well-recognised volume which cannot be omitted here is *The Age of Migration*, edited by Stephen Castles and Mark J. Miller. Its first edition was published in 1993. The book demonstrates migration movements in all regions of the world, issues related to migration policy and migration politics, questions of integration, and, connected to that, the formation of new ethnic minorities, together with the relations between migration and security, as well as migration and the labour market. In 2009, its fourth edition appeared, bearing the subtitle *International Population Movements in the Modern World*.⁶⁹ This brought updates regarding, *inter alia*, the financial crisis and displacement induced by climate change.

Even a short glance at the above-mentioned examples of publications allows one important conclusion to be reached. It is relatively easy to find analysis of the immigration situation and immigration policies of the settler countries or traditional immigration countries, e.g. the USA, Canada, or Australia,⁷⁰ and similarly, it is not difficult to find studies about Western European countries that have faced immigration into their territory since the Second World War.⁷¹ The long history of immigration to those countries constitutes a rich source of information and examples. The accessibility of numerous analyses of the immigration situation and policy of those states also encourage other researchers to ‘stay’ in the same countries for further studies. Much less literature is devoted to the policies of countries such as Spain, Portugal, Greece, and Italy, which experienced an ‘immigration boom’ only in the 1990s⁷² (Gary P. Freeman, in his frequently quoted article *Modes of Immigration Politics in Liberal Democratic States* from 1995, called those states new immigration countries.⁷³) The number of volumes about immigration to (not even immigration policies in) countries that are different from West European or the traditional receiving countries is small, at least when considering literature in English.⁷⁴

With regard to Central and Eastern European countries, understood as new EU member states (except for Malta and Cyprus), the situation has been starting to change only recently. Cases from that region began to appear in comparative analyses or sets of case studies, as evidenced by the above-mentioned volume by Geddes. Besides, questions of immigration and immigration policy became research topics for academics from the countries

69 Castles and Miller 2009.

70 Further examples are Chiswick 1992 or Borjas 1991.

71 Further examples are Baldwin-Edwards and Schain 1994; Joppke 1999; Favell 2001; Ireland 2004.

72 E.g. Sitaropoulos 2003 or Calavita 2005.

73 Freeman 1995.

74 E.g. Douglass and Roberts 2000 – Japan; Baily and Míguez 2003 – Latin America.

themselves. The following paragraphs present examples of Polish works to which the current study refers.

In Poland, there are three main research institutes dealing with migration issues and most of the works pertaining to the area come from these. These are the Centre of Migration Research, established at the University of Warsaw by Marek Okólski, probably the best-known Polish researcher interested in the migration phenomenon; the Central European Forum for Migration and Population Research at the Polish Academy of Sciences; and the Centre for International Relations, an independent, non-governmental think-tank. Some research studies regarding the topic have also been conducted by the Institute of Public Affairs. All these centres are situated in Warsaw.

Their output is very rich and varied. It consists of numerous books, working papers, and reports. In relation to migration issues, they are focused rather on emigration; however, more and more research on immigration issues is being conducted. In what follows, I will give just some examples related to labour immigration and labour immigration policy.

In the first place, I would like to point out two publications that examine the determinants of Poland's immigration policy before its accession to the European Union. In her study *Europeanisation of Polish Policy towards Foreigners, 1990-2003*⁷⁵ Agnieszka Weinar comes to the conclusion that the policy was shaped mainly by the requirements of the EU, possibly by the desire of the Polish authorities to indicate that Poland (at that time a candidate state) would be a good member. On the other hand, in her study *Between Polish Interests and the Influence of the EU – The Development of Polish Migration Policy 1989-2004*⁷⁶ Anna Kicingier notes that apart from the influence of the EU there were several other factors that clearly affected Polish immigration policy, e.g. national interests connected to good relations with Poland's Eastern neighbours. I will return to these publications later.

In 2008, several studies were published that are important from the point of view of the present analysis. The first of these to be mentioned here is the volume *Migration Policy as an Instrument of the Promotion of Employment and Reduction of Unemployment*, edited by Paweł Kaczmarczyk and Marek Okólski.⁷⁷ The book provides knowledge about economic emigration from and economic immigration to Poland and the demand for the latter. On the basis of that it makes some recommendations for Polish migration policy.

75 Weinar 2006 (published as *Europeizacja polskiej polityki wobec cudzoziemców 1990-2003*; translation of the title – AZK).

76 Kicingier 2005.

77 Kaczmarczyk and Okólski 2008 (published as *Polityka migracyjna jako instrument promocji zatrudnienia i ograniczania bezrobocia*; translation of the title – AZK).

With regard to the presence of foreigners on the Polish labour market, the study reaches several conclusions. I will point out only some of them. The scale of foreigners' employment in Poland – at least of an official sort – is very small, only slightly higher than the potential demand. Nonetheless, the scale of the potential demand reveals an increasing need for changes in the immigration policy of Poland. The highest number of foreigners finds work in the processing industry and services, but there is a potential demand for them in construction. Contrariwise to assumptions, foreigners' employment is not substitutive in its character but complementary. Finally, Polish companies are not active in the recruitment of foreign workers.⁷⁸

At the same year, another important study emerged: *Does the Polish Economy Need Foreigners?*, edited by Izabela Grabowska-Lusińska and Anna Żylicz. The study attempts to answer the question included in the title.⁷⁹ It examines foreigners' demand for work and its conditions, scale, and structure, together with the question of whether foreigners' work is rather substitutive or complementary in relation to work done by Polish workers. It also introduces an evaluation of immigration policy by experts and employers. Then, the study makes some prognoses about the development of demand, as well as making policy recommendations. It is worth mentioning that a few of these questions related to Poland's demand for immigrant workers were reflected in the earlier study by Korczyńska and Duszczyk, *Demand for Foreigners' Work in Poland*.⁸⁰

Finally, there is *Immigration to Poland: Policy, Employment, Integration*,⁸¹ a revised and extended version of the report on Poland elaborated by the Centre of Migration Research, which was one of the outcomes of the so-called IDEA project.⁸² The volume represents a rich source of information and the results of various research studies pertaining to immigration and immigration policy. With regard to Polish labour immigration policy in particular, the book mainly demonstrates its development and its impacts on economic immigration. However, it also introduces some findings about the determinants of the policy towards economic immigrants. According to Szczepański, 'policy regarding foreigners' access to the labour market was caused by a mixture of factors, of which accession to the EU, economic

78 Kaczmarczyk and Okólski 2008: 114-115.

79 Grabowska-Lusińska and Żylicz 2008 (published as *Czy polska gospodarka potrzebuje cudzoziemców?* – translation of the title – AZK).

80 Korczyńska-Winiarczyk and Duszczyk 2005 (published as *Zapotrzebowanie na pracę cudzoziemców w Polsce* – translation of the title – AZK).

81 Górny et al. 2010a.

82 Its full title was *Mediterranean and Eastern European countries as new immigration destinations in the European Union*.

prosperity, and Polish workers' enhanced international mobility should be mentioned. He also underlines the role of the media (in the context of the preparations for the 2012 European Football Championships), who were emphasising the last of these determinants and in that way they were 'creating a sort of ... labour market gap panic.'⁸³

In general, Polish research on immigration and immigration policy is practically oriented; almost every publication which has appeared in recent years has brought some policy recommendations. Nevertheless, what could be considered the scarcity of these analyses is their insufficient theoretical elaboration. It is nothing new or specifically Polish. As early as in 1978, Aristide R. Zolberg wrote that 'The specialists who deal with (...) – emigration policies, forced population exchanges, expulsions, immigration policies and their concomitants such as naturalization law – tend to be a-theoretic.'⁸⁴ Thirty years later Gary P. Freeman complained about the same thing.⁸⁵

Because the current study is being developed at a Czech university, finally, I would like to point out a few examples of the Czech academic output dealing with immigration and immigration policy topics. The first is *Immigration and a Liberal State. Immigration and Immigration Policies in the USA, Western Europe, and the Czech Republic*, by Andrea Baršová and Pavel Barša.⁸⁶ Then there is *Migration and (Im)migrants in the Czech Republic ('Who Are We, Where Are We Coming from?')*, edited by Dušan Drbohlav.⁸⁷ Lastly, an interesting volume, *Migration and State Sovereignty. The Authority and Limits of Immigration Policy from the perspective of Christian social ethics*, by Petr Štica, was published recently.⁸⁸ The book presents questions connected to the idea of open borders to Czech readers. They have already been reflected abroad for many years by various more and less known authors, e.g. John Rawls,⁸⁹ Joseph H. Carens,⁹⁰ or Antoine Pécoud and Paul de Guchteneire.⁹¹ Štica adds theological and ethical reflection to the debate over migration control issues.

83 Szczepański 2010: 71.

84 Zolberg 1978: 242.

85 Freeman 2005.

86 Baršová and Barša 2005 (published as *Přistěhovalectví and liberální stát. Imigrační a integrační politiky v USA, západní Evropě a Česku*; translation of the title - AZK).

87 Drbohlav 2010 (published as *Migrace a (i)migranti v Česku "Kdo jsme, odkud přicházíme, kam jdeme?"*; translation of the title - AZK).

88 Štica 2010 (published as *Migrace a státní suverenita. Oprávnění a hranice přistěhovačské politiky z pohledu křesťanské sociální etiky*; translation of the title - AZK).

89 Rawls 1971.

90 E.g. Carens 1987, Carens 1999.

91 Pécoud and de Guchteneire 2007.

2.2 Theoretical approaches to immigration control policy

For the analysis of immigration control policy, some of the political science theories could be used, for instance, Easton's system theory or the theory of rational choice. Nevertheless, apart from these general theories there is a spectrum of theoretical approaches which deal directly with ICP. The previous chapter demonstrated one of them, the theory of the socio-economic and foreign policy factors which the study draws on. The present chapter introduces six alternative theoretical approaches explaining immigration control policy.

Interest in the ICP explanation emerged in the middle of 1970s. The pioneers in this area were, however, John Higham and Maldwyn Allen Jones, who had conducted research into the anti-immigrant mood and its influence on U.S. immigration policy in the 1950s and 1960s.⁹² Together with the rise in the number of immigrants – mainly in Western countries – as well as with the politicisation and securitisation of that matter, more and more researchers became involved in examining phenomena connected to immigration policy.

Academics have elaborated a wide range of explanations of immigration control policy outcomes. Several overviews of these theoretical approaches are evidence of this. Among them are the article by Eytan Meyers in the *International Migration Review*⁹³ aimed at theories of immigration control, the publication of Kristof Tamas⁹⁴ mapping various studies of international migration (from studies of the relations between migration and development to immigrants' rights), and the article by Jeannette Money called *Comparative Migration Policy* – a part of the *International Studies Association Compendium Project*.⁹⁵ In the last of these, the author deals with both immigration control theories and theories explaining immigrant policies. Another interesting publication is *Dialogues on Migration Policy*, edited by Marco Giugni and Florence Passy,⁹⁶ which offers a variety of perspectives on the determinants of immigration policy. Next example is the article by Gary P. Freeman and Alan Kessler,⁹⁷ who focus on links between political economy and migration policy, but also offer an overview of selected theoretical approaches. Each overview brings a different set of theories and concepts explaining immigration policy, which range from three in number – in the case of e.g. Freeman and Kessler – to as many as six in the case of Meyers.

92 Higham 1955; Jones 1960.

93 Meyers 2000.

94 Tamas 2004.

95 Money not dated.

96 Giugni and Passy 2006.

97 Freeman and Kessler 2008.

In spite of the spectrum of approaches, it is difficult to find distinctive theories explaining immigration control policy in general and labour immigration policy in particular. As will be demonstrated later, even theories which deal with economic issues wish to appear as if they explain the whole immigration control policy, not only the ICP towards economic immigrants. This is because they limit the understanding of immigration to economic immigration and, consequently, immigration control policy to labour immigration policy.

In general, all theoretical approaches dealing with ICP explain what determines states' decisions regarding three main matters, i.e. the number, type, and country of origin of immigrants who are accepted. Trying to account for policy outcomes that take the form of laws and ministerial regulations (which must be distinguished from policy impacts, i.e. the actual number, type, and immigrants' home countries), they usually use different perspectives and they recognise various factors as the main determinants.

As introduced in the previous chapter, the present study only explains policy towards one type of immigration, i.e. the economic type. Drawing on Meyers' theory, it points out that the policy is shaped by as many as four determinants, these being the state of the economy, security considerations, foreign policy reflections as well as the volume and composition of labour immigration (understood as one factor). This is the reason why, from among a range of alternative theoretical approaches explaining immigration control policy, the following paragraphs demonstrate those which recognise one of those factors as being the main – or even the only – determinant of ICP. Consequently, among the selected theoretical approaches there are those which focus on economic interests, international relations, and security along with national identity. Additionally, theories are presented that concentrate on the role of domestic politics and institutions. For them immigration control policy outcomes are mainly a matter of the influence of the political parties and interest groups or state authorities, respectively. They are introduced here as well because in the present study those actors are recognised as carriers of the shaping factors, e.g. employers pointing out labour market shortages, if they initiate any legal change, or being intervening players during the ongoing legislative process.

2.2.1 Economic interests

Since the present study recognises the state of the economy to be the most important factor shaping immigration control policy towards economic immigrants, the overview starts with demonstrating the theories which explain ICP just with the economic interests.

Theories accounting for immigration policy with that determinant were among the first ones that emerged. In some way they follow theories explaining the phenomenon of migration itself because most of the last ones are similarly based on economic factors (e.g. the neoclassical economy, the new economics of migration, dual labour market theory⁹⁸). In the theories accounting for ICP, immigrants represent economic actors who affect other economic actors.

Some theorists draw from Marxism. It especially pertains to works published before 1989.⁹⁹ For Marxism, economic factors and the political process founded on class relations are crucial elements explaining the shape of immigration policy. Marxism focuses on labour migration and points out that in the short-term it is created as a response to changes in the economic cycle and to the unemployment rate. In its characteristic rhetoric, Marxism explains immigration policy in terms of capitalists' will to misuse immigrants to reduce wages. The capitalists play the main role in influencing immigration policy and making it stricter or more liberal. For them, an additional advantage of the foreigners' arrival represents breaking the unity of working class, which the capitalists expect. This could result from the implantation of culturally different elements and promoting racism at schools and media (controlled by the capitalists). Racism is promoted since it reinforces differences between classes.¹⁰⁰ Apart from that, labour immigration leads to collective social mobility of nationals, because immigrants take over the lowest positions. One should note that this occurred in Germany when the guest workers programmes were applied. The influx of immigrants made it possible to satisfy the labour demand from sources other than the national ones. Since there was no pressure on young Germans to answer to the labour market needs, they could gain longer and better education.¹⁰¹ Marxism recognises such collective social mobility of nationals as a negative phenomenon. Because of it less and less citizens of the receiving society work manually, therefore less and less of them consider themselves as members of the working class. Consequently, the working class is less numerous and weaker.¹⁰²

There are also other theoretical approaches, which underline the role of economic interests in ICP formation and which agree that economic prosperity can result in accepting a higher number of immigrants whereas economic stagnation or crisis contributes to

98 Arango 2004: 15-35.

99 E.g. Castells 1975; Gorz 1970.

100 Meyers 2000: 1247-1251.

101 Bade 2004: 299.

102 Gorz 1970: 28.

introduction of restrictions in ICP.¹⁰³ They usually draw from neoclassical economics. They explain immigration regulation through preferences of different economic actors in the receiving country and anticipation that immigrants can jeopardise the economic well-being of the native population. The two main economic actors here are the employers and labour unions. Employers are generally recognised as these who benefit from migration, although their gains differ depending on changes at the market. As far as labour unions are concerned, they represent native workers. It is mostly underlined that they oppose immigration because it can harm domestic workers' wages and working conditions. There are however, academics who notice that the labour unions' attitude towards migrants can be also neutral or positive because of the expectation that newcomers will become members of the labour unions and they will reinforce them at times when their power is shrinking.¹⁰⁴

2.2.2 International relations and security

Foreign policy reflections and security considerations, so another two factors that the current study explains the labour immigration policy with, are in the centre of a next set of theoretical approaches. These are approaches that draw from theories of international relations. They bring a completely different perspective on immigration control policy to the one presented above.

An academic who made the first steps to link international migration with international relations was Myron Weiner. In the middle of the 1980s, he indicated that there are three main dependences between the two. First, the way, in which states deal with migration issues often influences international relations. Second, the rules of access to the territory can be shaped by relations between states. Third, immigrants can affect politics of the receiving as well as the sending countries.¹⁰⁵

Concerning the first dependence (the rules of access affect migration and international relations), an example can be a situation when one state promotes emigration of some people, whereas the other one is open to accept those migrants. Such situation leads to cooperation between states. When however one state supports emigration to a country prohibiting entry, there is a risk of a conflict between the two. It can also happen that in an answer to prohibition of emigration from one state, the other state bans entry simply to avoid a conflict (although

103 E.g. Meyers 2004: 202.

104 E.g. Haus 1995: 29.

105 Weiner 1985.

normally it would not restrict immigration). There are also some other situations that can lead to consultations or negotiations, e.g. when one state bans emigration which the other state wants to support.¹⁰⁶

From the point of view of the current study, the second dependence, so international relations as a factor shaping immigration policy, is the most important. This is a case of entry rules being negotiated between states; a case when one state, while creating its entry rules, follows other country's entry or exit rules; or when rules of access to the territory can be used to demonstrate the position of a state or to build or maintain its image (e.g. as a democratic country or a trustworthy member of the organisation).¹⁰⁷

Finally, the last relation mentioned by Weiner regards the influence of immigrants on politics and policies, both receiving as well as sending countries. This is connected to situations when e.g. immigrants or foreign born citizens are voters or when immigrant organisations act as lobbying powers trying to promote different kinds of political interventions.¹⁰⁸

International relations theorists started addressing migration issues as late as the 1990s. This was because before migration used to be considered 'low politics' and thus not worthy of academic consideration in contrast to the 'high politics' of national security and foreign policy.¹⁰⁹ The great wave of migration at the beginning of the 1990s began to change this perception. In addition, the appearance of a new generation of academics dealing with international migration contributed to relating migration to state security and sovereignty, and thus to questions, which are at the centre of concern for realism and neorealism.¹¹⁰

For realists, a state, as a main and rational political actor, deals with security dilemmas. It has to make an effort to protect its sovereignty and increase its power, potential and importance. Immigration or asylum policy is perceived as a question of national security and the fact if immigration control policy is more restrictive or more liberal depends on national interest. The interest is related to security, but neither the one in a military or political sense, nor only in a sense of spying or terrorism, but also security understood more broadly.

One of the first to link immigration and security was again Myron Weiner mentioned at the beginning of the section. He pointed out how immigration can destabilise societies and regimes – mainly in developing countries, but also in developed democracies.

106 For more see Weiner 1985: 447-448.

107 Weiner 1985: 448-450.

108 *Ibid.*: 450-452.

109 Hollifield 2000.

110 *Ibidem.*

The destabilisation can result from the fear from foreigners. This one is not however only a question of xenophobia. Weiner assumes that many groups relate migration to economic and cultural issues and that the linkage can negatively affect the feasibility of societies to absorb immigrants.¹¹¹

Other scholars perceive the issue similarly. George Borjas identifies migration as an economic threat that would change societies in a way that at the top of their structures there would be many of ‘haves’ and at the bottom many more of the ‘have nots’.¹¹² Wæver points at social security – the ability to maintain patterns of culture and behaviour within society.¹¹³ Didier Bigo stresses the argument of *inassimilability*, which means that immigrants threaten national homogeneity, national identity and in that way they negatively affect social and state security.¹¹⁴ Finally, Tsoukala refers to three types of threats perceived by opponents of immigration. Based on that she identifies three principles around which anti-immigrant arguments are articulated. The first one is *a socio-economic principle* - the rise in unemployment, the development of the parallel economy, crisis of the welfare state and deterioration of the urban environment. The second one is *a securitarian principle* - security problems in a narrow sense, from petty to organised crime, from urban insecurity to terrorism. The third one is *an identity principle* – the threat to demographic balance and to the identity of the receiving societies.¹¹⁵

Immigration has become subject to securitisation. States and societies started to perceive newcomers as carriers of threats and these threats are widely understood. Therefore, while deciding about the number, type and level of ‘similarity’ of immigrants to be accepted, a state takes into consideration mainly threats that foreigners can bring.

2.2.3 National identity

Finally, the last factor that the current study deals with is the size and composition of immigration. Approaches, for which this is the main ICP determinant focus on matters related to receiving society national identity. Therefore, their supporters explain that the shape of immigration control policy of a particular state depends on its history, traditions, culture and experience as a sending or receiving country, possibly as a country with colonial past, because

111 Weiner 1995.

112 Borjas 1990.

113 Miller 2000: 33 based on Wæver et al. 1991.

114 Bigo 2005: 84.

115 Tsoukala 2005: 163-4.

all these elements are a base for national identity formation. Additionally, there are authors paying attention to national mythology. For example, Peter Stalker recognizes national mythology a fundamental factor influencing the level of tolerance towards newcomers.¹¹⁶

Due to national identity theories, an attitude pertaining to immigrants, in particular those culturally dissimilar from the receiving society, depends on the fact if the society is culturally homogenous or heterogeneous since formation of national identity in both cases looks unlikely. For this reason, ICP in ethnic European states, where majority of population belong to the same nation and represent the same culture and live in the country for generations, differs from ICP of states such as Australia or Canada that have settler societies consisted of immigrants coming from various countries of origin or of their descendants.¹¹⁷

The number of immigrants that are interested in settling in the receiving country and mainly the level of their cultural dissimilarity are therefore crucial for immigration control policy making.¹¹⁸ Jagdish Bhagwati believes that the most important values typical for certain society can be *diluted* by culturally dissimilar migrants for whom other values are crucial.¹¹⁹ For this reason, the increase in restrictions of ICP can result from fear of dilution of those values. Similarly, Peter Meilaender assumes that the receiving society would hardly accept immigrants who are believed to undermine fundamental features of its identity and to radically change the nature of that society.¹²⁰ These arguments resemble to some extent above-mentioned broadly understood security considerations (Tsoukala's *an identity principle*).

Academics who analyse immigration control policy from the perspective presented here relate immigration control to discussions about social conflicts and national identity as well as to further basic concepts of nation and citizenship, such as the principle of *ius solis* or *ius sanguinis*. For instance, Rogers Brubaker, for whom traditions related to citizenship are important for shaping immigration policy, points at the issue while comparing France and Germany.¹²¹ Similarly, Adrian Favell does it while contrasting France and Great Britain.¹²²

116 Stalker 1994: 138.

117 Zolberg 1981: 16; Meilaender 2001: 82.

118 Rex 1996: 42.

119 Bhagwati 1984: 681.

120 Meilaender 2001: 82.

121 Brubaker 1995.

122 Favell 2001.

2.2.4 Domestic politics

Apart from theories concentrating on particular factors, there are theories focusing on particular actors. The present study treats some of the actors as the carriers of the ICP determinants. For this reason, that kind of approaches are introduced here as well.

Among these approaches there are theories highlighting the extraordinary role of domestic politics in ICP creation. Their advocates perceive the state as a place of meeting of interests groups and partisan politics. Hence, immigration control policy results from negotiations and compromises made between all actors. In some cases it can also happen, however, that a particular group takes over control over that policy.

Unlike in case of theories concentrating on economic interests, who point out the role of economic actors, domestic politics approaches identify various actors influencing immigration control policy. These are for instance political parties, nationalist groups and labour unions contesting immigration as well as employers and ethnic groups supporting it.¹²³ Their activities bring changes in immigration control policy, nevertheless the changes reflect socio-economic factors of a particular situation.

One of the main representatives of that theoretical approach is Gary Freeman who examined the concentration and diffusion of costs and benefits connected to migration. He adopted the James Q. Wilson's concept of *client politics* in immigration politics.¹²⁴ According to Freeman benefits from accepting migrants, such as cheaper and more flexible labour force or family reunification, are concentrated. Therefore, they mobilise groups of interests, who are for example employers or settled migrants, to collective action. On the contrary, costs connected to migration, such as higher population density, are diffused. The costs contribute to persistence of anti-immigrant mood in the society. It regards mainly people who are negatively affected by migration, because they compete with immigrants e.g. for work or cheap housing. Nevertheless, it is difficult for the society to organise itself in a way to become one of the 'clients' influencing ICP. Therefore, in practice, only small but well-organised groups work with officials or politicians responsible for creating rules of immigration control. Additionally, their contacts take place mostly out of the public view.¹²⁵

123 Meyers 2000: 1257-1258.

124 Freeman 1995.

125 *Ibid.*: 885-886.

2.2.5 Institutional politics

The opposite perspective to that of the domestic politics approach is represented by approaches oriented to institutional politics. Their supporters concentrate on the role of a state. The state is understood here as state institutions, administration and bureaucracy, who do not remain only tools in the hands of the government. Here, a state shaping immigration policy acts autonomously to interest groups' pressure. Nevertheless, it needs to be said that the levels of the state autonomy recognised by theorists differs. Hence, some of them acknowledge that even though the state performs its role independently, sometimes its decisions can be modified for example by ethnic groups, non-governmental organisations, capital etc.¹²⁶

Institutionalists indicate history as an important element for ICP formation. Decisions made by previous generations influence institutions that determine policies and ideas for their descendants. In general, supporters of this approach perceive determinants of immigration control policy as complex and difficult to define precisely. They believe that the factors cannot be reduced to interests of individuals or groups.¹²⁷

Examples of the institutional approach to ICP formation are works of Money, Tichenor or Calavita.¹²⁸

2.2.6 Critique

Each of the aforementioned theories brings important findings into the discussion of immigration control policy. Nevertheless, none of them is able to explain fully what influences the final form of states' ICPs. They do not take into consideration all the complexities of the migration phenomenon. The following paragraphs shortly indicate examples of these theoretical approaches shortages.

For theories focusing on the influence of economic interests on ICP formation questions of foreigners' integration potential or security are important only as long as they are related in some way with the market and interests of particular economic actors. Moreover, they neglect *inter alia* foreign policy considerations or the international pressures, even though there is evidence of their effect on ICP.

126 Meyers 2000: 1261.

127 Freeman and Kessler, 2008: 658.

128 Money 1999; Tichenor 2002; Calavita 2010.

The last reproach regards in fact more of above-mentioned theories, e.g. these, focusing on the role of domestic politics as well as on the meaning of the state institutions, which otherwise seem to take into account many more factors shaping ICP than other theories.

On the contrary, approaches drawing from international relations theories naturally take into consideration the international dimension. Nonetheless, they seem to overestimate questions of international relations and the role of a state as well as considerations of threats that immigrants may bring. Simultaneously, they completely underestimate the meaning of interests groups or the influence of globalisation or international organisations.

The problem with theories, which recognise that the main determinant of immigration control policy is activities of international organisations or questions connected to globalisation, is that they tend to be a-political. Besides, as Meyers, notices, they are better applicable to accounting for the phenomenon of migration itself than immigration control policy.¹²⁹

Approaches highlighting the meaning of national identity for ICP formation neither are without scarcities. Their critique can be aimed, for instance, to their inability to explain similarities between policies of various receiving countries where societies have various national identities. Furthermore, the theories are among those which do not take into account external factors.

These are only examples of the theories weaknesses. Additionally, all above-mentioned theoretical approaches suffer from another shortage. They build on the experience of Western European countries, and partly on traditional immigration countries such and the United States or Canada, inhabited by settler societies. For this reason, their universal usage is limited.

129 Meyers, 2000: 1268.

3 CONTEXT OF THE FORMATION OF LABOUR IMMIGRATION POLICY IN POLAND

Immigration policy towards economic immigrants arises in a particular context that is worth portraying before the policy itself is analysed. This chapter focuses on five elements of the context. The first one is the aforementioned structural factors (*pre-conditions*), the overall political, economic, social, and demographic situation influencing the policy indirectly. Their actual state is the result of the transformation from a communist country into a liberal democratic one that Poland has undergone within approximately the last twenty years. For this reason, the section dealing with structural factors briefly points out the developments that have taken place in Poland since the moment when it escaped from the influence of the USSR. The second element is the development of the Polish immigration situation, which – similarly to other countries that used to belong to the Soviet bloc – changed radically with the opening of the country's borders. Although Poland remains a country of net emigration, various kinds of inflows of people are gaining in importance, too. The third component of the context is the development of immigration policy before 2004, together with the factors affecting it. The fourth one regards the engagement of the main actors responsible for immigration control policy with respect to the creation of legal rules regulating issues related to migrants, in particular in the legislative process. Finally, the last element this chapter presents is the rules for the admission of economic immigrants to Polish territory, which in most cases remains a natural condition of foreigners' access to the labour market.¹³⁰ The five parts introduce the background to contemporary labour immigration policy in Poland.

3.1 Structural factors affecting labour immigration policy

As stated earlier, structural factors are relatively stable and hard to change. Nevertheless, it is exactly in these factors that a state undergoing transition experiences changes.

The political, social, and economic changes that started in 1989 changed the face of Poland beyond all recognition. The present section briefly demonstrates the developments which brought Poland to the state in which it was at the moment of its accession to the European Union, i.e. the starting point of this study.

¹³⁰ The policy has not yet dealt separately with issues regarding the possible remote employment of foreigners (via the internet).

After breaking free of the influence of the USSR, which had lasted for a few decades, Poland turned to the West. It became a member of a number of international organisations and a signatory of many international treaties. Within a few years, it started the process of accession to the European Union and the North Atlantic Treaty Organisation and, in that way, Poland changed its geopolitical position.

Drawing on its own history, as well as learning from the most recent experience of its western neighbours, Poland became a liberal democratic country again. The borders opened, human rights started to be respected, and civil society gradually began to develop.

In 1992 the so-called Small Constitution, which created new regulations for the relationships between the executive and legislative branches, as well as local self-government, was adopted. A few years later, in 1997, a completely new Constitution (the current one) came into force.

Poland reformed itself into a parliamentary republic, with a multi-party system, a bicameral parliament, and a president elected in free direct elections. It is a unitary state with territorial self-government realised at three levels: the municipality (*gmina*), district (*powiat*), and voivodeship (*województwo*),¹³¹ and based on the principle of subsidiarity.

To support the transition that had taken place in post-communist Central and Eastern European countries, the European Union invited some of them to become its members. In relation to that, in the second half of the 1990s and after 2000 the role of the European Union in the economic and political changes in Poland was indisputably significant. One of the most important reasons for that was the requirements that it imposed on Poland as a candidate state, which made its governments adjust a number of its laws so as to conform to the *acquis communautaire*.

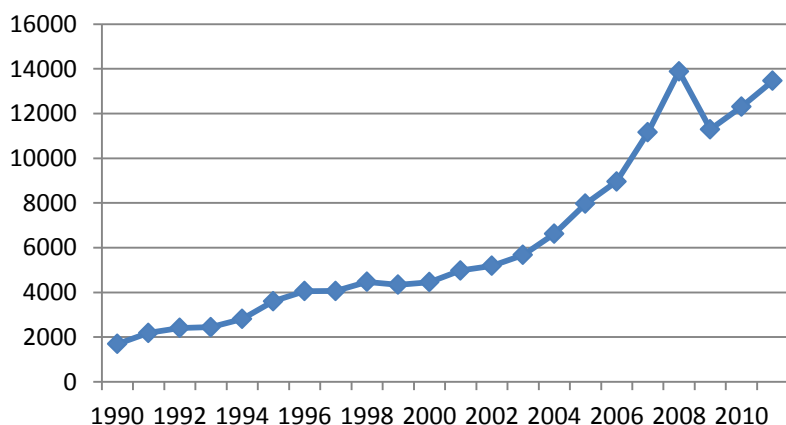
The political changes were accompanied by great economic reforms. As they seem to be especially important for the study from the point of view of its topic, they are presented here more broadly. The reforms were triggered at the beginning of the 1990s with the so-called Balcerowicz plan (also labelled ‘shock therapy’), which meant a transformation from a centrally planned economy to a market economy. The system, together with the institutional reforms included in the plan, involved, among other things: privatisation, demonopolisation, a change in the fiscal system, the liberalisation of foreign trade, the establishment of

131 In some texts, it is also translated into English as ‘region’ or ‘province’. Local government administration is also organised at the level of the sixteen voivodeships.

a securities market, the facilitation of foreign investment, and the protection of the unemployed.¹³²

Thanks to all those efforts the economic situation clearly improved. A few macroeconomic indicators are evidence of that. For instance, GDP per capita increased from about 1500 US dollars in 1990 to over 4300 in 1999. On the eve of Poland's EU accession, it was already almost 5700 US dollars.¹³³ In addition, the structure of Polish GDP changed. Whereas in the first half of the 1990s agriculture produced from 6.5 to 8 per cent of GDP, between 2000 and 2004, its contribution to GDP dropped to 4-5 per cent.¹³⁴ The share of industry in GDP decreased by about 20 per cent within ten years.¹³⁵ On the contrary, the role of services grew and in 2003 they were already producing 66 per cent of GDP.¹³⁶ In that way, the structure of the Polish GDP is gradually approaching the scheme that Western European economies display.

Graph 1.: Poland 1990-2011: GDP per capita (current US \$)



Source: WB 2012d.

Another example regards the participation of private companies in the economy. By way of illustration, whereas in 1990 only 21.5 per cent of employees were hired on the basis

132 Kaliński 2005: 11.

133 WB 2012d.

134 WB 2012a. Here it should be noted, however, that in 2003 there were as many as 18.4 per cent of the people working in the first sector of the economy, i.e. agriculture, forestry, and fishing (in 2010 the percentage had already dropped to 12.9 per cent) (CSO 2011a).

135 WB 2012b.

136 WB 2012e.

of employment contracts in the private sector (annual average),¹³⁷ in 2003, this figure increased to 60 per cent.¹³⁸

Finally, the last indicator to be given as an example is foreign trade. From 1990 to 1999, the foreign trade turnover increased 1.9 times in terms of imports (it reached almost 46 billion US dollars) and as much as 4.8 times in terms of exports (it exceeded 27 billion US dollars).¹³⁹ In 2003, the figures were already 68 billion US dollars and 54 billion US dollars respectively.¹⁴⁰ Additionally, the direction of foreign trade changed completely after the beginning of the 1990s. Whereas during the whole period of the communist regime the main Polish trade partner was the USSR, since 1990 it has been Germany, both for exports and imports.¹⁴¹ About 25 per cent of the foreign trade turnover relates to this country. Russia placed at the second position for imports. In the case of exports, Russia remains Poland's main non-EU partner. Nevertheless, since the end of the 1990s more and more EU countries have moved ahead of it.¹⁴²

Given the topic of the present study, it is worth noting the position of Poland's other non-EU eastern neighbours, i.e. Ukraine and Belarus. For Poland, Ukraine is an important partner in foreign trade: of all non-EU countries, it remains the greatest Polish export partner except for Russia, and in 2003, the value of exports to Ukraine even exceptionally exceeded those to Russia.¹⁴³ On the other hand, for many years the role of Belarus in foreign trade turnover has been weak, considering its geographical proximity to Poland. It is in approximately 21st place among Polish export markets and in about 25th position among its import markets.¹⁴⁴ It is not even mentioned in the list of selected countries published by the Central Statistical Office (CSO) in the Concise Statistical Yearbook of Poland.

Apart from the indisputable positive developments in the political, social, and economic situation of Poland, one also needs to point out the problems that exist. These are, for instance: unemployment, impoverishment, the differentiation of incomes and wealth, regional differences, and demographic regression. Whereas the first three questions can be called social costs of transformation, the others, together with some other problems that also appeared in the 1990s, are connected to the transformation only indirectly.

137 CSO 2000: 132.

138 CSO 2004: 138.

139 CSO 2000: 344.

140 CSO 2004: 356.

141 CSO 2000: 343-344.

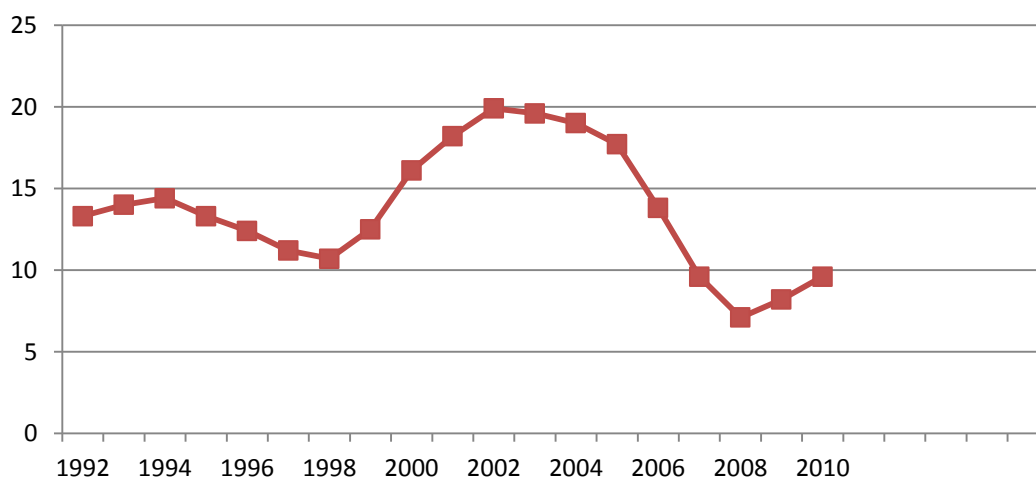
142 CSO 2000: 343-344; CSO 2010: 390-391.

143 CSO 2004: 361.

144 MG 2007b: 29.

While, throughout the communist period, because of ‘the obligation to work’, the phenomenon of unemployment did not exist, during the economic transformation many people lost their jobs. According to the data of the World Bank, in 1992 unemployment reached 13 per cent and for the rest of the 1990s it stayed at a similar level. The turn of the century brought an unprecedented crisis on the labour market. The peak of the crisis was the years 2002-2004, when the level of unemployment – according to the World Bank data – was equal to or more than 19 per cent.¹⁴⁵ The Polish Central Statistical Office data are lower: 2002 – 17.4 per cent, 2003 – 17.7 per cent, and only for the year 2004 – 19.4 per cent (as of 30 June of those years).¹⁴⁶ In fact, it means that in some regions over 40 per cent of the people were without jobs.¹⁴⁷

Graph 2. Poland 1992-2010: Unemployment, total (% of total labor force)



Source: World Bank 2012.

145 WB 2012f.

146 M. P. 2002, nr 46, poz. 688; M. P. 2003, nr 47, poz. 703; M. P. 2004, nr 42, poz. 740.

147 M. P. 2004, nr 42, poz. 740.

Beyond the high unemployment rate, another problem is the low employment rate. Poland – together with Malta and Hungary – has the lowest employment rate in the European Union. Between 2002 and 2005 less than 52 per cent of the people in the group of persons aged 15-64 were working. There are several reasons for that situation. The Ministry of the Economy report points out mainly structural problems. They are the effect, for instance, of: the low level of human capital, the low qualifications of the unemployed, the maladjustment between labour market supply and demand, high labour costs, and regional differences in the labour market, together with the low spatial and professional mobility of poorly-qualified workers.¹⁴⁸

Apart from problems directly connected to the labour market, other new phenomena were impoverishment and the differentiation of incomes and wealth. For instance, a research study that focused on households' budgets revealed that in 2004 about 20 per cent of the people were living below the poverty line.¹⁴⁹ At the same time, the media stated that the one hundred richest Poles owned wealth which equalled one third of the state budget in value.¹⁵⁰

Regional differences are another significant problem. Whereas all big cities, i.e. Warsaw, Cracow, Wroclaw, Poznań, Lodz, and the Upper Silesian agglomeration (the Katowice region), along with the so-called Tricity on the coast (Gdańsk, Gdynia, and Sopot), noted a high growth rate of GDP between 1998 and 2003, the development of many other regions was very slow. The dynamics of GDP in western border regions were at a very low level, although it used to be expected that they could profit from their location. The situation of the eastern 'wall' of Poland was even worse, at least as far as the dynamics of GDP are concerned. In the given period, four eastern subregions¹⁵¹ even noted an absolute decrease in GDP.¹⁵² The 2003 Eurostat data confirm this: the poorest EU regions (scaled NUTS 2) in 2003 were located in Eastern Poland: the Lubelskie and Podkarpackie voivodeships noted a GDP per inhabitant at the level of 33.2 per cent of the EU average.¹⁵³

148 MG 2007: 90.

149 GUS 2007: 69.

150 Rajkiewicz 2005: 310.

151 I.e. ostrołęcko-siedlecki, białskopodlaski, chełmsko-zamojski and krośnieńsko-przemyski (NUTS 3 in 2003 version).

152 Gorzelak 2006.

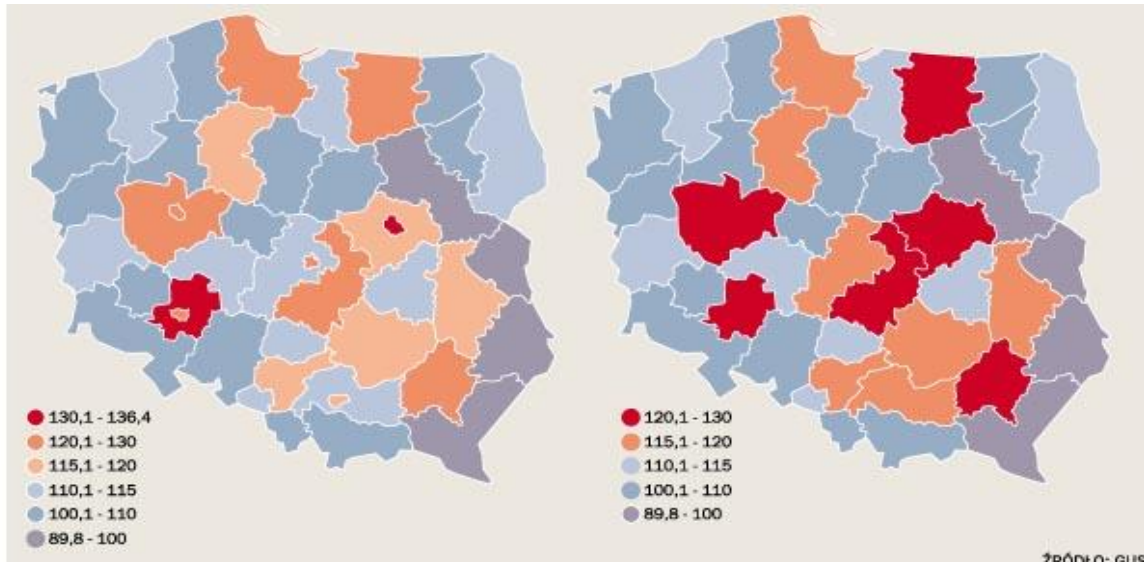
153 EU 2006d.

Map: GDP Dynamics in Poland's subregions, 1998-2003 (NUTS 3 in 2003 version)

Data in percentage (1998 = 100%)

Version with excluded cities

Version with cities counted together with regions



Source: CSO in Gorzelak 2006.

Next problem that Poland faces – like all EU countries – is demographic regression. In this matter Rajkiewicz reminds us that taking into consideration the data gathered in the 1988 census – which, among other things, revealed there were 37.9 million people living in Poland – it was expected that in 2000 the number could exceed 40 million. However, the nineties brought unforeseen changes: since 1999 the Polish population has started to diminish, mainly as a result of emigration.¹⁵⁴ The 2002 census showed that there were only 38.2 million people living in Poland.¹⁵⁵ One of the most alarming things is a significant decrease in the total fertility rate – i.e. the average number of children born to one woman (from 2.13 in 1988 to 1.25 in 2002).¹⁵⁶ A recent population forecast expects that in 2020 Poland will have a population of only 37.8 million people, in 2030 36.8 million, and that within the following five years the number will drop by about eight hundred thousand people.¹⁵⁷ The decrease in the size of the population, with a simultaneous extension of life expectancy, will greatly affect

154 Rajkiewicz 2005: 301-302.

155 GUS 2003.

156 Rajkiewicz 2005: 301-302.

157 GUS 2008.

– among other things – the situation on the labour market: the share of the population of working age is expected to decrease from 70.8 per cent in 2007 to 63.9 per cent in 2030.¹⁵⁸

With reference to the population size, a few other demographic matters are worth noting. Poland is the thirtieth most populous country in the world and the ninth in Europe (2003). Concerning the density of its population, it is an average country: 122 people for 1 km² (1105 in cities, 50 in the countryside). About 61.5 per cent of the people live in cities.¹⁵⁹ Since the end of the Second World War, Poland has been an ethnically homogeneous country. In the 2002 census almost 97 per cent of the people declared their nationality as Polish. Out of those, who declared a nationality other than Polish, as many as 94 per cent were Polish citizens. The most numerous national and ethnic minorities were Germans – 153 thousand, Belarusians – 49 thousand, and Ukrainians – 31 thousand. Apart from that, 173 thousand people declared themselves Silesians and 13 thousand were Roma.¹⁶⁰ All these demographic conditions can indirectly influence both migration and migration policy.

3.2 Development of the Polish migration situation before 2004

Knowledge of the development of the Polish migration situation provides a context that is important for understanding developments in immigration control policy. Even though the study is devoted to labour immigration policy, this section presents data regarding various types of voluntary migration. Thanks to that, it is possible to estimate the general migration pressure that Poland faces, concerning both numbers and the directions from which immigrants come to Poland. In addition, statistics regarding various types of migrants (including permanent immigrants or emigrants) help to understand policy towards temporary economic immigrants on the contrary, to point out its shortcomings.

Together with the political, economic, social, and demographical changes that the previous section referred to, the migration situation of Poland has also changed radically. In general, before the end of the 1980s, not only did immigration to Poland (and, actually, to all the countries of the Soviet bloc) almost not exist but in fact any kind of inflow was rare. Foreigners were a rare element in communist societies and, as Łodziński says, they were not only something unusual but also *suspect*.¹⁶¹ Foreign tourists were mostly citizens of other communist countries (and were kept in controlled groups) or they were of Polish descent and

158 Zespół do spraw Migracji 2011: 27.

159 GUS 2003: 3.

160 *Ibidem*.

161 Łodziński 1998: 2.

coming to visit their families. There were a few foreign students from fraternal countries (mainly from Vietnam, Bulgaria, and the USSR); some of them stayed in Poland after finishing their studies and then married Polish citizens. In communist Poland, it was almost impossible to receive a work permit. Few foreign workers were coming in as staff members of subcontracting companies to work on sophisticated projects. Altogether, from 1949 until 1989, only two to three thousand immigrants arrived in Poland yearly. In addition, most of them were of Polish origin.¹⁶² The situation was similar in other communist countries.¹⁶³

As Iglicka notes, 'between 1945 and 1989 all legal acts related to foreign migration strictly followed the main principles of [isolationism]: they were simply repressive'.¹⁶⁴ They were meant to prevent contacts with foreigners and, at the same time, the spread of information about the 'enemy' countries, economies, and ideologies. This caused communist countries to limit or even eliminate international flow. Okólski reminds us of the opinion of the main Soviet specialist in population relations, Leonid Rybakovski, who declared in 1973 that 'in socialist countries, in contrast to capitalist countries, external migration is episodic in its nature'.¹⁶⁵ Not only was inflow strictly limited, but additionally, any kind of outflow from a communist country was difficult. Moreover, the Iron Curtain in Europe did not exist only between the 'capitalist West' and 'communist East' but there were also many small iron curtains dividing particular communist countries and preventing their citizens from indulging in regular neighbourly relations.

The situation changed fundamentally with the collapse of communism in 1989. The opening of the borders resulted in a great change in border flows. Western European countries were terrified by the vision of a human flood coming from the East. Their fears were fuelled by forecasts made by different academics and officials. Klaus Bade reminds us of some of them in his work. For instance, a French demographer, Jean-Claude Chesnais, estimated that between 1992 and 1995 altogether 4-5 million people from the former USSR would come to the Western countries. Yuri Rechetov from the Soviet Ministry of Foreign Affairs was talking about 4-6 million migrants coming yearly to the Western European countries in the same period. Other Russians anticipated even higher numbers. Boris Khorev from the University of Lomonossov estimated 40 million people by 1995. Anatoli Vishnevski from the Scientific

162 Górný et al. 2010b: 11.

163 See, e.g. Boušková on Czechoslovakia: Boušková 1998.

164 Iglicka 2000: 5.

165 Rybakovski cited in Okólski 1997a: 11 [translation AZK].

Council for Social Development in the USSR was talking about as many as 48 million by that year.¹⁶⁶

If some of those forecasts had been correct, Poland would have been trampled down by transit migrants. Actually, however, although the great potential for migration of the former Soviet bloc countries was indisputable, border flows increased significantly,¹⁶⁷ and Poland in fact did become a notable transit country, all the above-mentioned estimates proved to be grossly exaggerated. Nevertheless, they caused Western European countries to restrict their migration policies, especially towards asylum seekers. Simultaneously, many Eastern European countries triggered sets of economic, political, and social reforms that prevented migration push factors from growing. Therefore, their citizens did not leave the countries in such great numbers as had been estimated. Poland, the Czech Republic, and Hungary soon became the leaders of these changes. The invitation to those countries to join the European structures became another stimulus for development. The synergetic effect of all these factors contributed to lower migration to the Western European countries than had been expected, as well as to the lower level of transit migration through Poland.¹⁶⁸

Poland, as one of the leaders of the economic reforms, became a country of opportunities. As Okólski notes, the commercial visits of foreigners to Poland transformed in a short time into highly organised and complex activities with a hierarchic network of wholesale and retail trading organisations. The average Pole met foreigners mainly in market places. There were four gigantic open-air markets in central Poland, over a dozen medium-scale bazaars in border areas, and hundreds of small bazaars where many foreign small traders from different countries sold goods they had brought from their home countries. At the same time, many visitors to those markets were foreigners too.¹⁶⁹ Probably the most famous market

166 Vogeley and Santel cited in Bade 2003: 283. One can suppose that there could be some political interest behind those estimates. As Bade reminds us, in the early 1990s Russians were warning that rates of migration to the West after the granting of freedom to travel 'could depend solely on the capacity of the passport printing office'. The Polish prime minister did not want to rule out the possibility that, in the event of there being insufficient economic aid, millions of Poles could set out for the West. Additionally, Poland could open its borders on the East as well 'so that refugees from Russia could migrate further to Germany' (Bade 2003, 283 based on Werner 1992: 253 who in turn refers to the interview of Wolfgang Schäuble in *Der Spiegel*, 1.-3.1.1994, 25).

167 As Grzymała-Kazłowska and Okólski point out, whereas in 1985 3.4 million foreign border crossings were recorded in Poland, in 1991 that number increased to 36.8 million (Grzymała-Kazłowska and Okólski 2003: 4).

168 Nevertheless, one cannot assume that simply because of those restrictions the actual number of immigrants was smaller than what had been anticipated. There are many more factors that prevent people from migration (family ties, money, cultural differences, the language barrier, fear etc.). Allegedly 3.1 per cent of all the people in the world are immigrants' (IOM 2011). Taking into account the number of people living in poor conditions, the percentage is not high and one can hardly expect that the number is only small because of the restrictions laid down by immigration control policy.

169 Okólski 1999: 8.

was Stadion Dziesięciolecia (Decade Stadium) in Warsaw, called Jarmark Europa (Europe's Market). It used to be considered the largest open-air market in Poland or even in Central and Eastern Europe. It functioned for over twenty years and, as Keith Sword notes, in its best year – 1997 – 6,600-7,500 people were directly employed there, out of whom about 3000 were foreigners. Another few thousand people were working for factories servicing the stadium. Every day 25,000 customers, of whom about 60 per cent were foreigners, visited Jarmark Europa.¹⁷⁰ As surveys confirm, the great importance of the bazaar trade in the Polish economy in 1990s was undeniable.¹⁷¹

As for concrete migration statistics, it must be said that not only were the migration statistics incomplete but the system as such was far from collecting data that reflected the actual state of affairs. In Poland, except for numbers regarding cross-border movement recorded by the Border Guard, the only data that were available were those on permanent residence permits registered by the Central Statistical Office, which moreover, did not differentiate between immigrants of Polish origin and other foreigners. At the same time, regional registers gathering information with reference to short-term migration were collecting data about applications and not about people. As a result, it was impossible to distinguish the number of real immigrants from the number of their applications or permit extension requests; for this reason, the applications are omitted here.

Despite difficulties with data, the following sections attempt to give some idea about the development of the numbers of foreign nationals in Poland, pointing out the general number of arrivals, data concerning flows connected to permanent residence, estimates of the stock of foreign nationals in Poland, and finally data regarding temporary work.

In the first half of the 1990s, the number of arrivals grew systematically. Between 1995 and 2000, there were around 80 to 90 million people coming to Poland annually. In 2001, as a result of the stagnation of the Polish economy, the number of arrivals decreased sharply, by as much as 23 million. 2002 and 2003 were the years with the smallest number of arrivals since 1992. The introduction of EU visas for Ukrainians, Belarusians, and Russians on 1 October 2003 contributed to a further decrease in the arrivals of these foreigners. The year in which Poland entered the European Union brought an increasing trend again.¹⁷²

170 Sword 1999: 153.

171 Malinowska and Wyznikiewicz cited in Okólski 1999: 8.

172 See: Okólski 1997, 1998, 1999, 2000; Kępińska and Okólski 2001, 2002; Kępińska 2003, 2004.

Unsurprisingly, the highest number of foreigners crossing the Polish border each year referred to citizens of the seven neighbouring countries. Germans clearly predominated – they represented 50-60 per cent of all arrivals.¹⁷³

With regard to the inflow of foreign nationals, there are only data regarding the number of permanent residence permits (PRPs) granted. According to the data of the Central Statistical Office, whereas in 1990 2.6 thousand immigrants were granted PRPs in Poland, in 1991 the number grew to five thousand. This increasing trend held until 1998. Only in 1999 did the number of immigrants granted permanent residence permits start to decrease. That fall could be explained mainly by the more restrictive policy that the new 1997 Act on Aliens brought. In the following years, immigration decreased, in particular because of the worsening of the Polish economic situation. Since 2003, the number has been growing again (see Table 1.).¹⁷⁴

In addition to an inflow of ‘truly foreign’ nationals, another important category of immigrants is repatriates and their families. Their resettlement is obligatorily connected to their acquisition of Polish nationality – the repatriates are naturalised after arriving in Poland. The possibility of coming to Poland on the basis of repatriation was introduced by the 1997 Act on Aliens, which provided a repatriation visa to people of Polish origin. Then this question became regulated by a separate Act on Repatriation in 2000. Between 1997 and 2010 altogether over seven thousand people came to Poland within the repatriation programme; most of them were from Kazakhstan (2540), followed by Ukraine (1155).¹⁷⁵

As far as the stock of immigrants is concerned, it would also be useless to look for data reflecting the actual situation – at least until 1997.¹⁷⁶ Okólski reminds us of the SOPEMI reports that estimated the number of foreign citizens residing in Poland in the mid-1990s as being within the range of 30,000-35,000. For the end of the year 1997, he estimated the stock of immigrants in Poland as being at the level of 40,000-50,000.¹⁷⁷

The 1997 Act on Aliens brought some changes, which influenced how immigrants were counted. The Act replaced residence permits by two separate documents: permission for settlement and residence permission for a fixed period. In connection with that change, a new register of foreigners was established at the Ministry of the Interior. According to data from the register, at the end of 1999, almost 43 thousand foreigners lived in Poland, out of whom

173 *Ibidem*.

174 GUS 2010; CSO 2011b.

175 CSO 2011b: 442-443.

176 See Okólski 1997b: 21.

177 Okólski 1999: 15.

54 per cent were holders of permission for settlement ('permanent residence') and 46 per cent of temporary 'fixed period' residence. The largest numbers of them were from (in descending order) Ukraine, Russia, Vietnam, Belarus, and Germany.¹⁷⁸

Table 1. International migration flows (in thousands)¹⁷⁹

Year	Immigrants (due to PRP)	Emigrants (due to permanent residence)	Net migration
1989	2.2	26.6	-24.4
1990	2.6	18.4	-15.8
1991	5.0	21.0	-16.0
1992	6.5	18.1	-11.6
1993	5.9	21.3	-15.4
1994	6.9	25.9	-19.0
1995	8.1	26.3	-18.2
1996	8.2	21.3	-13.1
1997	8.4	20.2	-11.8
1998	8.9	22.2	-13.3
1999	7.5	21.5	-14.0
2000	7.3	26.9	-19.6
2001	6.6	23.3	-16.7
2002	6.6	24.5	-17.9
2003	7.0	20.8	-13.8
2004	9.5	18.9	-9.4
2005	9.4	22.2	-12.8
2006	10.8	46.9	-36.1
2007	15.0	35.5	-20.5
2008	15.3	30.1	-14.9
2009*	17.4	18.6	-1.2
2010*	15.2	17.4	-2.1

Based on: Główny Urząd Statystyczny 2010 and Central Statistical Office 2011b.

The 2002 population census brought new information regarding the stock of foreigners. Out of almost 37.6 million residents of Poland, there are 49.2 thousand non-Polish residents (i.e. foreigners residing on a permanent basis, as well as temporary residents). Additionally, as many as 530.6 thousand persons claimed that their citizenship was unknown and 302.5 thousand people held not only Polish but also another citizenship. The greatest number of foreign residents originated in Ukraine (20 per cent). Citizens of other countries that represented more than one per cent of the total came from Russia (9 per cent), Germany (8 per

178 Okólski and Kępińska 2001: 14.

179 Inflows concern people granted a permanent residence permit – PRP, whereas outflows concern people who deregistered from permanent residence in Poland.

cent), Belarus (6), Vietnam (4 per cent), and Armenia and the United States (3 per cent each), as well as Bulgaria, the United Kingdom, France, Lithuania, and the Czech Republic (2 per cent each).¹⁸⁰

Finally, there is the question of access to the labour market. As in the aforementioned case, here too the matter of statistics regarding the temporary foreign labour force is difficult. The data are scarce and incomplete; therefore, they do not reflect the real situation on the labour market.¹⁸¹ This is especially true of the 1990s. Then the available data were modest and, besides, they concerned work permits issued to individuals, but the number did not correspond to the number of foreigners who actually used them and undertook employment in Poland. There were no statistics regarding real regular employment, not to mention that of an irregular nature.

In the first half of the 1990s, the number of work permits granted each year to foreign workers ranged between 10 and 12 thousand.¹⁸² As Okólski notes, ‘a leading rule pertaining to regular employment of migrant workers in Poland during the first half of the 1990s was an implicit linking of that kind of employment with the inflow of foreign capital.’¹⁸³ Small but important exceptions regarded foreign language teachers and accepting Ukrainians and Belarusians for unskilled work. Apart from that, foreign nationals found employment in enterprises owned by their compatriots or in companies with foreign capital, where strategic positions used to be reserved for them.¹⁸⁴

As Table 2. shows, since 1997, the number of work permits granted individually has been systematically rising. In that year over 15 thousand work permits were issued. In 2000, the number increased to 17.8 thousand. Two years later, it jumped to 22.7 thousand.¹⁸⁵ Nevertheless, the background to such a sudden change was the legislation: foreign nationals performing statutory functions in the executive boards of legal persons running business activities became obliged to apply for a work permit. For that reason one can consider that in 2003, the number did not *decrease* but only *returned* to its previous level.¹⁸⁶

The Polish labour market offered foreigners various positions in various years. After 2000, the highest number of work permits was granted – as earlier – for employment in trade.

180 Kępińska 2004: 19-20.

181 This kind of a sentence appeared repeatedly in reports Recent Trends in International Migration between 1997 and 2005.

182 Okólski 1997b: 26 based on Dryll 1996.

183 Okólski 1997b: 28.

184 *Ibid.*: 28.

185 Kępińska 2005: 62.

186 *Ibid.*: 21.

Table 2. Work permits granted individually and to subcontracting foreign companies. Poland 1995-2011.

Year	Work permits granted individually (b)				Work permits granted to sub-contracting foreign companies (b)	
	Total	Women	of which: Extensions		Total	Up to 3 months
			Total	Women		
1995	10 441	.	.	.	920	.
1996	11 915	.	.	.	1 753	.
1997	15 307	.	.	.	2 191	.
1998	16 928	.	.	.	3 831	.
1999	17 116	.	.	.	3 502	.
2000	17 802	.	.	.	1 86	145
2001	17 038	.	.	.	2 755	411
2002	22 776	8 541	.	.	1 867	1 001
2003	18 841	6 25	10 19	3 607	990	289
2004	12 381	3 559	5 41	1 494	798	43
2005	10 304	1 786	4 399	830	847	29
2006	10 754	2 376	4 125	735	1 309	30
2007	12 153	2 778	4 486	1 02	2 645	168
2008	18 022	4 383	5 632	1 423	3 711	100
2009	29 340	8 850	8 534	2 467	3 070	179
2010	35 365	.	.	.	1 756	25
2002 (a)	10 625	3 705	.	.	995	611
2003 (a)	9 043	2 824	5 144	1 761	460	219
2004 (a)	6 544	1 710	2 934	721	307	43
2005 (a)	5 270	767	2 182	310	419	8
2006 (a)	5 194	1 002	2 082	260	592	23
2007 (a)	5 750	1 270	2 304	447	1 185	18
2008 (a)	8 154	1 908	2 694	620	1 662	37
2009 (a)	14 891	3 981	4 692	1 258	1 817	140
2010 (a)	15 628
2011 (a)	18 396	5 410	3 562	1 160	2 230	32

(a) January – June.

(b) since 2011 'work permits granted individually' refers to work permits of 'A', 'B', 'C' and 'E' type, whereas 'work permits granted to sub-contracting foreign companies' refers to work permits of 'D' type only.

(.) Not available.

Source: Kępińska 2007, Ministry of Labour and Social Policy.

Manufacturing/mining followed.¹⁸⁷ The third position belonged in some years to education and in others to financial intermediation and real estate. Nevertheless, agriculture, which in the 1990s used to attract many foreigners, has completely lost its position since the end of the decade – the number of work permits issued for jobs in that sector decreased to the level just above the general category ‘other’.¹⁸⁸

From the labour immigration policy point of view an important matter is which countries of origin foreign workers are from. In Poland, the great majority of all work permit holders have always come from Ukraine. Apart from that, between 1995 and 1997 the group of the top eight sending countries with respect to receivers of work permits included Vietnam, the UK, Russia, China, Belarus, and Germany, along with the USA. In 1998, France gained a position there: for the first two years at the expense of Belarus, and then of China, which fell out of the group in 2000. Since 2000, the number of work permits granted to Vietnamese has started to diminish and in 2003 Vietnam ended up in ninth position, just behind Turkey.¹⁸⁹ All in all, it can be said that since 2000 out of the eight top sending countries three were EU members and the rest were so-called third countries.

After 2004, statistics regarding work permit holders started to change significantly because many nationals of the EU countries did not need work permits any more. The numbers pertaining to the access of foreigners to the labour market since 2004 are presented only in Chapter IV, as the volume and composition of that immigration is recognised in the study as a factor shaping labour immigration policy.

All the aforementioned numbers of permanent and temporary immigrants seem to portray Poland as a country that is rather avoided by immigrants. In fact, however, the reality of migration revealed that new migration patterns appeared, among which the type of mass – mostly illegal – migration that Okólski calls ‘incomplete migration’ had the greatest significance.¹⁹⁰ ‘Incomplete migration’ was quasi-migratory in its character. The term

187 An exception was 2005, when more work permits were granted for jobs in manufacturing/mining than for jobs in trade.

188 Kępińska 2005: 62.

189 *Ibidem*.

190 It was a new type of mass migration that could be observed as far as the inflow to, flows through or the outflows from Poland are concerned. At the example of the last ones, Okólski explained that the virtue of ‘incomplete migration’ ‘seems to be a combination of the following three features of a migrant: "loose" social and economic status in Poland, irregularity of stay or work in [the] host country, and maintaining close and steady contacts with [the] migrant’s household in Poland (i.e. through frequent home visits). No regularity can be observed as far as [the] duration of [the] stay abroad or the country of destination are concerned; some migrations are [so] short (from a few days to [a] few weeks), that they would fail to meet criteria [inherent] in any popular definition of migration and they tend to be recurrent according to a cycle [that] is typical for a particular (national/regional/local) labour market of [the] host country (or to any other opportunities to earn more

concerns the situation of people who did not fall under most definitions of a migrant but who fulfilled to a high degree the economic function of migration. Usually they were registered as tourists and they were ready to go back home any time. They did not mean to settle; their lives were split between foreign countries where they were making money and their home country, where they used social services and spent their holidays. For the year 1995, Okólski estimated that ‘incomplete migration’ concerned allegedly 3-5 million foreigners coming to Poland, mainly from the republics of the former Soviet Union (in particular Ukraine), together with 1-2 million Poles leaving to go abroad.¹⁹¹ This ‘incomplete migration’ was connected to some type of business or temporary work, mostly in the so-called shadow economy (i.e. irregular work or business). For instance, in 1995, about 3.7 million formal ‘tourists’ were involved in some kind of business and as many as 1.8 million came with the intention of seeking a job.¹⁹² At the end of the 1990s, different sources suggested that allegedly 100-200 thousand migrant workers found (irregular) employment in Poland, for example working in or for the aforementioned bazaars.¹⁹³ Nevertheless, they made the estimates mostly by taking into account seasonal workers. As Okólski suggests, however, if one also counts the numerous cases of immigrants that take a job for a shorter period than two weeks (often a weekend job, or a one- or two-day job), then the number would be several times higher in the case of Ukrainians alone.¹⁹⁴ As can be seen from the above data, the concept of ‘incomplete migration’ can change the perception of Poland as mainly a country of emigration. Okólski points out that at least until the middle of 2004, ‘incomplete migration’ represented a predominant share of economically motivated movements and he calls it a form of flow that is specific to Central and Eastern Europe that is rooted in the *underurbanisation* of many societies of Central and Eastern Europe.¹⁹⁵

In the end, the brief description of the Polish migration situation should be completed with at least some data regarding outflows, since, as already mentioned, in spite of all those changes, Poland is recognised as a country of net emigration. Available data and estimates

money that it might have been possible by staying in the home country), while some others might extend to over one year, and the migrants hardly follow traditional routes marked by earlier [waves of] migration [...] from Poland, [but] rather they [...] react [exactly] to foreign demand for (seasonal, irregular) labour or to other foreign [travel]-related gainful opportunity.’ (Okólski 1997b, 9).

191 Okólski 1997a: 11.

192 Okólski 1997b: 12.

193 E.g. the Polish Ministry of Labour and Social Policy was talking about 100-150 thousand foreign workers annually (Okólski 1998, 15); the National Labour Office argued that the number represents some 200,000 each year (Lentowicz cited in Okólski 2000: 21).

194 Okólski 1999: 19.

195 Okólski 2007: 3.

regarding the actual number of outflows differ from data connected to permanent residence change. For instance, according to official registers, between 1990 and 2003 approximately 18 to 27 thousand people were leaving Poland yearly.¹⁹⁶ In the year when Poland joined the EU the number of emigrants, understood as people who deregistered from the permanent residence in Poland, dropped below 19 thousand (see Table 1.).

The indicated official numbers regarding the outflow of Poles do not seem to be high. Nonetheless, for example, according to the results of the 1995 microcensus, about 900 thousand people – officially permanent residents of Poland – were staying in a foreign country for at least two months.¹⁹⁷ Concerning waves of emigration after 2001, the media were talking about two million Poles working abroad. At the same time, according to the Ministry of Labour and Social Policy, the number was at the level of approximately from 600 thousand to 700 thousand. It seems that the number did not change much, at least between 2001 and 2006.¹⁹⁸

3.3 Immigration policy development 1990-2004

Taking into account the fact that until the end of 1980s there was (almost) no immigration to Poland, there was no immigration policy, neither. The need to develop one only emerged together with the increase of the number of border crossings at the beginning of the 1990s. Another stimulus was the pressure of Western European countries, which were exposed to the impacts of any attempts, including misguided ones, to regulate migration in post-communist countries.

The current section briefly presents the development of Polish immigration policy until 2004. In that way, it introduces the next element of the context of today's policy towards economic immigrants. It sketches specific phases of the development of that immigration policy. It pays attention not so much to rules concerning foreigners as to the changing context and factors influencing the policy – or at least how these two things are perceived by particular academics.

Polish immigration policy has special significance because of the geopolitical position of Poland, situated between the east and west of Europe. As the migration situation in 1990s proved, it means that Poland is exposed to a great transit migration of people who want to pass through its territory to reach Western European countries. Accession to the European

196 CSO 2007b: 31.

197 Okólski 1997b: 13.

198 Compare: Kępińska and Okólski 2002: 18 and MPiPS 2006b.

Union was to change that geopolitical position in that Poland was additionally to become an eastern rampart of the EU. That situation reinforced the importance of one of the ICP aims, i.e. security. With its accession to the EU and then the Schengen area, Poland was to be responsible not only for its own security but also for the security of other EU member states.

When its borders opened in 1989, Poland was completely unprepared to face great numbers of arrivals, whether they were transit or short-term immigrants or refugees. Only gradually, in fact by a trial-and-error method, did particular institutions involved in immigration questions become established and legal regulations start to be applied.

Agnieszka Weiner has divided the development of Poland's immigration policy before EU accession into three phases: 1990-1997 – the opening of its borders; 1998-2001 – negotiations with the European Union and reinforcing of a Polish model, and 2001-2003 – preparing for EU membership. Each of these phases brought new regulations regarding foreigners.¹⁹⁹

The first phase was a period of searching for immigration policy models and solutions that Poland could adopt. Polish officials, together with politicians, took part in a number of international meetings to learn how migration issues are managed, mainly in Western European countries.²⁰⁰ Poland, like some other Central and Eastern European countries, took part in several transgovernmental working groups and forums which were meant to *transplant* the Western instruments aimed at migration and asylum.²⁰¹ As a result of those works, Poland signed a number of readmission agreements with its neighbours and started to prepare a new Act on Aliens.²⁰² The old one, the 1963 Act on Aliens, did not correspond to the new reality, whereas the 1991 amendment was not a sufficient solution. Considering all these matters, Weiner, when analysing the development of Polish immigration policy at that stage, concludes that it was shaped mainly by imitation, especially as regards readmission agreements.²⁰³

It used to be thought the basic meaning of the 1997 Act on Aliens had was the integration of Poland with the European Union. From the text of the Act, it is evident that the policymakers took over some solutions from Western models. The Act on Aliens was relatively restrictive and did not correspond to the situation of Poland, which was primarily a transit country and not a receiving one. As Weiner observes, these restrictions resulted,

199 Weiner 2005: 2.

200 Weiner 2006: 5.

201 Guiraudon 1999: 32.

202 Weiner 2006: 5.

203 *Ibidem*.

however, more from the fear of financial expense than from any anti-immigrant atmosphere in society in general or in political parties in particular.²⁰⁴ Certainly, the geopolitical location of Poland, between the economically and politically disadvantaged East on the one side and wealthy and democratic West on the other side, also contributed to the restrictions. The introduction of the new Act closed the first phase of the development of Polish immigration policy. The restrictions that the new Act on Aliens introduced resulted in a decrease in the number of individual border crossings of the border with Russia and Belarus. For that reason, the new regulations also evoked protests from people living from cross-border trade, who were afraid of a decrease in the number of arrivals.²⁰⁵

The second phase, the years 1998-2001, was characterised by the desire of Poland to become a member of the European Union. The influence of the EU was distinct during the negotiations, as well as during so-called horizontal and twinning programmes. As Weiner notes, the effect of the processes was the Europeanisation of Polish immigration policy. This Europeanisation concretely resulted, *inter alia*, from the fact that the Justice and Home Affairs chapter, which included questions connected to migration or border management, represented a special case in the negotiations for two reasons. Firstly, its content was not given at the beginning of the negotiations. Secondly, in fact it was not an issue to be *negotiated*.²⁰⁶ Changing conditions, as well as requirements, caused issues of immigration and border management to become a *moving target*.²⁰⁷ In the end, solutions regarding those questions were in reality imposed on Poland. It only confirms the more general thesis expressed by Klaudijus Maniokas²⁰⁸ concerning the new method of enlargement, for which *conditionality* was not only one of the main principles but its *backbone*.²⁰⁹ The second phase finished with the introduction of the 2001 amendment to the 1997 Act on Aliens.²¹⁰

The last stage of the development of Polish immigration policy pointed out by Weiner – 2001-2003 – was a stage of direct preparations for EU membership. The 2001 amendment to the Act on Aliens was in force and at the same time work on the new – this time two – Acts

204 Weiner 2005: 15.

205 Łodziński 1998: 5-6.

206 Weiner 2005: 8.

207 Kępińska and Stola 2004:164.

208 A former Deputy Director-General, European Committee under the Government of Lithuania and former Deputy Chief Negotiator.

209 Maniokas 2004: 19. Conditions had been extended further and further and did not just regard the inviolability of the *acquis*. Moreover, they were not fixed: in many cases, they were widened *ad hoc*. These characteristics of conditionality went towards the growing asymmetry between the EU and the candidate states, especially in that ‘instruments based on unilateral obligations gradually replaced instruments based on contractual and more or less mutual obligations’ (Maniokas 2004: 19-20).

210 Dz. U. 2001, nr 42, poz. 475.

regarding aliens was in process. The two Acts were the new 2003 Act on Aliens,²¹¹ together with the Act on Granting Protection to Aliens within the Territory of the Republic of Poland, enacted on the same day.²¹² With the replacement of one Act on Aliens by several Acts regulating their affairs, the conceptual change of the regulation of the question of foreigners became reinforced. The change started in 2000, when the Act on Repatriation²¹³ came into force. Later, the 2002 Act Regulating the Entry and Stay on the Territory of Poland of EU Member States' Citizens and Their Families was introduced,²¹⁴ which made a clear division between those foreigners and other arrivals – citizens of other, non-EU countries.

Concerning factors shaping Polish immigration policy in that period, Weinar talks about increased security standards, in addition to greater experience of immigration. Nevertheless, for her, the main factors affecting Polish immigration policy remain Europeanisation and European integration.²¹⁵ As Geddes writes, 'policy in the [Central and Eastern European Countries] has arisen almost entirely as a result of the requirements of EU accession and [...] EU policy models and ideas about borders, security and insecurity have been exported to CEE countries.'²¹⁶ Peter Vermeersch notes the same, saying that 'new member states (often already as candidates) have been obliged to marginalize domestic factors (such as the number of asylum seekers, the level of politicization of the immigration topic, or the existence of tradition local cross-border cooperation) and have responded rather narrowly to EU demands'.²¹⁷ Paolo Ruspini comments Europeanisation process in a similar way. According to him: 'The need to satisfy parameters established from above, at the EU level, without the advice of the directly interested countries, has led on several occasions to the postulating of policies that are often inadequate in taking into account the historical characteristics of the CEE region and the problems, as a consequence of population movements in the past century, which have arisen in the displacement of ethnic minorities outside their borders of origin'.²¹⁸

The attempts to meet the *acquis communautaire*, together with the determination to keep to the calendar of preparations for EU membership, resulted in limited debate about immigration. It helped the government to introduce its own proposals without any greater

211 Dz. U. 2003, nr 128, poz. 1175.

212 Dz. U. 2003, nr 128, poz. 1176.

213 Dz. U. 2000, nr 106, poz. 1118.

214 Dz. U. 2002, nr 141, poz. 1180.

215 Weinar 2006: 97-8.

216 Geddes 2003: 173.

217 Vermeersch 2005: 73.

218 Ruspini 2008: 183-184.

negative reaction by the opposition. Access to the European Union was the main aim of (almost) all sides. Additionally, there was no adequate experience allowing competing bills (or at least constructive critiques) to occur. In this way, the European Commission became the main initiator of the changes to Polish immigration regulations.²¹⁹

The portrait of the factors affecting the development of Polish immigration policy briefly presented here would not be complete, however, without pointing out observations made by some other academics, for whom Europeanisation was not its only determinant. They notice that Polish national interests also played an important role in establishing the policy. Concerning the beginning of the 1990s, for instance, Łodziński calls attention to human rights, together with humanitarian requirements on the one hand, and the interests of the state, on the other hand, as determinants shaping the ICP of Poland.²²⁰ With regard to later years, Kicinger – who does not deny the Europeanisation of Polish immigration policy – points out several such issues. Firstly, as she notices, the fact that Poland was adjusting its regulations to the EU *acquis* does not mean it was contradictory to Polish interests. Secondly, Kicinger underlines the success of Polish politicians who were able to secure Polish interests (foreign policy, economic, social affairs etc.) when they postponed the introduction of visas for Ukrainians, Russians, and Belarusians to the maximum extent (visas were only introduced in October 2003). Then, in order to minimise the expected negative impacts of the introduction of visas on cross-border movement, Poland increased the number of its consulates, and visas for Russians and Belarusians were relatively cheap, while for Ukrainians they were even free of charge. Thanks to that, there was no significant decrease in migration movement on Poland's eastern border. At the same time, Poland achieved its main goal, integration with the European Union. The third matter which Kicinger points out is the question of repatriation. The 1997 Constitution guarantees the right of persons of Polish origin to repatriation. In 2000, a separate bill regarding that thing was issued. The question of repatriation, a special feature of Polish immigration policy, represents another example of the realisation of particularly Polish interests.²²¹

All in all it can be said that before 2004 Europeanisation was the main, though not the only factor, shaping the immigration policy of Poland. In the case of the part of the policy aimed at the regulation of foreigners' access to the labour market, whose development is elaborated below, the situation was different, however. According to Kicinger, the main, if

219 Iglicka, Kaźmierkiewicz, and Mazur-Rafał 2003: 18.

220 Łodziński 1998: 19.

221 Kicinger 2005: 12.

not the only factor shaping the policy was the Polish economic situation, and, chiefly, the high unemployment rate.²²²

3.4 Access to the labour market between 1990 and 2004

In contrast to the previous section, this one is devoted solely to the development of labour immigration policy, which comprises a component of immigration control policy. As it deals with issues that are closely connected to the topic under study, this part presents the rules regulating the access of foreigners to the Polish labour market before 2004.

In fact, until the end of the 1980s labour immigration did not represent a problem to be solved. Foreigners, in general, were not interested in working in Poland or simply did not have the chance to come to the country. Those few who were employed there were either working on the basis of bilateral agreements between Poland and their states of origin or had a settlement permit there. The question of foreigners' employment was regulated only by a 1965 ministerial order. No regulation was laid down by any Act.²²³

The employment of foreigners appeared for the first time in the Act on Employment of December 1989. The only article dealing with that issue introduced an obligation of a company or a physical person aiming to employ a foreigner on Polish territory to obtain a work permit from the director of the voivodeship labour office. While making the decision, the voivodeship labour office had to take into consideration the situation on the local labour market. The only exception was foreigners working for the Polish Academy of Sciences – the conditions for employing them there were to be set by the Secretary of the Academy. The new 1991 Act on Employment and Unemployment made the regulations more precise (e.g. rules related to the period for which the work permit was issued, the type of work or position). As an innovation, rules appeared regarding the performing of work by foreigners within the scope of export services provided by foreign companies in Poland.²²⁴

Finally, the year 1994 brought the Act on Employment and Prevention of Unemployment²²⁵ that was in force – with some amendments – for ten years. According to the act, a visa with a work permit could be issued only if a foreigner had previously received the proper permission of the voivodeship labour office (which took into account the situation on the local labour market). Such a visa could be granted only for a specific position and

²²² *Ibidem*.

²²³ Stachurski 2005: 40.

²²⁴ *Ibid.*: 41.

²²⁵ Dz. U. 2004, nr 99 poz. 1001.

a specific employer and for a period not exceeding one year. The only foreigners exempted from the visa obligation were people granted refugee status and researchers working for higher education institutions or for the Polish Academy of Sciences. The rules were strict. Besides, in addition to the complicated two-stage procedure for the issue of a visa, the costs of the application (regardless of the final decision) were very high. They equalled the minimum monthly wage in Poland.

The consequence of these restrictive regulations, as well as the high unemployment rate and general tolerance of illegal employment that exists in Poland, was that the number of legally employed foreigners was very low, while, on the contrary, there was a high number of illegally working immigrants. Officially, policymakers declared the need and the will to fight that undesired phenomenon. These declarations were even followed by suitable regulations, which comprised concrete instruments for combating the illegal employment of foreigners (e.g. in the 1997 Act on Aliens). Nonetheless, the actual enforcement of the policy only confirmed the correctness of Cornelius' aforementioned policy gap hypothesis. Some of the instruments were not used at all (e.g. refusing entry when the genuine reason for wishing to stay in Poland was different from the declared one – employment vs. tourism). Others were used in an inadequate manner (e.g. the number of labour inspections was very low). According to Kicinger, awareness of the demand for a foreign labour force in some sectors of the economy (regardless of the general high unemployment rate), together with strategic foreign policy goals related to Poland's Eastern neighbours, were the driving factors behind the *silent tolerance* of illegally working 'tourists'.²²⁶

3.5 Main actors of Polish immigration control policy

Another piece of the puzzle of the context is the actors who can affect immigration control policy. This section introduces the network of the most important authorities and organisations involved in the creation of immigration control policy in general and labour immigration policy in particular. It also briefly presents the legislative process in Poland and pays attention to the moments when these actors can intervene in it.

Like the next section, concerning access to territory, this one is devoted to the borderline issue. One could consider the question of the actors committed to immigration control policy as an element of the context. The reason for that would be the fact that the players indicated here influence not only the policy towards economic immigrants but the

226 Kicinger 2005: 20-22.

policy towards all migrants. At the same time, others may perceive the matter as being a component of the main topic under study, i.e. labour immigration policy, and therefore they could advise that the section should be placed in one of the chapters that follow. It is placed in the present chapter as the subsequent parts of the study examine rules that are already established concerning the employment of foreigners or, possibly, the role which the particular actors played while the specific rules were being constituted. Accordingly, the following paragraphs introduce the general framework of the legislative process, together with the players who contribute to it with their inputs. The section starts by briefly presenting the development of the main authorities engaged in matters of migration.

As stated earlier, Poland was unprepared for the changes in its migration situation that emerged at the beginning of the 1990s. Evidence of that is provided by, for example, the question of the authorities and institutions that were to deal with these issues.

Since the beginning of the 1990s, the main authority in matters of migration has been the Ministry of the Interior and Administration (MIA).²²⁷ It is responsible for the coordination of matters connected to migration policy, border protection, and border control, as well as questions of citizenship and the repatriation of people of Polish origin.²²⁸ Nevertheless, only between 1990 and 2001, as many as four units of the ministry – mostly departments – dealing with the subject were exchanged.²²⁹ Finally, in 2001 a separate authority was established, the Head of the Office for Repatriation and Foreigners,²³⁰ which replaced the Department for Migration and Refugees that had existed up to then.

The idea was that the Office for Repatriation and Foreigners would consolidate the process of the management of migration. It was organised similarly to Western agencies, but, at the same time, it was adjusted to Polish needs and conditions. An evidence of that represented e.g. the name of the office, where the word ‘repatriation’ was put in first place. Within two months of the office starting its activities, the new Prime Minister announced a plan for a clear reduction of central administration. Among other things, it meant that the recently set-up the Head of the Office for Repatriation and Foreigners was to be abolished. After a short time, the decision was postponed for one year and then was not put into practice,

227 Originally the Ministry of Interior (Ministerstwo Spraw Wewnętrznych), which since 1997, was called the Ministry of the Interior and Administration (Ministerstwo Spraw Wewnętrznych i Administracji)

228 For repatriation see 4.7.

229 1993-1996 Bureau for Migration and Refugees, 1997-1999 Department for Migration and Refugees, 2000-2001 Department for Border Protection, Migration, and Refugees, 2001 Department for Migration and Refugees.

230 Prezes Urzędu do Spraw Repatriacji i Cudzoziemców

but the whole situation had a negative effect on the activities of the office, which was not able to live up to the original expectations.²³¹

After a few years of stagnation, the year 2006 brought some important changes, both legal (see Chapter 4.2) and institutional ones. In the Ministry of the Interior and Administration – this time apart from the already-existing the Head of the Office for Repatriation and Foreigners – a Department for Migration Policy²³² was established, which has continued to work until today. Simultaneously, in the Ministry of Labour and Social Policy, the Department of Migration was set up (see further). The next year another MIA unit came into existence – the Department for Citizenship and Repatriation.²³³ That period also brought the revival of the activities of the Head of the Office for Repatriation and Foreigners, but already as a new authority – the Head of the Office for Foreigners.²³⁴ The Head of the Office for Foreigners became the central authority responsible for e.g. the entry, transit, and departure of foreigners. It is the second stage in cases regarding foreigners' stays in which the governor (*wojewoda*) - the heads of the voivodeships understood as local government administration – makes decisions. Then it is competent to grant and deprive different forms of international protection, such as refugee status or a tolerated stay (the first stage), as well as the organisation and management of centres for refugee seekers.²³⁵ Apart from that, it runs the national set of registers regarding foreigners, the so-called STAY System,²³⁶ and plays the role of the Central Visa Authority on the basis of the Community Code on Visas.²³⁷ Repatriation issues were moved to the competent MIA department.

Questions connected to foreigners' access to the labour market, together with issues related to family policy, social insurance, and integration, remain within the scope of the competencies of the Ministry of Labour and Social Policy.²³⁸ In April 2006, as a result of economic emigration on the one hand, and, on the other hand, the economic boom in Poland, the above-mentioned Department of Migration was established.²³⁹ In this way, the MIA Department for Migration Policy gained an equal partner in the Ministry of Labour and Social Policy. The MLSP department dealt with many issues connected both to the emigration of

231 Kępińska and Okólski 2002: 2-3.

232 Departament Polityki Migracyjnej

233 Departament Obywatelstwa i Repatriacji

234 Szef Urzędu do Spraw Cudzoziemców established by the Na mocy ustawy z dnia 24 maja 2007 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw (Dz. U. Nr 120, poz. 818).

235 Dz. U. 2003, nr 128, poz. 1175: Art. 141.

236 System POBYT launched by Art. 132 of the 2003 Act on Aliens as amended.

237 Dz. U. 2003, nr 128, poz. 1175: Art. 34 and Art. 46.

238 Ministerstwo Pracy i Polityki Społecznej

239 Departament Migracji

Poles and the immigration of foreigners, together with the integration of the latter. For example, it initiated the formation of an important body called the (interministerial) Team for Migration (henceforth referred to as TM).²⁴⁰ Despite that, its existence as an independent unit was not too long. In 2009, it was absorbed by the Department of the Labour Market²⁴¹ and was downgraded to the Section for Economic Migration.²⁴² The decision provoked many questions; however, the minister did not justify it.²⁴³

The two ministries, or rather their particular units, are the main actors within the Polish government that shape migration policy. The initiatives regarding rules regulating the inflow and stay of foreigners mainly come from there. In Poland, the legislative initiative, apart from the Cabinet, belongs to the upper chamber of the Parliament (Senate) as a whole, then to a group of fifteen members of the lower chamber of the Parliament (Sejm) and to the president. In addition, one hundred thousand Polish citizens can take the legislative initiative. In fact, however, as the question of immigration has not yet been politicised in Poland, bills dealing with migration issues represent governmental proposals, although it can happen that the stimulus for the change to a particular rule may come from some other actor. A very influential player, not mentioned above, remains the European Union, whose numerous directives make the government amend legal acts.

Before further paragraphs briefly present the legislative process, one more actor is worth paying attention to. This is the already-mentioned interministerial Team for Migration. The TM was established in February 2007 as a consultative body of the Prime Minister. Representatives of a wide range of ministries and central authorities take part in its work. The tasks of the TM are to initiate legislative and institutional changes regarding migration, as well as the integration of foreigners in Poland, and to recommend them to the Cabinet, to prepare proposals for modifications of competencies concerning migration issues, and to give opinions in matters of both long-term and one-year national programmes of the European Fund for the Integration of Third-Country Nationals. Apart from that, it is to exchange information and monitor work regarding migration issues at the EU level. It cooperates with different authorities when dealing with questions within its remit.²⁴⁴ Although the TM is not

240 Zespół do Spraw Migracji

241 Departament Rynku Pracy

242 Wydział Migracji Zarobkowych

243 Zalewski 2009.

244 Kancelaria Prezesa Rady Ministrów 2008b.

the first body brought into existence for the creation of the Polish migration policy,²⁴⁵ it is the first one that worked out the strategic document ‘Polish Migration Policy’ (see 4.9).

A stimulus that triggers the legislative process in the event of a change to some rule regarding foreigners often comes from the interministerial Team for Migration. The following paragraphs outline the way in which an initiative eventually becomes an amendment to an act, as well as the network of the various actors involved in the process. The example refers to a situation in which a bill relates to the employment of foreigners.

The legislative process at the governmental level starts at the moment when, on the basis of some stimulus, e.g. from the TM, the Department of the Labour Market prepares a bill for an amendment to the Act on the Promotion of Employment. The bill is subsequently consulted with all the other departments within the Ministry of Labour and Social Policy. Sometimes the Supreme Employment Council, which is a consultative body in the MLSP, comments on it. If it includes regulations connected to some extent to EU law, the Committee for European Affairs also considers it. In the next step, there is time for all other ministries to give their opinion about the bill. It must be admitted that although the bill is submitted to all ministries, the main ones that actually refer to it – if it is a bill regarding the labour market – are the Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of the Economy, and Ministry of National Education, together with the Ministry of Science and Higher Education. At the same time, the Department of the Labour Market sends the bill to all governors (since they play an important role in the enforcement of policy) and to stakeholders. Obligatorily, it is delivered to employers’ organisations and to labour unions. Aside from that, it is placed on the website of the Public Information Bulletin,²⁴⁶ where all other stakeholders and individuals can read the bill and its justification, as well as being able to follow which stage of the legislative process the bill is at a particular moment.

In addition to the actors mentioned in the previous paragraph, a few other players who may comment on a bill are worth special attention. Apart from the governors, who e.g. act as first stage for questions regarding the legalisation of foreigners’ stays and granting work permits or who make decisions regarding the expulsion of foreigners, there are other actors who are concerned mainly with law enforcement. They can bring important inputs related to the practical side of the functioning of particular rules. For instance, there is the Border Guard,

245 In the years 1990-1993, an Interministerial Commission for Refugees existed, which was responsible for determining the principles of the policy towards refugees. Then, in 1997, the Prime Minister created the interministerial Team for Migration; nevertheless, the team in fact did not undertake any activity to work out migration policy guidelines, Rajkiewicz 2003.

246 Biuletyn Informacji Publicznej

which is competent in questions of admission, stay, and legality of employment, as well as in questions relating to foreigners' return or expulsion.²⁴⁷ Other examples are the National Labour Inspectorate,²⁴⁸ which is also involved in combating illegal work by foreigners, as well as the district and regional labour offices.

Furthermore, there are a few interministerial bodies. In addition to the TM, migration issues are of interest e.g. to the Governmental Population Council,²⁴⁹ interministerial Team for the Polish Diaspora and Poles Abroad,²⁵⁰ and the interministerial Team for Combating and Preventing Human Trafficking.²⁵¹

As far as stakeholders are concerned, it is worth noting that in Poland there are a few dozen non-governmental organisations focusing on migrants, as well as research institutes examining phenomena connected to migration. An important thing is that their outputs have a greater and greater influence on the process of decision making.²⁵²

After taking into account the comments of all those actors, the Cabinet accepts the final version of the bill. Then the bill is sent to the Parliament. Both its lower and upper chambers (the Sejm and Senate respectively) discuss it in commissions and in their plenary sessions. A member of the government participates in all the discussions to explain the position of the Cabinet and to answer possible questions. The Parliament gives the final shape to the amendment or the Act. Before that, its position can additionally be influenced by the activities of various lobbying groups. Finally, the Act is sent to the President, who can sign it, but can also veto it – then the Parliament can overrule his veto. The President may alternatively pass it on to the Constitutional Tribunal.

This is an outline of the legislative process in Poland in the case of amendments to acts. In the case of ministerial regulations (ordinances), the procedure is similar. It often happens that a bill for an amendment to an act already includes the drafts of ordinances. Therefore, authorities, politicians, and stakeholders can comment on them simultaneously while commenting on the bill. When a ministerial regulation is issued regardless of whether it deals with the enacting of an act or an amendment to an act, its draft passes through the same route of consultations but of course it is not sent to the Parliament or the President.

247 Dz. U. 1990, nr 78 poz. 462: Art 1.2.

248 Państwowa Inspekcja Pracy

249 Rządowa Rada Ludnościowa

250 Zespół do spraw Polonii i Polaków za Granicą

251 Zespół do Spraw Zwalczania i Zapobiegania Handlowi Ludźmi.

252 Zespół do spraw Migracji 2011: 95.

The main aim of the above outline of the legislative process is to highlight the chief actors in the creation of the LIP. The stimuli for a change in the labour immigration policy can be introduced by some of them at any stage of the process.

What has already been presented requires one more comment. Even the modest introduction of the actors involved in the creation of migration policy performed while presenting the legislative process reveals that the structure of the Polish institutional system concerning migration issues is dispersed. The situation makes the actual coordination of actions difficult. Moreover, new migration phenomena, such as the massive outflow of Poles to EU countries or the increase of circular migration to Poland, as well as new tasks, such as tighter controls, contribute to the further dispersal of competencies. Although legal rules should act as a regulative factor here, in reality they do not guarantee uniform procedures. Therefore, the interministerial Team for Migration recommends following the praxis of most EU countries and centralising migration structures (see 4.9).²⁵³

3.6 Admission of economic immigrants to the Polish territory

The last piece of the context to be introduced in the present chapter pertains to the question of the admission of foreigners to the territory of Poland. The section presents the general rules laid down in the 2003 Act on Aliens as amended, but it pays special attention to requirements regarding foreigners who intend to undertake economic activity in Poland.

As stated earlier, access to the territory is a borderline issue which can be recognised as both an element belonging to the context and part of the main topic. It is considered here as the rules on entering and staying on Polish territory are generally similar in the case of all foreigners, regardless of their purpose in coming to Poland. The fact that those who are coming there to undertake employment can be granted a visa on the basis of a work permit or a so-called employer's declaration represents the only distinct difference.

Entering the European Union in 2004 and, connected to that, joining the Schengen area at the end of 2007, Poland transformed itself into a guardian of the eastern border of the EU. Poland's eastern border became the longest eastern external border in the EU. Altogether, it is 1185 km long. As the previous sections mentioned, Poland has been in the difficult situation of having had to balance EU requirements for a strong external frontier and border checks on nationals of third countries with which it has its own wish for good neighbourly relations, Ukraine, Belarus, and Russia.

²⁵³ *Ibid.*: 95-96.

At the moment of Poland's accession to the EU, the 2003 Act on Aliens²⁵⁴ was already in force. The next paragraphs introduce the basic rules for crossing Poland's borders that the Act laid down.

With regard to access to territory, the original wording of the 2003 Act on Aliens reads that to cross the border, foreigners have to be in possession of a valid travel document and a visa. If it is necessary to maintain reciprocity in relations with other states, crossing the border may be dependent on paying an entry fee (Art. 13). Apart from that, foreigners are in general obliged to present sufficient means of subsistence to cover their living, medical treatment, and transit and departure costs. This, however, does not concern those who come to Poland for the purpose of employment (Art. 15).

There are several types of visas. People interested in employment in Poland have to possess a visitor's visa for the purpose of work. A consul issues such a visa if a promise to grant a work permit had been issued first. Like the previous Act, this one too provides for an exception from the obligation to have a work permit – on the basis of an employer's declaration about their intention to employ the foreigner (Art. 32). However, this possibility was only used three years later (see 4.6). A visa can be short-term, i.e. for three months within six months, or a long-term one, i.e. up to one year (Art. 31). If a foreigner's stay on the territory of Poland is to exceed three months, the visa cannot be prolonged any more but the person has to apply for a residence permit for a fixed period (Art. 53). The governor grants such a permit for a period necessary to fulfil the purpose of the foreigner's stay but no longer than for two years (Art. 56).

It must be said that the 2003 Act did not introduce fundamental changes to the rules for access and staying on Poland's territory that had been in force up to then. It rather simplified and added some more order to the existing law, because the amended 1997 Act was already unclear.

The governmental justification for the bill underlined the obligation of Poland to implement existing EU legal acts, as well as pointing out that the new act would make it easier to adjust Polish law on migration questions to future changes in EU law.²⁵⁵ Similar arguments appeared during the discussion in parliamentary commissions and in the plenary session of the Sejm. During the latter, however, some voices appeared that opposed the bill. Nevertheless, the objections did not concern its content. They came from members of two

254 Dz. U. 2003, nr 128, poz. 1175.

255 Prezes Rady Ministrów 2003: 103.

populist parties, the conservative, radical right-wing political party, the League of Polish Families,²⁵⁶ and the agrarian political party Self-Defence of the Republic of Poland,²⁵⁷ which, after the 2001 elections, got into the Sejm. These parties were, in general, fighting against Poland's accession to the European Union. While opposing the bill, they condemned treating the adjustment of Polish law to EU directives as being in the national interest of Poland. They were stressing e.g. that Poland was under heavy pressure from the European Union to introduce legal instruments that were advantageous not so much for Poland but for the EU²⁵⁸ or that the acceptance of the bill was related to Poland being treated as an *EU state*.²⁵⁹

The question of economic immigrants' admission and stay on Poland's territory was not discussed as a separate issue in the debates on any level. As one member of the parliamentary commission noted, matters connected to employment remain beyond the scope of the Act on Aliens.²⁶⁰ Therefore, one cannot say that the factors affecting the admission of economic immigrants to Poland's territory differed from the factors affecting the rules regarding the admission of other arrivals. The main determinant shaping the Act was the need to adjust Polish law to EU law. In the case of access of economic immigrants to the Polish territory, the justification for the bill refers directly to the Council Resolution of 20 June 1994 on limitations on the admission of third country nationals to the territory of the Member States for employment.²⁶¹

In connection to access to the territory of Poland, it is worth paying special attention to the matter of visas for nationals of Poland's eastern neighbours. Visa policy with regard to Ukraine, Russia, and Belarus has an extraordinary place in Polish immigration control policy. It is largely connected to economic immigration from these countries, both legal and illegal. As already stated, despite its unwillingness to do so, Poland was forced by the EU requirements to introduce visas for nationals of these countries. Although the original deadline for this was set at 1st July 2003, extensive public debates, which were exceptional in Polish conditions (immigration is not usually a topic for public debates there), contributed to the postponement of the deadline. The main arguments that appeared in the debates concerned the historical, cultural, and economic connections between Poland and these countries (in

256 Liga Polskich Rodzin

257 Samoobrona Rzeczypospolitej Polskiej

258 Wiśniowska in Sejm RP 2004a.

259 In origin: *land unijny* – a reference to German states (land), Stanisław Gudźowski in Sejm RP 2004a.

260 Górna-Kubacka in Komisja Administracji i Spraw Wewnętrznych 2003.

261 Prezes Rady Ministrów 2003: 123.

particular Ukraine), but also ties with ethnic Poles living there.²⁶² Besides, it must be emphasised that in spite of its orientation to the West, Poland has already been underlining its interests in good relations with its Eastern neighbours for many years. A liberal visa policy towards those countries has been treated as an instrument of such relations.

Eventually, the visas for Ukrainians, Russians and Belarusians were introduced, as late as on 1st October 2003. To make them easily accessible for these foreigners, Poland set a very low visa fee for them and, in the case of Ukraine, the visas were even free of charge. Besides, the documents were issued automatically. Despite that a decrease in the number of arrivals from these countries was observable, e.g. between 2002 and 2004 from 5.8 million to 4.5 million in the case of Ukrainians, from 4.2 million to 3.5 million in the case of Belarusians, and from 1.8 million to 1.4 million in the case of Russians.²⁶³

Joining the Schengen area on 21 December 2007 meant stricter restrictions in terms of the ICP connected to the realisation of uniform standards of border controls, police cooperation, and applying the Schengen visa policy. Whereas the first two aspects resulted from the implementation of the most basic regulation regarding external immigration control, i.e. the Schengen Borders Code,²⁶⁴ the last one was connected mainly to the rules of the Convention Implementing the Schengen Agreement.²⁶⁵ A few years later, a new Schengen Visa Code²⁶⁶ was additionally introduced.

For Poland's eastern neighbours (as well as other third country nationals), these changes brought a few disadvantages, along with one significant advantage. On the one hand, it meant more difficult and more expensive visa procedures and longer queues at the border as a result of more detailed checks. On the other hand, however, obtaining new (short-stay) visas opened the doors to all Schengen countries, without any checks at internal Schengen borders. One of the most difficult changes, and one that probably made international mobility unbearable for some people, concerned the visa application fee. As there is a uniform visa in all Schengen countries, the fee is also the same. In June 2006, the fee increased from 35 to 60 EUR. Some states signed visa facilitation agreements – thanks to that their nationals can pay a fixed reduced price of 35 EUR – and some categories of them may even be exempted from any visa fees. Among those states, Russia²⁶⁷ and Ukraine are included.²⁶⁸ As far as Belarus is

262 More about the debate can be found e.g. in Iglicka et al. 2003: 21.

263 Kępińska 2004: 39.

264 EU 2006b.

265 EU 2000.

266 EU 2009b.

267 EU 2007a.

concerned, before Poland became a part of the system, its nationals had to pay five EUR for a single-entry visa to Poland. Since December 2007, they have had to pay the regular fee of 60 EUR because of the poor relations between the EU and Belarus. Under the Schengen *acquis* the exception regarding the payment of the visa fee concerns only a few cases.

Today (in the middle of 2011), the general rules for entering and staying on the territory of Poland are similar to those mentioned above. Although it has been amended many times, the 2003 Act on Aliens is still in force.²⁶⁹ The main changes introduced to the Act up to now regard e.g. local border traffic,²⁷⁰ which is not, however (at least officially), connected with undertaking economic activity, as well as new types of visas. Foreigners who want to cross the Polish border have to be in possession of a Schengen visa – which is valid for the territory of all member states – or a national visa, which is valid only on Polish territory. Foreign citizens who intend to work in Poland have to hold a visa issued for one of the following purposes. The first purpose can be performing work activities during a period of up to six months within twelve consecutive months on the basis of an employer's declaration. The second purpose can be performing work as a driver in international road transport. Finally, thirdly, a visa can be granted for performing work on the basis of other documents than the employer's declaration or different work than a driver.²⁷¹

A consul grants a visa on the basis of a work permit (not a promise any more) or an employer's declaration of their intention to employ a foreigner if a work permit is not required. A visa is issued for the period stated in the work permit or in the employer's declaration and not for longer than the period provided for the particular type of visa.²⁷² Starting from March 2011, Poland reduced the national visa application fee for Ukrainians from 35 to 20 EUR.²⁷³

As far as the residence permit for a fixed period is concerned, the general rules stayed the same. That means that if a foreigner's stay on Polish territory is to exceed three months, the person has to apply for a residence permit for a fixed period.²⁷⁴ Such a permit can be

268 EU 2007b.

269 Nevertheless, preparation of the new Act on Aliens has already started.

270 Implementing the 2006 EU regulation regarding local border traffic (European Union 2006c), the amended Act gives frames for concluding agreements with the eastern neighbours facilitating traffic involving the inhabitants of border areas. In 2008, such an agreement was signed between Poland and Ukraine (Dz. U. 2009, nr 103 poz. 858).

271 Dz. U. 2003, nr 128, poz. 1175: Art. 26.1. 4)-7).

272 Dz. U. 2003, nr 128, poz. 1175: Art. 27.

273 Söderköping Process 2011.

274 Dz. U. 2003, nr 128, poz. 1175: Art. 53.

issued by the governor for a period necessary to fulfil the purpose of the foreigner's stay; here it concerns employment, but it can be for no longer than two years.²⁷⁵

In general, questions of access to territory, regardless they are economic immigrants or people arriving in Poland for other purposes, are chiefly shaped by the European Union regulations. Poland, as an EU border guard, does not have much space for its own solutions. Nevertheless, firstly, the reinforcement of Poland's borders does not mean that it is contradictory to Polish interests, taking into account e.g. questions of security. Secondly, the visa policy with respect to nationals of Poland's eastern neighbours, in terms not only of its creation but also its implementation and enforcement, is an example of how is it possible to combine EU requirements with the interests of Polish foreign policy.



To sum up the whole chapter, on the eve of Poland's accession to the European Union, the newly developed structural conditions could be considered as more or less stable and already hard to change. This regards especially its geopolitical position, political structure, and economic structure. If the conditions had not been stable the EU would not have let Poland become a member at that moment. A problematic matter was the economic crisis that Poland had been experiencing, which is evidenced by the high unemployment rate. Nevertheless, its nature was not severe enough to postpone accession.

As far as migration itself is concerned, in 2004 Poland was a country with an insignificant number of regular immigrants and a great number of irregular foreigners, which was connected with the phenomenon of so-called 'incomplete migration'. The question of migration had not been politicised. The only matters present in public debate concerned the outflows of Poles looking for a job abroad. Sporadically, the issue of repatriation was publicly referred to.

Experience with policymaking in the area of migration was relatively modest. For that reason the development of Polish immigration control policy was, to a great extent, influenced by the experience of other countries. With regard to issues concerning access to territory the most important role was played by the EU. It must be admitted, however, that other factors that were taken into consideration by policymakers also existed.

275 Dz. U. 2003, nr 128, poz. 1175: Art. 56.

The absence of migration from public debate is probably one of the reasons why the bills leading to the Acts concerning the presence of foreigners in Poland have been prepared behind the closed doors of ministerial studies. Nevertheless, there has been a wide range of institutional actors, as well as various kinds of stakeholders that may influence policymaking during the legislative process. What is problematic, however, is the dispersed structure of the institutional system, which makes the coordination of measures difficult. Moreover, until April 2011 Poland did not have any migration doctrine or strategy which would give a direction to the development of the policy.

Access to the territory of Poland used to be relatively easy, especially for citizens of Poland's eastern neighbours. Nevertheless, from the moment when Poland became an EU member, and the more so since it joined the Schengen area, crossing Poland's eastern borders became clearly more difficult, regardless of the reason for one's arrival. Poland, as an EU rampart, follows the Schengen rules strictly in that regard.

4 DEVELOPMENT OF LABOUR IMMIGRATION POLICY AFTER EU ACCESSION

The previous part provided a context for the development of the labour immigration policy, which is discussed in this chapter. The chapter presents and analyses the Polish approach to questions relating to the employment of foreigners in particular years between 2004 (and specifically since Poland's accession to the European Union) and 2010.²⁷⁶ Together with the chapter including the general analysis of the factors affecting the policy outcomes as well as the one presenting trends in policy development, it represents the core part of the study.

The chapter is structured as follows. Each of the first five sections is devoted to the developments in labour immigration policy that took place in one year. There are only two exceptions: in the section discussing the year 2004, a small modification made regarding the issue of the employment of foreigners in 2005 and one further document from that year are mentioned, while in the section dealing with the year 2009, changes made in 2008 are introduced. Changes introduced in 2005 and 2008 are not analysed separately, since they were too few of them.

Each section is structured in a similar way. After some introduction providing a general picture of the developments of the particular period, the economic and migratory context (with regard to the labour market) in which they took place is presented. The data mostly reflect the situation of the preceding year, since one can suppose that while the new or amended rules were being worked on, these were the data available to the policymakers. Then the particular rules of the Act on the Promotion of Employment, as well as of the executive acts based on it, are demonstrated and discussed. In a few cases – this mainly concerns the year 2007 – other matters than just legal developments are also considered. Each section ends with a short summary of findings.

Furthermore, the chapter includes two sections devoted to special cases. The first one is the extraordinary instrument of Polish labour immigration policy, employers' declarations of intent to employ a foreigner. The second one is the so-called Polish Charter, in the case of which access to the labour market was only a secondary, additional question. The Charter is worth mentioning, however, since it potentially opens up access to the Polish labour market to an extraordinarily great number of people.

²⁷⁶ In the first half of 2011 none act pertaining to labour immigration policy was enacted. The middle of 2011 was chosen as a boundary of the study because of the strategic document called Polish Migration Policy.

4.1 Analysis of developments in 2004 and 2005

The year 2004 brought one of the most significant changes for Poland since the end of the communist regime, i.e. accession to the European Union. As presented in the previous chapter, Poland's economic situation on the eve of its accession was poor. One of the instruments intended to improve the situation was the new 2004 Act on the Promotion of Employment and Labour Market Institutions, which – just a few days before Poland joined the EU – replaced the oft-amended 1994 Act on Employment and Counteracting Unemployment. The Act includes the basic rules regulating the employment of foreigners in Poland. The current section discusses these rules.

As noted in the previous chapter, at the beginning of the millennium Poland faced economic problems. Let us list a few economic indicators. In 2001, the annual growth of GDP decreased to only 1.2 per cent and in 2002, it only increased to 1.4 per cent.²⁷⁷ The value of both imports and exports increased between 2001 and 2002 by merely approximately five billion US dollars each.²⁷⁸ Between the years 2000 and 2002 investment levels were clearly decreasing.²⁷⁹ Nevertheless, the year 2003 brought an improvement in the state of Poland's economy. The annual GDP growth reached 3.9 per cent.²⁸⁰ The value of imports reached almost 13 billion and that of exports clearly over 12 billion US dollars.²⁸¹ Similarly, investment levels finally started to increase.²⁸² The most serious problem of the Polish economy in the pre-accession period remained the high unemployment rate: in the middle of 2003, it was close to 18 per cent on average and it was on the rise.²⁸³

With regard to migration, or, specifically, the numbers concerning the employment of foreigners in Poland, a few pieces of data could be helpful in getting an insight into the situation. In the year directly preceding Poland's accession to the European Union, almost 20 thousand work permits were issued to foreigners in Poland. Almost 19 thousand of them were granted individually and the rest to persons working in sub-contracting foreign companies.²⁸⁴

277 WB 2012c.

278 CSO 2003.

279 CSO 2004: 420.

280 WB 2012c.

281 CSO 2004: 356.

282 CSO 2004: 420.

283 M. P. 2003, nr 47, poz. 703.

284 Kępińska 2004: 31-32.

The highest numbers of work permits granted individually were received by Ukrainians (15 per cent); Germans (10 per cent) and British and French citizens (8 per cent each) followed.²⁸⁵

As far as economic spheres are concerned, most work permits were issued for work in trade (23 per cent), manufacturing and mining (18 per cent), education (14 per cent), real estate activities (11 per cent) and hotels and restaurants (5 per cent). In that context it should be explained that in the following years, the spheres were defined differently. If the real estate activities had been in one sector together with financial intermediation in 2003, as was the case later, they would have taken third position with almost 15 per cent.²⁸⁶

With regard to qualifications/occupation, clearly most work permits in 2003 were granted to managers, experts and consultants (46 per cent); additionally, as many as 26 per cent were issued to owners (in the following year the two categories were combined). Since in 2003 education was the third main economic sector that foreigners were interested in, teachers received 15 per cent of the work permits. Skilled workers received 11 per cent of the work permits granted individually.²⁸⁷

These were the economic and migratory circumstances in which the new Act on the Promotion of Employment and Labour Market Institutions²⁸⁸ came into existence. The role of the Act is to regulate relationships on the labour market in general; therefore, the rules regarding foreigners represent only a very small part of it (originally it was three articles out of 152). Nevertheless, that part is crucial for the employment of foreigners.

With regard to foreigners, the 2004 Act did not change much in comparison to the previous one. The general rule remained the same: foreigners were allowed to perform work in Poland if they were in possession of a work permit. The 2004 Act defined performing work by a foreigner as employment, performing another gainful occupation or acting as a member of the board of legal entities conducting economic activities (Art. 2.1, pt 40).²⁸⁹ Then it provided that work permits were required: when foreigners worked for an employer located in Poland; when they worked for a foreign employer and were delegated to Poland to carry out an export service, and finally, when they worked for a foreign employer and were delegated to

285 *Ibid.*: Table 36.

286 *Ibid.*: Table 37.

287 *Ibid.*: Table 38.

288 Dz. U. 2004, nr 99 poz. 1001.

289 Although in the bill the definition had included also acting in boards of limited partnership business entities, when the Senate removed it, the definition regained the old form.

an entity located in Poland for a period longer than thirty days within one year to carry out tasks other than an export service (Art. 88.1).

The Act preserved the complicated two-step procedure for granting a work permit that had existed in previous years. It meant that as the first step employers had to obtain a promise that work permits would be issued to the foreigners they were going to employ. The promise was subject to a condition that initially foreigners would be granted proper visas or residence permits for a specified period (or another kind of permit in the case of EU nationals and their family members). Only as a second step would work permits be issued to the employer and it was done only after the employer had confirmed in writing the date when the foreigner would start working. Both the promise and the work permit were granted by governors. When issuing their decisions, the governors had to take into account the situation on the local labour market, as well as the criteria applied to issuing promises and work permits which they had determined. Additionally, they could consider the usefulness of the employer to the labour market and to the economy. The Act, however, did not explain what usefulness meant or how it could be assessed (Art. 88). This was laid down by a ministerial regulation.²⁹⁰

The rules were complicated and restrictive: the promise and the work permit itself were issued to the employer for a specified period, a specified foreigner and an employer, for a specified position or kind of work. The conditions determined in the work permit had to mirror those determined in the promise. Additionally, when applying for a work permit, an employer was obliged to make a payment equal to a minimum monthly wage for work for each person to be employed. In case of an application for the renewal of a work permit, the payment was half of the minimum monthly wage. The payment was connected to the application and had to be made regardless of what kind of decision was issued afterwards (Art. 88.14). Finally, the decision could be revoked if new circumstances were identified, e.g. the documents presented were found to be false. It ought to be added that this last rule was not included in the previous Act. Nonetheless, revoking a decision was possible on the basis of the administrative code.

The Act provided some exceptions to the obligation to be in possession of a work permit. Concerning nationals of third countries (not EU nationals' family members), the Act identified people who – generally speaking – were granted some kind of international protection in Poland, as well as their family members under specific conditions, then family members of Polish nationals and those who were exempted from the obligation on the basis

290 Dz. U. 2006, nr 141 poz. 1002.

on specific rules (Art. 87). This list of exceptions in fact only confirmed the restrictive character of the Act. The list of further exceptions from the work permit requirement – this time not on the basis of the foreigner's status, but with regard to the person's occupation – was to be presented by the minister responsible for labour issues in the form of an ordinance. Besides, the minister was to issue an ordinance including a list of cases in which a work permit could be granted regardless of the situation on the labour market. The Act established some general conditions related to both lists. They are presented in the part that discusses the regulations.

The bill of the Act contained the drafts of the two ordinances, together with the draft of the ordinance on the procedure and conditions for the issuing of work permits. Nevertheless, they only exactly copied the restrictive rules included in the ministerial regulations from 2001 as amended. For this reason, these old ordinances continued to be applied. New ministerial regulations appeared together with the new circumstances, i.e. in the middle of 2006.

To sum up, in the matter of the employment of foreigners the 2004 Act on the Promotion of Employment did not bring anything new in comparison to the previous regulations. On its basis, employing a foreigner legally was connected to many limitations, together with a long, complicated and expensive procedure.

In the question of foreigners' access to the territory of Poland and remaining on it, searching for the factors lying behind the existing rules is relatively easy, since all the materials and arguments included in them relate to foreigners. On the other hand, in the case of access to the labour market the situation is much more complex. The 2004 Act on the Promotion of Employment and Labour Market Institutions regulates relations on the labour market in general, i.e. mainly issues regarding Polish nationals. As mentioned before, matters related to foreigners represent a marginal part of the Act. Especially in the case of the 2004 Act, it is difficult to find explicit arguments for the preservation of particular rules regarding the employment of foreigners. The first reason it is so is because the Act did not bring any innovations in this regard to be justified and the preservation of the existing rules was not justified at all. Second, in the context of the Polish economic situation on the eve of EU accession, the 2004 Act as a whole was of special significance and the parliamentary debate about the bill was connected to much wider discussion about the so-called 'Hausner savings plan', which was designed to improve the Polish economy of that time. Issues relating to the employment of foreigners stayed in the background of other important matters discussed in

references concerning the bill. If the question of foreigners appeared during the parliamentary debates, it concerned the employment of EU citizens rather than nationals of third countries since the application of the reciprocity principle was a hot topic in Poland when so many EU countries were restricting the access of Polish workers to their labour markets. For these reasons, the analysis of all references related to the Act on the Promotion of Employment did not provide much material for the examination of factors shaping Polish labour immigration policy towards nationals of third countries in 2004. However, what was found is presented below.

At the general level the justification for the bill first of all referred to the European Employment Strategy and in particular to the guidelines for the employment policies of the Member States.²⁹¹ The justification underlined that the bill represented a realisation of recommendations included in the guidelines regarding the *transformation* of illegal employment into its legal counterpart. Hence, the influence of the European Union, together with the will to combat illegal employment (as such, not in the case of foreigners alone), were two general and basic factors indicated in connection to the Act.

Concerning the employment of foreigners, the justification pointed out that the particular rules helped to reinforce the protection of the Polish labour market, as well as to eliminate employment in the so-called *grey zone*.²⁹² Similar arguments were later repeated during the parliamentary debate and the debates in the parliamentary commissions.²⁹³

As already stated, the rules regarding accepting foreigners on the labour market did not change much in comparison to the previous Act. The 2004 Act only ordered and concretised rules that had already existed earlier. Two things which were rationalised in the governmental justification of the bill were the empowerment of a governor by the Act to determine the criteria for issuing promises and work permits, together with the specification of the criterion pertaining to the local labour market test. The introduction of the former resulted from experience. The justification pointed out that the lack of such empowerment in the Act had produced different legal forms of criteria and had the effect of devaluing the decisions about promises and work permits. Concerning the latter question, the justification highlighted the possibility that a governor could take into account the usefulness of the employer for the labour market and the economy (in particular it concerned foreign legal entities). According to the text, such a possibility could, or rather should, represent a barrier to

291 EU 2003.

292 It is understood in Poland as an illegal work; Rada Ministrów RP 2004: 161.

293 Miżejewski, Cymański in Sejm RP 2004a.

the establishment of fictitious companies of which the only aim would be receiving work permits for particular foreigners.²⁹⁴

Neither during parliamentary sessions nor during meetings of the commissions had the deputies devoted much time to the employment of foreigners. In fact, they referred only to three matters: the length of the period for which a foreigner delegated by a foreign employer to an entity located in Poland could work without a work permit; the size of the application fee; and the presence of limited partnership business entities in the definition of the performing of work by a foreigner.

With regard to the first matter, there were suggestions that the length of that period should be extended from thirty to ninety days, but there was not much discussion about it. Eventually, the rule stayed as it was originally formulated (thirty days) with reference to the economic situation of Poland and the need to protect the Polish labour market.²⁹⁵

The situation looked similar in the case of the application fee rate. A suggestion that it should be reduced because it represented a barrier to the legal employment of foreigners with scarce qualifications was refuted. Interestingly, nobody related the high application fee rates to the economic situation of that time. It was only argued that in comparison to other countries' practice a fee rate corresponding to the amount of the minimum monthly wage was liberal.²⁹⁶ Nonetheless, when in 2007 the fee rates were radically reduced, the main and widely accepted argument was that their high level represented a barrier to legal employment (see 4.3).

Finally, some controversies were evoked by the question of the definition of the performing of work by a foreigner. In the bill, the definition of this basic term was formulated as 'employment, performing another gainful occupation or acting as a member of the board of legal entities conducting economic activities or acting in boards of limited partnership business entities'. The last phrase ('acting on boards of limited partnership business entities') was to distinguish the definition from the one included in the previous Act.²⁹⁷ During the legislative process, however, the Senate removed the phrase. Interestingly, some deputies in the Sejm perceived such a new version of the definition as too liberal, others as too restrictive. The opponents of the definition amendment claimed that the rule would force foreign board members who come to Poland sometimes even only once or twice a year to apply for a work

294 Rada Ministrów RP 2004: 154-155.

295 Sejm RP 2004a.

296 *Ibidem*.

297 Dz. U. 1995, nr 1 poz. 1: Art.2. 2. pt 22b.

permit. Nevertheless, the governmental representatives explained that such broadening of the definition resulted from experience: there were many foreigners trying to misuse the fact that until then board members in such business entities did not have to be in possession of work permits. Therefore, it used to happen that such companies had been established merely to avoid the work permit requirement. In such situations, there were company boards which had twenty members or even more.²⁹⁸ In the end, the Sejm accepted the Senate amendment, which was accompanied by the justification that in the new version the rule was clearer since companies acting on the basis of the trading partnership code were not obliged to form management boards. What is interesting is that in that way the definition of the performing of work by a foreigner returned to the exactly the same wording as that of the definition that was present in the previous Act regulating the issues.²⁹⁹

As can be seen, the whole debate over the definition was full of confusion, which was later confirmed by the discussion of the first amendment to the Act. In fact, ‘acting as members of boards in limited partnership business entities’ is included in the phrase ‘acting as a member of the board of legal entities conducting economic activities’.

One can assume that the complicated administrative procedure, high application fee and improving checks on the legality of employment (which are not the subject of the study) were set to ensure that – as had been repeated for many years – the employment of foreigners would stay merely complementary in its character and not substitutive to the employment of Polish nationals. Besides, as is evident from the parliamentary debates, given the economic situation at that time, even if the government would have liked to liberalise the labour immigration policy (but it did not), it would hardly justify such steps.

It is interesting, however, that only one voice referred to *the state of the economy* explicitly – the factor was present implicitly in all debates and the justification of the bill when representatives of the government and the deputies were talking about the *protection of the Polish labour market*.

The protection of the Polish labour market was a very general argument. Moreover, it could suggest that the Act was reacting to the fear of pressure from a foreign labour force. In the economic situation at the time when the Act was passed, an outside observer could treat maintaining (and reinforcing) the restrictions as a signal to society that it was truly protected from a (cheap) foreign labour force. Nevertheless, in fact it was protection *a priori* because

298 Sejm RP 2004b.

299 Dz. U. 1995, nr 1 poz. 1.

both the number of immigrant workers in Poland at that time and the immigration pressure were small. If one could indicate any more significant problem with an immigrant labour force it would be rather a question of foreigners working illegally, related to the phenomenon of the ‘incomplete migration’, which was discussed in 3.2. Addressing the problem would not, however, be only a question of establishing new rules, which would actually support legal employment, but also of their implementation and enforcement, which in Poland would leave a lot to be desired, *inter alia* because of there being too small a number of controls. Furthermore, immigration was not a public topic at that time. Quite the opposite, it was the emigration of Polish nationals looking for a job in Western European countries that was interesting for Polish society. Therefore, nobody was saying at that time that ‘immigrants take our jobs’.

All in all, the analysis of the materials related to the 2004 Act on the Promotion of Employment brings the conclusion that the shape of the rules regarding the employment of foreigners resulted mainly from the state of the economy and soft security considerations (‘protection of the labour market’). Additional influencing factors, the significance of which was, however, clearly smaller, were the practices of other European countries, which some deputies, as well as ministerial representatives, referred to, along with the experience of Poland with applying the previous rules.

Furthermore, it could be said that the wording of the rules regarding the employment of foreigners only confirmed that Polish policy at that time was passive in questions of immigration. Even drafts of ministerial regulations, that were to introduce concrete manifestations of these rules, copied ordinances that had existed earlier.

In the meantime, the first amendment to the Act, in 2005, changed the definition of the performing of work by a foreigner.³⁰⁰ Even though the bill omitted the question, the proposal of the change emerged during the meeting of the Senate commissions because thanks to the change the rule became ‘more precise’.³⁰¹ The new definition of the performing of work by a foreigner was formulated as ‘employment, performing another gainful occupation or acting as a member of a board of legal entities which had been registered in the register of entrepreneurs on the basis of rules on the National Court Register or which are joint stock companies within an organisation’ (Art. 1.1a). It was argued that ‘the decisive matter would be not the fact of the performance of economic activity by particular legal entities but their

300 Dz. U. 2005, nr 164 poz. 1366.

301 Pastusiak in Senat RP 2005b: 13.

registration in the register of entrepreneurs or the status of a company in an organisation.’³⁰² In the Senate justification, the change emerged within a group of amendments with a ‘specifying, corrective or supplementary character.’³⁰³ Interestingly, contrariwise to the arguments that had emerged a year earlier, which presented a broader definition of the performing of work by a foreigner as more restrictive, this time a similar matter was referred to as ‘broadening of access to the labour market for people acting on the management boards of legal entities.’³⁰⁴ There was no further discussion of it either in the Senate or in the Sejm.

Apart from that small modification, no more changes pertaining to the employment of foreigners in Poland happened until 2006. Nevertheless, at the end of the sub-chapter, it is worth mentioning a document which was not a legal act; nevertheless, it marked out the direction of the development of immigration policy. This was the 2005 National Employment Strategy for the years 2007-2013, accepted within the framework of the National Development Plan.³⁰⁵ In this document, the government admitted that the unfavourable demographic trends, along with the experience of other EU countries, revealed that there was ‘a necessity to prepare guidelines for migration policy in relation to the labour market.’³⁰⁶ In the SWOT analysis of Polish employment and labour market policy the lack of a migration policy after the year 2010 was recognised as one of the threats to the existing system.³⁰⁷ These observations later became a basis for the development of the migration policy strategy, parts of which are presented in 4.9.

Something new that appeared in the National Employment Strategy was that the government recognised that the task of migration policy was to stimulate factors pushing Poles abroad and factors pulling foreigners to Poland. Thanks to that, the labour pool could be used optimally.³⁰⁸

Statements of this kind could give the impression that the will existed to open the gate to economic immigrants. Nonetheless, the principles of the immigration policy, which followed them, confirmed the opposite – a continuation of the restrictive character of the policy, which was justified by the high unemployment rate. The document stated that the basis of the immigration policy was the protection of the Polish labour market. This should be

302 Skorupka in Senat RP 2005a: 2.

303 Senat RP 2005c : 10.

304 Męcina in Senat RP 2005a: 1.

305 Ministerstwo Gospodarki i Pracy 2005.

306 *Ibid.*: 56 [translation AZK].

307 *Ibid.*: 44.

308 *Ibid.*: 76.

ensured by treating the work done by foreigners as only complementary to the work of Polish nationals, as well as by accepting and enforcing rules such as the labour market test, regional criteria for issuing work permits and committing the employer to employ a Polish national, whenever possible. The only exceptions should regard cases related to international standards, international agreements or the so-called national interest, which was not specified in the document. Then it was underlined that the policy should be coherent with the EU guidelines.³⁰⁹

Until the middle of 2011, there were several amendments to the 2004 Act on the Promotion of Employment. Most of them, however, did not modify the articles regarding the employment of foreigners. Nevertheless, three amendments brought more significant changes in that matter: the 2007, the 2009 and the 2010 ones; these three, together with ministerial regulations and a few other things, are enlarged on in the following sections.

4.2 Analysis of developments in 2006

After a few years of stagnation in labour immigration policy, the year 2006 brought some innovations. First of all, as stated in the sub-chapter 3.5, in that year specific important institutional changes were made. In the Ministry of Interior and Administration, the Department for Migration Policy was set up, whereas in the Ministry of Labour and Social Policy, the Department of Migration was established. Additionally, the Minister of Labour and Social Policy finally issued a package of new ordinances regulating the access of foreigners to the labour market. They replaced ministerial regulations that had been in force since 2001. The regulations regarded the (regular) procedure and conditions for issuing and prolonging promises and work permits for the employment of foreigners, a simplified version of the procedure, and, finally, the cases in which the work permit requirement for foreigners was waived. Additionally, among them there was an ordinance regulating the access of EU nationals to the Polish labour market, but it is omitted here because it lies beyond the scope of the study. In general, the rules introduced by the ordinances only confirmed the restrictive character of Polish labour immigration policy. The single exception, the attempt to open the *wicket* to the Polish labour market slightly, was so-called employers' declarations of intent to employ a foreigner. Because of their extraordinary character, they are, however, discussed elsewhere in the study (see 4.6).

309 *Ibid.*: 77.

After Poland's access to the European Union, its economic situation started to improve. It was reflected, for instance, in a decrease in the unemployment rate, as well as in the growth of gross domestic product. Whereas in June 2004 the average unemployment rate in Poland exceeded 19 per cent,³¹⁰ in the following years it dropped systematically. In 2005, it fell to 18 per cent³¹¹ and in 2006 to less than 16 per cent. In the Mazowieckie voivodeship (the central region where Warsaw is situated), where the highest number of work permits for foreigners is issued, the unemployment rate decreased to 12.7 per cent in June 2006.³¹²

Further evidence of the economic development was the increase in the gross domestic product. A clear improvement of the economic situation was observable in 2004, when GDP reached 5.3 per cent. In 2005, the Polish economy did not repeat this high result and GDP was only 3.6 per cent.³¹³ However, this fact could not be considered as another economic slowdown. Evidence of that was the high increase in the first quarter of 2006 (5.4 per cent), which led to the expectation of high GDP growth throughout the whole year.³¹⁴ Similarly, other economic indicators were on the rise. Examples include investments, which increased by 6.6 per cent in 2005 in comparison with the previous year,³¹⁵ or foreign trade turnover, which grew in terms of both imports and exports, although the growth was not as high as that in 2003 and 2004.³¹⁶

As stated earlier, the number of foreigners working in Poland legally was not high. In 2004 12.4 thousand work permits were granted, and in 2005, the number dropped to 10.3 thousand (it started to increase only in 2006).³¹⁷ It must be underlined, however, that the statistics are not evidence of declining interest on the part of foreigners in employment in Poland. This is because first of all, as a result of Poland's accession to the EU, the work permit requirement was abandoned for nationals of three EU-15 countries, which – in contrast to other states of EU-15 - established free access to their labour markets for Poles, i.e. the United Kingdom, Ireland and Sweden (Poland applied the principle of reciprocity). The same was true for the other new member states (EU-10), except for Malta. The subsequent opening of the labour markets of other 'old EU countries' resulted in the opening of the Polish labour

310 M. P. 2004, nr 42, poz. 740.

311 M. P. 2005, nr 58, poz. 789.

312; M. P. 2006, nr 67, poz. 693.

313 WB 2012c.

314 MG 2006: 113-114.

315 *Ibid.*: 13-14.

316 CSO 2006: 375.

317 MPiPS 2005.

market for their nationals too.³¹⁸ Besides, a number of exemptions for nationals of all EU/EEA countries were already in place. These concerned those people who on May 1, 2004 had already been working in Poland for an uninterrupted period of twelve months, those who had been granted a work permit for the period after that date, and those who served on the executive boards of businesses enterprises.³¹⁹ The result of all these exemptions is that since 2004, the number of work permits granted has been more and more a reflection of the number of their holders who are nationals of third countries. In 2005, the highest numbers of work permits were granted to nationals of Ukraine (26 per cent), then to nationals of Vietnam (10 per cent) and of Belarus (6 per cent).³²⁰

A few more pieces of data reflect economic immigration in Poland. First, in 2005 most foreigners found employment in manufacturing (31 per cent), retail and wholesale trade (27 per cent) and in education and financial intermediation and real estate activities (10 per cent each). Second, in that particular year, most work permits – to be exact, as many as 58 per cent – were issued to managers, consultants and experts (including people acting on management boards). Qualified workers and teachers – mostly teachers of foreign languages – followed. They were granted 18 and 10 per cent of the work permits respectively.³²¹

In such an economic and migratory context, a package of new 2006 ministerial regulations concerning the work of foreigners was issued. These regulations are presented in detail in the following sections.

4.2.1 Regular procedures for work permits issuing

Questions concerning the issuing and prolonging of promises and work permits are in fact regulated by two ordinances. Whereas the first one concerns foreigners in general, the second one regards foreigners working on the realisation of export services carried out by a foreign employer on the territory of Poland. The presentation of both of them starts with the former.

All in all, it can be assumed that the 2006 ministerial regulation³²² specifying the details of the procedure and conditions for issuing and prolonging promises and work permits reflected the restrictive spirit of the 2004 Act on the Promotion of Employment. At least two things indicated that: the information required that is fundamental for issuing a work permit,

318 Poland imposed reciprocal restrictions on economic migrants from these countries.

319 Dz. U. 2004, nr 99 poz. 1001.

320 MPiPS 2006a.

321 *Ibidem*.

322 Dz. U. 2006, nr 141 poz. 1002.

along with the rules for carrying out the evaluation of the employer's usefulness to the labour market in some justified situations.

As far as the first matter is concerned, the regulation obliged the prefect of the district where the particular workplace was situated to deliver to the governor two types of information that were basic for issuing a work permit: one regarding the situation on the local labour market and the other one regarding the possibilities of safeguarding the particular employer's staff shortages. The regulation specified that to fulfil the second task prefects should analyse the registers of unemployed and job offers reported to the labour offices but also publicise the offer among people who were neither unemployed nor looking for a job. Additionally, it was explicitly stated that prefects should not take into consideration these requirements presented in the employer's offer which were underestimated or overestimated with respect to the job that a foreigner was to perform (§ 3).

As for the second matter, i.e. the evaluation of the employer's usefulness to the labour market, the regulation stated that the governor should provide the analysis in cases that seemed reasonable, given the situation on the local labour market (§ 3.6). In relation to this, the ordinance enumerated situations in which the decision in the matter of a work permit should be negative. These were the following cases: when the employer's income was too low;³²³ when the employer – for at least one year – had not been employing full-time and for an indefinite period at least two people who did not need work permits, and finally – as an alternative to the two previous cases – when the employer could not present enough financial means to fulfil both the aforementioned conditions during the next twelve months. The first condition did not have to be fulfilled if the employers were able to prove that it would be done in future, especially if they could prove that their economic activity contributed to increased investment, the transfer of technologies, the introduction of advantageous innovations or an increase in the number of jobs (§ 4.5).

Furthermore, the regulation stated that the governor, when making decisions about work permits, should take into account employers' information about the activities that they had undertaken to find employees from among people who were not obliged to have a work permit. These could be Polish citizens, EU nationals or some other categories of foreigners. Unlike the previous ordinance, the 2006 one explicitly considered placing a job offer in a district labour office as insufficient. In addition, it stated that employers must inform the

323 I.e. the employer's income in the previous fiscal year is not higher than twelve times the average monthly wage in Poland.

governor about their activities connected to placing a job offer in the European Employment Services – EURES (§ 3.1).

Finally, the ordinance enumerated a range of cases in which the governor's decision on issuing a work permit should be negative. These were, for instance, situations in which: foreigners' qualifications or skills were unsuitable for the work they were expected to perform; their proposed wages would be lower than the wages paid to Polish workers for similar work, or when less than one year before the employers' applications a check had revealed that the employers or the particular foreigners had violated the Act on the Promotion of Employment (§ 4).

In general, the 2006 ministerial regulation was simpler and clearer in comparison to the earlier ordinance, but it remained strict. However, the criteria for the evaluation of the employer's usefulness to the economy became more measurable. In the earlier regulation, they had been more vague, and therefore they had made various interpretations of the actual employer's condition possible.³²⁴

A separate ordinance regulated the procedure and conditions for issuing work permits for foreigners performing export services for a foreign employer.³²⁵ The most important difference in comparison to the above-mentioned regulation concerned two things. First, one of the conditions for issuing a work permit was the presentation of a contract concluded with an entity located in Poland or a subcontract concluded with a foreign employer who was in possession of such a direct contract (§ 2). Unlike the ordinance that had been in force until the end of 2006, this one was more precise about the content of these agreements (§ 3.4-6). Second, unlike the previous regulation on issuing work permits for foreigners working in export services,³²⁶ this one did not oblige the governor to take into account the situation on the labour market where the service would be performed.

Unfortunately, neither the justification of the drafts of the two ordinances nor any other documents connected to them are available.³²⁷ Nonetheless, the main determinants

324 E.g. while applying for work permits for foreigners-partners or shareholders of commercial law companies intending to work in Poland or foreigners who were going to work in the management boards of legal entities performing economic activity, the employers had to fulfil three conditions: to prove that their economic activities bring income from which they pay taxes (but it was not said what should be the amount of the income); the amount of the employer's income had to point out that the economic activity is beneficial for the economy and then that the activity has to contribute to the increase of investments, transfer of technologies, introduction of advantageous innovations or to increase of the number of work places. In case of employers beginning their activities they had to prove they would fulfil the conditions in future (Dz. U. 2004, nr 27 poz. 236: §3.2g).

325 Dz. U. 2006, nr 141 poz. 1003.

326 Dz. U. 2004, nr 27 poz. 236: § 4.1.

327 Sweklej 2012; Stachura 2012.

shaping the regulations were directly reflected in the Act on the Promotion of Employment. The state of the economy, understood as the situation on the local labour market, was here indicated at the first place. Article 90 explicitly obliged a minister of labour to provide particular regulations ‘taking into consideration the needs of the labour market of the Republic of Poland’.³²⁸ Hence, in a way the state of the economy became a *de jure* factor shaping Polish labour immigration policy. Additionally, the Act paid attention to the need to ensure the proper organisation of the process of issuing promises and work permits.³²⁹

4.2.2 Simplified procedure for work permits issuing

In addition to the regular way of gaining access to the Polish labour market through the two-step procedure of granting a work permit, Polish law allows for a simplified version of the procedure.

The simplified version of the procedure means that a work permit (until 2009 also a promise) can be granted regardless of the situation on the local labour market (labour market test) and the criteria for granting promises and work permits issued by a particular governor.³³⁰

The 2006 regulation enumerated eight groups of foreigners – or rather types of work – in the case of which the simplified version of the procedure could be applied. As well as particular categories of EU nationals or foreigners connected in some way with diplomatic representatives or representatives of international organisations etc., there were a few other groups. These were physicians and dentists taking part in training courses, foreigners representing foreign employers in their branch offices in Poland, sports coaches and sportsmen, foreigners working in the framework of international agreements, and nationals of Turkey in cases when the employer applied for an extension of their work permits and they had already been working for the employer for one year.³³¹

The regulation in fact copied the earlier ordinance concerning the same question. The only change was that the 2006 regulation specified nationals of Turkey (in the above-mentioned specific cases), instead of pharmacists who were graduates of Polish schools

328 Translation AZK.

329 These factors were not indicated by the previous 1994 Act on Employment and Counteracting Unemployment (Ustawa z dnia 14 grudnia 1994 r. o zatrudnieniu i przeciwdziałaniu bezrobociu. In: Dz.U. 1995 nr 1 poz. 1.).

330 Dz. U. 2006, nr 141 poz. 1004.

331 *Ibidem*.

undergoing one-year training courses in pharmacies, at whom the 2001 regulation had been aimed.³³²

The selection of the listed cases was in fact very narrow and the ordinance facilitated access to the Polish labour market for a very limited number of foreigners. As in the case of ordinances on the procedure and conditions for the issuing of work permits, here too it is not easy to identify the factors determining the selection. Neither the justification of the ordinance draft nor any of the other documents that usually accompany such a draft are available. However, like its predecessor,³³³ the 2004 Act on the Promotion of Employment also indicated the main factors that should shape the minister's decision about the list of categories of foreigners that the regulation should contain. This should be the governors' criteria for issuing and prolonging work permits, but mainly the principle of reciprocity.³³⁴

4.2.3 Types of work for which a work permit is not needed

The last ministerial regulation from the 2006 package of ordinances regarding foreigners' employment provided a list of cases in which a work permit was not needed.³³⁵ It should be said that in general there exists an unwritten rule in Polish law that whereas the Act states who is entitled to work in Poland without a work permit with regard to the person's stay status, the ministerial regulation appoints types of work, and possibly also other circumstances, which release the foreigner from the obligation to obtain that document.

In the previous regulation,³³⁶ the group of categories had been rather narrow. The 2006 ordinance provided a longer list of cases in which a work permit is not needed. It enumerated a few such types of work. Firstly, it pointed out some categories of foreigners working for programmes carried out within the EU framework or other international aid programmes along with cases agreed within international agreements to which Poland is a party. Then the regulation listed the following categories (sometimes under specific conditions): teachers of foreign languages if the language is their mother tongue; persons who provide artistic services or occasional lectures for a period of up to thirty days in a calendar year; sportsmen (in the case of occasional jobs); members of the armed forces or civil servants working on the basis of international agreements that Poland is a party to; permanent correspondents; churchmen;

332 Dz. U. 2004, nr 27 poz. 239: § 1.8.

333 I.e. the 1994 Act on Employment and Counteracting Unemployment as amended (Dz.U. 1995, nr 1 poz. 1).

334 Dz. U. 2004, nr 99 poz. 1001: Art. 90.5.

335 Dz. U. 2006, nr 156 poz. 1116.

336 Dz. U. 2004, nr 27 poz. 238.

students studying in Poland (e.g. during student holidays); researchers; people delegated to work in cultural institutions; members of company management boards (but in case of nationals of third countries it concerned them only as long as the period of their stay in Poland did not exceed thirty days); persons sent onto Polish territory by a foreign employer for a period no longer than three months in a calendar year to provide a service as specified in the regulation, and finally, physicians and dentists, together with nurses and midwives – as long as these were graduates of Polish universities or schools and were undergoing a probationary period. Additionally, the ordinance made a few points concerning nationals of Turkey and their relatives (e.g. Turks who had been working in Poland legally for four years).

It must be said that the regulation also referred to nationals of countries neighbouring Poland who had received so-called employers' declarations of intent to employ them in agriculture for three months within six consecutive months. Since the last exception is very specific and it actually exempted the highest number of foreigners from the work permit requirement, it is discussed in detail in a separate section (see 4.6).

The basic factors that underlay cases exempted from the work permit obligation were again explicitly indicated in the 2004 Act on the Promotion of Employment. Like the previous Act, this one too stipulated that the minister's decision about the exceptions results from the international agreements and training and consultation programmes carried out within the framework of the European Union, as well as from the specific character of the profession in question. However, the 2004 Act broadened the list of factors with the character of work and the special status on the basis of which the foreigner had gained a fixed-term stay permit in Poland.³³⁷

The determinants that are enumerated are rather broad; therefore, when looking for factors influencing the choice of particular cases to be exempted from the work permit requirement one should become acquainted with the justification of the project of the ordinance, which this time was preserved.

The justification provided reasoning only for changes that were made in the ordinance and it did not explain why particular exceptions that had been created earlier were preserved in the regulation. All in all, it can be assumed that two main broad factors influencing the choice were international relations, together with not so much the needs of the labour market as rather the perception of the influence of foreigners representing particular professions on the situation of Polish employees.

337 Dz. U. 2004, nr 99 poz. 1001.: Art. 90.4.

With regard to the former factor, it firstly meant following the EU rules. After all, ‘the necessity to implement the community regulations’ became indicated as the general and main reason for providing the ordinance as such.³³⁸ It was so, even though, in detail, the justification referred to particular EU regulations only in the case of the exceptions that related to EU nationals and to nationals of Turkey. The consideration of international relations was, however, also evident in other rules. In the case of persons delegated to Poland by a foreign employer to provide services, the justification related to the rulings of the European Court of Justice (reflecting the fact that international courts’ decisions affect the country’s image in the international arena). Then, in the case of students who work within the framework of the cooperation of public employment services, the justification explained that the rule would mainly concern German students working on the basis of the Polish-German Agreement on the mutual employment of seasonal workers and students. It underlined the principle of reciprocity embedded in the agreement. Simultaneously, however, it highlighted that ‘the scale of the phenomenon in Poland is small’ and that ‘it will not negatively influence the labour market’.³³⁹

In the case of work done by foreigners who were members of the armed forces and civil servants working for the army, the justification did not relate explicitly to international relations; however, the motivation was included in this implicitly. What the justification said directly, explaining why that category of foreigners was included in the list, was that it concerned people taking part in ‘the implementation process, which is important for the defensive capability of the Republic of Poland’. Then it referred to the practical side of their work, ‘the increase in the efficiency of people engaged in the works of foreign teams’. The justification underlined that it also represented ‘the vital interests’ of Poland.³⁴⁰

In the case of other categories not mentioned in the justification (since they had already been present in the previous ordinance), it could be assumed that they were included, among the other things, because they were not recognised as those categories of foreign workers who endangered the situation of Polish employees. The reason for that could be e.g. their small number, *inter alia*, connected to special qualifications related to the category. Examples can be churchmen or sportsmen working in Poland occasionally. The situation is similar in the case of physicians and dentists, as well as nurses and midwives. The justification did not account for their presence in the regulation; however, the very fact that

338 MPiPS 2006b.

339 *Ibid.*: 1.

340 *Ibid.*: 2.

the rule concerned only medical staff who was simultaneously graduates of Polish universities or schools and undergoing a probationary period clearly limits the group of people covered by the category. In relation to researchers, the justification of the new regulation explicitly pointed out that no administrative limits were needed here, since the requirement to have a particular academic title represented a sufficient limitation. Finally, with regard to foreigners working for deputies of the European Parliament, the justification explained that the exception was made here since the work was of a special character, and therefore any state intervention, e.g. sending the unemployed for the place on offer, should be excluded here. Interestingly, in the case of a few categories of teachers of foreign languages, the justification did not provide any explanation, but only provided information about the shape of the rules.³⁴¹

In general, the package of the 2006 ministerial regulations reflected some tendencies regarding immigration policy that had appeared in the 2005 National Employment Strategy for the years 2007-2013, which was mentioned earlier. This was mainly a continuation of the restrictive character of the policy, related to the principle of the protection of Polish labour market. An indicator of a slight reorientation of Polish labour immigration policy was the introduction of rules regarding the work of nationals of neighbouring countries on the basis of employers' declarations, which is the most distinctive instrument of Polish labour immigration policy (see 4.6).

4.3 Analysis of developments in 2007

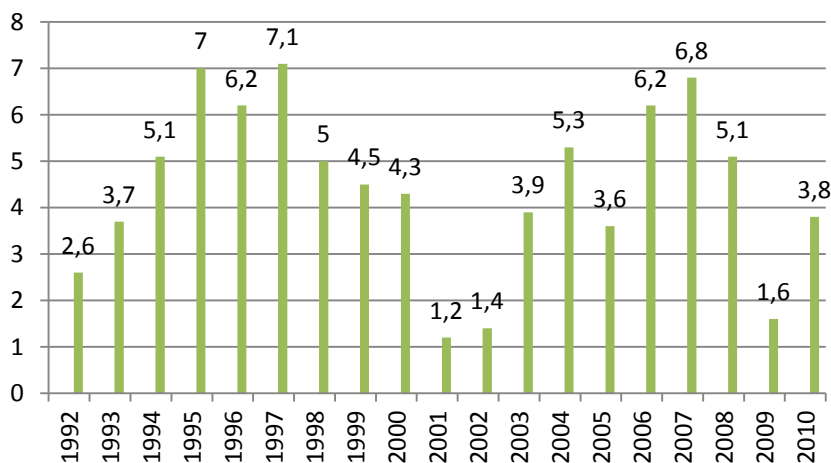
The year 2007 was rich in events related to labour immigration. These developments were evidence that some activation in questions of foreigners' employment, which started in 2006, was continuing. In February, the Team for Migration, which is presented in 3.5, was established. Between March and May a few meetings took place of the then Minister of Labour and Social Policy with representatives of Vietnam, China, and Pakistan. On the initiative of the ambassadors of these countries the possibilities of employing these countries' nationals in Poland were negotiated. In June, the minister visited India and in July China, to prepare programmes for the recruitment of Asian workers. In June, the Ministry of Labour and Social Policy issued amendments to a few ordinances regarding the employment of foreigners. August brought an amendment to the 2004 Act on the Promotion of Employment. It also introduced some changes to the rules regarding foreigners, out of which reducing the application fee rates was the most important one. The ordinance regarding the fee rates was

³⁴¹ *Ibid.*: 2.

then issued in October. Finally, in October, the interministerial Team for Migration passed a resolution on directions of measures regarding the employment of foreigners in Poland. The resolution put an end to the long-lasting conflict between the MLSP and other ministries regarding preferred sending countries. The Asian orientation was definitely rejected. This chapter is devoted to all of these developments.

The economic situation of Poland in 2007 was conducive to liveliness in the labour immigration policy. The 2007 Ministry of the Economy report pointed out that the access of Poland to the European Union contributed to GDP growth. Whereas during the crisis years 2001 and 2002, the GDP growth came to only 1.2 and 1.4 per cent respectively, in 2004 it was already 5.3 per cent and in 2006 the average development was as much as 6.2 per cent. In the first quarter of 2007 it even reached 7.4 per cent.³⁴²

Graph 3.: Poland 1992-2010: GDP growth (annual %)



Source: CSO 2011.

Another positive change was observable in investment expenses, which grew systematically from 2003. The year 2006 brought a great increase in investments by enterprises. Additionally, the fast rate of economic growth, together with the good financial standing of enterprises, contributed to a great inflow of foreign investments. For instance, as much as 43 per cent of all foreign investment in the new EU member states (EU-10) in 2006 was in Poland.³⁴³

342 MG 2007b: 59-60.

343 *Ibid.*: 9-10.

Similarly, foreign turnover increased. While in 2004 imports reached 88 billion US dollars and exports 74 billion US dollars, in 2006 the figures were already 125 and 109 billion US dollars, respectively.³⁴⁴

Dynamic economic growth resulted in positive changes in the labour market. The average unemployment rate clearly decreased, from 18.0 per cent in June 2005³⁴⁵ to 15.9 per cent a year later.³⁴⁶ The trend continued in 2007.

The gradual overcoming of economic problems produced a greater demand for labour, which had already been loudly expressed by employers in 2006 (see 4.6). The foreign labour force supply, however, did not seem to increase in comparison to 2005. The statistics reflect this. In 2006, the number of applications for issuing a work permit was over 14 thousand (in 2005 it was almost 17 thousand). The overall number of work permits issued individually was similar to that a year earlier and exceeded 10 thousand. Simultaneously the number of work permits granted to sub-contracting foreign companies exceeded 1.3 thousand. In 2006 almost 40 per cent of decisions were made in cases of work permit extensions. As always, the highest numbers of permits were issued to nationals of Ukraine (over 30 per cent). In that specific year they were followed by nationals of Vietnam, Belarus, Turkey, and the United States.³⁴⁷

In 2006, the highest numbers of work permits were issued to managers, consultants, and experts – 43 per cent. The groups also include people acting on the management boards of companies (usually their owners). In terms of the overall numbers of work permits issued in 2006, this category decreased by almost half in comparison to 2005, so it represented only 16 per cent.³⁴⁸ The decrease was the effect of releasing owners from member states of the European Union and European Economic Area from the work permit requirement, and allowing owners from third countries to work in Poland without a work permit for up to 30 days a year. As for other categories, more than 22 per cent were qualified workers and almost 8 per cent workers performing simple jobs.³⁴⁹

The main economic sectors in which foreigners were employed were retail and wholesale trading (25 per cent) and manufacturing (23 per cent), together with financial intermediation and real estate activities (10 per cent).³⁵⁰

344 CSO 2005: 363; CSO 2007a: 378.

345 M. P.2005, nr 58, poz. 789.

346 M. P. 2006, nr 67, poz. 693.

347 MPiPS 2007b.

348 *Ibidem*.

349 *Ibidem*.

350 *Ibidem*.

To present a more comprehensive picture of economic immigration, it is worth noting that from 1 September 2006 some foreigners could work in agriculture in Poland without work permits but on the basis of an employer's declaration of the intent to employ a foreigner. Until the end of 2006, Polish consulates issued 249 visas allowing for performing jobs in connection to the employers' declarations. From the beginning of 2007 until the middle of May 2007, the number of such visas exceeded 1300.³⁵¹

Against the background of an increasing demand for labour, as well as a foreign labour supply that was not high, it ought to be added that a great number of Poles were still working abroad, so they were missing from the domestic labour market. As mentioned in the sub-chapter 3.2, the estimations ranged from 600 thousand to two million. Most of them seemed to be temporary economic migrants. However, it was difficult to predict how many Polish emigrants would eventually return to Poland. The number of those who actually deregistered from their permanent stay in Poland jumped to 47 thousand in 2006 alone.³⁵²

To sum up the economic and migration situation of Poland in 2006, a few things should be said. The increased labour demand resulting from economic development was not sufficiently covered either from domestic sources or from foreign ones. The overall situation created favourable conditions for illegal employment, in particular in a country where the enforcement of the instruments for combating illegal employment leaves a lot to be desired. The 2007 developments in foreigners' employment took place against the background of that state of play.

The first months of 2007 soon foreshadowed the fact that the year could be full of activities concerning immigration questions, since the Ministry of Labour and Social Policy came up with the idea of attracting workers from countries outside Europe. The idea resulted mainly from the activities of the ambassadors of a few Asian countries, in particular India, but also Bangladesh, Pakistan, Vietnam, and China.³⁵³ The Polish Minister of Labour and Social Policy discussed the question of employment with some of them. Finally, during visits to India in June and to China in July, the minister was actually negotiating the question of the employment of these countries' nationals in Poland, as well as the legal and organisational solutions related to that.³⁵⁴

351 MPiPS, BA: DMI, Uzasadnienie (dot. DZ.U. 2007 nr 120 poz 824).

352 GUS 2010. This number is clearly higher than in previous years (19 thousand in 2004, 22 thousand in 2005) but as Kępińska notes, it was in particular an effect of the agreement between Poland and the United Kingdom (the main destination for Polish emigrants) to eliminate double taxation (Kępińska 2007: 10).

353 I7.

354 MPiPS 2007a; MPiPS 2007c.

Nonetheless, the position of the MLSP with regard to the question of Asian immigration was extraordinary. Most members of the government did not agree that such an orientation of the immigration policy should be accepted. The tensions between the MLSP and other ministries persisted for a few months. As one of the experts who were interviewed admitted, the criticism was connected to the fact that in the case of Asian immigrants it would not be only seasonal or temporary economic migration. Such migration could transform into long-term stays and integration problems related to them, something in which Poland is not experienced. Besides, there were concerns about those situations in which e.g. the employer was not satisfied with the work of the Chinese and dismissed them. In such cases, the administration, which is not prepared for it, would have to take over the responsibility for these foreigners. Furthermore, this could be connected to high levels of financial expense, especially if these people did not have enough money to return home.³⁵⁵

The clash between the MLSP and other ministries ended up in the October resolution of the interministerial Team for Migration, which designated the preferred sending countries, and which will be presented later.

Apart from the visit to India, June also brought some amendments to two existing ordinances on the procedure for the issuing of work permits, as well as to the ordinance on cases exempted from the work permit requirement. The changes made to the former were of an ordering character, resulting from modifications to the division of the tasks and competencies of the regional administration.³⁵⁶ Changes that were more important, although still small, were made to the second ministerial regulation and they are discussed in the following paragraphs.

The regulation specified that permanent correspondents of foreign media could work in Poland without a work permit only as journalists and only if they worked for an agency or editorial offices which had received accreditation from the Polish Ministry of Foreign Affairs. The change was introduced because the practice showed numerous cases of misuse of the previous rule. There were people who applied for accreditation as journalists only to avoid the work permit requirement. In other words, for them being a journalist was only a part-time additional job, whereas their main occupation was different. Thanks to the formulation of the

355 I42

356 The rules on transferring the tasks pertaining to promises and work permits issuing from the governors to the voivodeship marshals were cancelled, MPiPS, BA: DMI, Uzasadnienie (dot. DZ.U. 2007 nr 120 poz. 822); MPiPS, BA: DMI, Uzasadnienie (dot. DZ.U. 2007 nr 120 poz. 823).

previous rule as accredited journalists they could also do any other job. The new rule was designed to end that practice.³⁵⁷

Another change that the ordinance brought was the extension of the list of exceptions by the addition of the internships of foreign students, along with the work of people coming to Poland within the framework of programmes of cultural or educational exchange, humanitarian aid or holiday work. Including these two cases in the group of categories exempted from the work permit requirement resulted mainly from suggestions that had already been made by academic circles for a long time. It was pointed out that the importance of such programmes and of young people's holiday work is on the rise. It contributes to international exchanges as such, as well as to the growth of interest in the receiving country. Additionally, it supports the promotion of knowledge about the country and its culture. In this way, it can be helpful in the development of tourism. Simultaneously, the holiday work of young people can be useful for the labour market, in particular with regard to seasonal work. The arguments were further supported with references to the experience of other countries, especially of the United States.³⁵⁸

Besides this, the ordinance prolonged the period for which foreigners (non-citizens of the EU, EEA, or Switzerland) were allowed to work in Poland without a work permit as members of company boards from thirty days to three months within any consecutive six months. In that way, the rule became adjusted to the amended rule on employers' declarations. This latter stated that a foreigner coming from a country neighbouring Poland was allowed to work there simply on the basis of a declaration, regardless of the sector of the economy, just for three months within any consecutive six months.³⁵⁹

Additionally, it is worth pointing out that the final wording of the amendment to the ordinance clearly differed from its draft in one significant point. The draft included a rule which was to open the doors of the Polish labour market to temporary economic migrants, regardless of their country of origin. Economic migrants recruited by the public employment services could work in agriculture and construction in Poland for three months in a calendar year. The proposal of the rule stayed in line with the other above-mentioned steps of the Ministry of Labour and Social Policy at that time but it faced great criticism. The main arguments in favour of rejecting it concerned the fact that thanks to the rule Poland would be open to arrivals from countries from which there was an increased risk of immigration, such

357 MPiPS, BA: DMI, Notatka z konferencji uzgodnieniowej.

358 MPiPS, BA: DMI, Uzasadnienie (dot. DZ.U. 2007 nr 120 poz 824).

359 *Ibidem*.

as China, Vietnam, and India. It was argued that as a result of this rule Poland would open the gate to legal entry to the territory of the European Union to people who would later become immigrants who were staying illegally not only in Poland but also in all the countries of the European Union. A new route for migrants staying illegally would be established. Poland could not presume to take such a step: soon, in December 2007, it was to become one of the main border guards of the Schengen zone.³⁶⁰ For these reasons, the rule did not eventually appear in the ordinance.

A further important change that the year 2007 brought was an amendment to the Act on the Promotion of Employment published in September. The Act made a few other small steps towards the facilitation of the access of foreigners to the Polish labour market.

The 2007 amendment first of all extended the catalogue of entities that could apply for a work permit for a foreigner. From then on not only economic entities but also individuals who do not employ any staff, along with entities without a legal personality, could assign paid work to a foreigner.³⁶¹ Then the amendment simplified the procedure for issuing a work permit because actual foreigners themselves became excluded from it: the Act stressed that only an employer who wishes to employ a foreigner need take part in this procedure.³⁶² Finally, the third and probably the most significant change that many employers were waiting for regarded the application fee. The rate of the fee was reduced and diversified. The Act determined that it would not be higher than the minimum monthly wage, which in January 2007 was 936 PLN (approximately 240 EUR).³⁶³ The Minister of Labour and Social Policy was to determine the fee rates, taking into account one or more broadly defined elements. These were the type of work, the foreigner's qualifications, the supply and demand of those kinds of qualifications on the labour market, international agreements regarding employment, the period for which the foreigner would be employed, or, finally, the number of applications for a work permit that the particular employer was making (Art. 1.34-37).

This time the draft of the amendment to the Act was proposed together with the draft of the amendment to the ministerial regulation. The latter specified the fee rates at 100 PLN in the case of employing a foreigner for up to three months, 350 PLN in the case of a period of from three to twelve months, and 800 PLN when the expected duration of the working period exceeded twelve months (approximately 26, 39, and 205 EUR, respectively). With regard to

360 See e.g. MPiPS, BA: DMI, Notatka z konferencji uzgodnieniowej.

361 Dz. U. 2007, nr 176 poz. 1243. In the study all entities and individuals who can assign paid work to a foreigner are called simply an employer.

362 *Ibidem*.

363 *Ibidem*.

an application for an extension of the work permit the fee was reduced to half of the basic rate and when an employer applied for a work permit for twenty-five or more foreigners then the fee was also reduced by fifty per cent. The application fee rate for work permits for foreigners coming from EU/EEA countries or for their family members was reduced to as little as 50 PLN, which was equivalent to about 13 EUR.³⁶⁴ Nevertheless, the eventual levels of the fee rates clearly differed from the amounts proposed in the draft.

The voices that appeared in relation to the amendment to the Act reflected the economic and migratory context, which was presented at the beginning of the section.

The most significant change, the reduction in the fee rates, was mainly rationalised in the governmental justification for the project by developments on the labour market and the shortages in labour supply connected to them. The diversification and reduction of the fee rates (i.e. the rule about the fee rate up to the amount of the minimum monthly wage) were to ensure a faster and more effective response to the needs of the labour market. At the same time, they were to safeguard employers from financial problems, especially when they applied for work permits for a greater number of foreigners or when they applied repeatedly in connection with the same persons (i.e. in the event of a work permit extension).³⁶⁵

In relation to taking into account international agreements on employment in providing the ministerial regulation on fee rates that the Act was to set, the justification called special attention to Bulgaria and Romania joining the European Union and Poland's approach to questions of the free movement of workers. According to the government, the introduction of all these changes was also intended to reduce the illegal employment of foreigners in Poland.³⁶⁶

There were three expert opinions attached to the bill of the amendment. One of them in particular concerned questions of foreigners' employment and pointed out the factors that should be taken into account while preparing the particular rules in this matter.

In her expert opinion Kryńska referred to the demographic prognosis of the Central Statistical Office saying that the shortages in the labour supply that existed in 2007 would intensify as a result of both a natural decrease in the size of the population and net emigration. She notified the fact that in the event of an economic boom the demand for labour would be great but – as it had been until that time – it would be complementary and not substitutive in its character. The expert noticed that there is a need 'for changing the approach to the

364 Rada Ministrów RP 2007b: pt 37.

365 Rada Ministrów RP 2007b.

366 *Ibidem.*

employment of foreigners: the thing is to perceive the work of foreigners as a factor in economic development that improves the competitive strength of the country and its regions and not as a threat to the economy and the labour market'.³⁶⁷ A similar opinion was expressed during a parliamentary debate when one of the deputies brought attention to the experience of Western European countries.³⁶⁸

Apart from that general remark, the expert opinion concerned the fee rates. According to Kryńska, too-high application fee rates exclude some employers from the possibility of employing foreigners and they weaken the competitive advantage of their companies and even provoke them to the illegal employment of a foreign labour force. The expert opinion noted that arguments pointing out that reduced fee rates simultaneously reduce the income of the state budget should not be taken into account. Low application fees or no fees at all, can limit the *grey zone* in Poland. They can encourage people to employ foreigners legally – especially if there was a possibility that a physical entity or an entity without legal personality could also apply for a work permit for a foreigner. Kryńska furthermore criticised the idea of the diversification of the fee rates that could depend on the type of work performed, foreigners' qualifications, or labour demand or supply.³⁶⁹ Finally, she ended with another remark of a general character when she noted that the main problem was the lack of a Polish migration policy based on a solid analysis of the demand for a foreign labour force.³⁷⁰ Objections concerning the last two questions also appeared in another expert opinion added to the bill.³⁷¹ Additionally, the lack of a comprehensive migration policy was further reproached during the parliamentary debate about the amendment to the Act.³⁷² Earlier, at the stage of the consultations with social partners, labour unions had been criticising the same thing.³⁷³

With regard to the changes that the amended Act was to bring, the All-Poland Alliance of Trade Unions³⁷⁴ evaluated the diversification of the application fees negatively. They noted that the introduction of diversified fee rates without performing an analysis of the actual needs would be risky.³⁷⁵ Contrariwise, the Confederation of Polish Employers,³⁷⁶ for instance, generally referred positively to the proposed amendments, especially as far as the application

367 Biuro Analiz Sejmowych 2007c: 22-23 [translation AZK].

368 H. Siedlaczek in Sejm RP 2007a.

369 Biuro Analiz Sejmowych 2007c.

370 *Ibidem*.

371 Biuro Analiz Sejmowych 2007a: 5.

372 D. A. Kłeczek in Sejm RP 2007a.

373 E. g. OPZZ 2006a; OPZZ 2007a.

374 Ogólnopolskie Porozumienie Związków Zawodowych

375 OPZZ 2006b.

376 Konfederacja Pracodawców Polskich.

fees were concerned. However, their opinion about the proposed redefinition of the term *an employer* (which was also to involve entities that were going to assign other paid work to a foreigner) was negative.³⁷⁷

An analysis of the Sejm debates about the project of the amendment again confirmed that the topic of immigration and a foreign labour force did not provoke any discussion.³⁷⁸ Nevertheless, in the Senate a lively discussion took place regarding the application fee rates. Some voices suggested that the rate which some employers would have to pay for the extension of foreigners' work permits every three months represented too great a burden for them. The deputies mainly referred to the economic situation of Poland, and specifically to the situation on the labour market. They pointed out the labour shortages were connected *inter alia* to the emigration of Poles and to the good economic situation. They argued that high application fee rates made the employment of foreigners unprofitable. Finally, there even appeared a proposal to reduce the amount set in the Act itself to a maximum of five per cent of the minimum monthly wage.³⁷⁹ The Ministry of Labour and Social Policy subsequently supported that change.³⁸⁰ Nonetheless, after a short discussion the Sejm commission suggested that the Sejm should reject the proposal. The main argument was that the Sejm commission wanted to leave the rule more flexible. The fact is that leaving the amount of the application fee at the level of a 'maximum up to the level of the minimum monthly wage' did not exclude the possibility of radically reducing the amount in the ministerial regulation.³⁸¹

In general, the analysis of materials preceding the passing of the amendment to the Act by the Sejm allows the conclusion to be drawn that the main factor affecting the reduction of the fee rates was the economic situation. Specifically, it means changes on the labour market, i.e. the appearance of shortages in the labour supply caused by the combination of the improvement of the economic situation and the emigration of Polish workers. Another factor that was important for the amendment to the Act and directly related to the situation on the labour market was the desire to limit the illegal employment of foreigners. Other changes to the Act were not referred to in the parliamentary discussion on any level. As was said in the justification to the bill, they resulted from the experience with the enforcement of earlier wording of the rules.³⁸²

377 Rada Ministrów RP 2007b.

378 Sejm RP 2007a; Sejm RP 2007b.

379 Senat RP 2007.

380 Komisja Pracy i Komisja Samorządu Terytorialnego i Polityki Regionalnej 2007.

381 *Ibidem.*

382 Rada Ministrów RP 2007b.

The ministerial regulation setting the amounts of the fee rates was issued only in October 2007. Its final wording differed significantly from the draft that was attached to the bill of the amendment, which was presented above.

According to the regulation, there are only three fee rates related to an application for a work permit: the first one, 50 PLN, in the event of the intent to employ a foreigner for a period of up to three months; the second one, 100 PLN, if the period were to exceed three months, and the third one, 200 PLN, in the case of export services (it does not result from the expected duration of the period of work). These amounts represent approximately 13, 26, and 52 EUR respectively. The fee rate for an application for the extension of a work permit is half of the original amount. There is no difference in fee rates between applications for work permits for EU/EEA nationals and non-EU/EEA nationals.³⁸³

The rules that the ordinance established reflected the spirit of the debates that took place in relation to the August amendment to the Act. Although expert opinions attached to the bill at that point concerned the amendment to the Act, in fact many of the arguments expressed there concerned the project of the ordinance as it then stood. This is especially true of the opinion prepared by Kryńska.

As written above, Kryńska criticised the high application fee rates and gave a range of arguments for reducing them. These were the better availability of a legal foreign workforce for Polish employers, the competitiveness of Polish employers, a higher number of applications, and a decrease in the illegal employment of foreigners.³⁸⁴

The second expert opinion prepared for the Sejm criticised the difference in the fee rates between work permits for EU/EEA nationals and nationals of third countries as being too great. It served as a reminder that working in Poland is much more attractive for people coming from non-EU/EEA states.³⁸⁵

Finally, the third expert opinion concerned the issue of the consequences for the state budget. The experts noted that a reduction in the fee rates could reduce the income of the state budget, while at the same time they noted that the decrease could be compensated for by an increase in the number of applications resulting from greater interest in the legal employment of foreigners.³⁸⁶

383 Dz. U. 2007, nr 195 poz. 1409.

384 Biuro Analiz Sejmowych 2007c: 22-23.

385 Biuro Analiz Sejmowych 2007a.

386 Biuro Analiz Sejmowych 2007b: 2.

Let us note that the proposal of the amount of the fee rate at the level of five per cent of the minimum monthly wage (50 PLN makes approximately five per cent of the minimum monthly wage) appeared in the Senate statement to the bill of the amendment to the Act. In relation to this, the Senate argued in July that ‘influencing the policy on the employment of foreigners with the fee rates for work permits is not a good instrument of shaping that policy and it can lead to a lack of interest on the part of employers in that form of employment.’³⁸⁷

The opinions of stakeholders on the second draft³⁸⁸ of the ministerial regulation were, in general, positive. The dissenting voice was that of the All-Poland Alliance of Trade Unions, who criticised such a radical reduction in the fee rates. The alliance argued that the fact would simplify the employment of foreigners in Poland but it would not solve the problem of their treatment as a cheap labour force. The union repeatedly expressed the opinion that there was no problem with labour supply but there was a problem with fair levels of salaries.³⁸⁹ This opinion was not, however, taken into consideration.

The analysis of the materials accompanying both the bill of the amendment to the Act and the drafts of the ministerial regulation revealed that the main factor deciding the final shape of the ordinance was the improved economic situation. To be specific, it was the situation on the labour market. Additional evidence of that is the comparison of the parliamentary debate in 2007 with the one in 2004. In 2004, the issue of the fee rates was only mentioned: a single doubt was expressed that the amount was too high and could ‘discourage employers from searching for well-educated employees from other countries’.³⁹⁰ In the answers to that remark there appeared arguments that in the case of a good foreign professional the employer pays the person a much higher salary than the minimum monthly wage and that the fee rate at the level of the minimum monthly wage actually represented ‘a marginal cost’. Then it was argued that it was ‘a soft solution’ (also against the background of other countries’ solutions) chosen because the ministry did not want to ‘discourage the employers’ and that a new solution could only appear after the new framework of the migration policy was presented.³⁹¹ In 2007, there was still no framework of Polish migration policy; despite that, similar arguments supporting the maintenance of the high fee rates did not appear. What apparently had changed in comparison to the year 2004 was the economic situation of Poland. Even a change in the composition of the parliament would not be

387 *Ibidem*.

388 I.e. the version of the ordinance draft that appeared only after the amendment of the act was accepted.

389 OPZZ 2007b.

390 Bachalski in Komisja Nadzwyczajna...2004 [translation AZK].

391 Komisja Nadzwyczajna...2004.

a decisive factor here. In 2004 the Act was accepted by a Sejm with a left-wing majority, whereas in 2007 there was a right-wing majority. While one could assume that the right-wing majority would vote for a reduction in the fee rates to support the employers, in this case the relationship would not be that simple, since the Parliamentary majority in 2007 was nationally oriented (a coalition of Law and Justice, Self-Defence of the Republic of Poland, and the League of Polish Families). This characteristic could therefore have cooled down its support for facilitating access to the Polish labour market for foreigners. Therefore the political change could not have been enough. The essential determinant was, then, the improved state of the economy.

In relation to this it is worth emphasising that the 2007 amendment to the Act determined several factors that the minister should take into consideration when issuing the ordinance on the application fee rates. They had already been present in the bill. The needs of the labour market had been mentioned there in the first place.³⁹² It can be assumed that the subsequent discussions and the opinions that were expressed helped to perceive the actual labour market situation in a way that contributed to such a radical reduction in the fees. The background to the step was expressed most succinctly by one of the experts from the Ministry of Labour and Social Policy who was interviewed: ‘We needed workers – we reduced the fee rates.’³⁹³

The second determinant was connected to the first one and it was the will to reduce and prevent the illegal employment of foreigners.

Foreign policy considerations, mentioned in the justification for the bill, connected to the accession of Bulgaria and Romania to the European Union, were not decisive in the end. But what was important for giving up the diversification of the fee rates with regard to foreigners’ countries of origin was the volume and composition of economic immigration in Poland (the fact that most economic immigrants in Poland come from non-EU/EEA countries).

A few months later the volume and composition of economic immigration in Poland at this time, to a great extent together with foreign policy reflections, became factors affecting the results of the debates regarding the future geographical orientation of Polish labour immigration policy. As already intimated, the issue of this orientation turned into a subject of discord between the Ministry of Labour and Social Policy on the one side and other ministries, along with the interministerial Team for Migration, on the other side.

392 Dz. U. 2007, nr 176 poz. 1243: Art. 1. 34 – 37.
393 I4 [translation AZK].

The MLSP pressed the TM to pass a resolution saying that Poland should accept foreign workers mainly from Asian countries.³⁹⁴ After some hot discussions, the Resolution on Directions of Actions regarding the Employment of Foreigners in Poland³⁹⁵ set a completely different orientation. The TM recommended facilitating access to the labour market first of all for nationals of countries neighbouring Poland (Ukraine, Belarus, and Russia), then for nationals of other former Soviet Union countries, countries of Western Balkans and countries associated with the European Union. With regard to other Asian countries, the Team for Migration pointed out that migration from these countries could result in potential threats connected to illegal migration or transborder criminality. For these reasons, the TM stated that any collaboration with these states in the area of employment should be accompanied by consular cooperation and cooperation regarding readmission. At the same time (and in fact in the very first place), the ITM paid attention to the potential of Polish nationals living abroad and foreigners of Polish origin and advised that they should be encouraged to build professional careers in Poland.³⁹⁶ In that way the interministerial Team for Migration indirectly referred to questions related to the Act on the Polish Charter, which, because of their specific nature, are discussed separately (see 4.7).

Besides making recommendations regarding the geographical orientation of Polish labour immigration policy, the resolution contained proposals concerning a few other things. Among them were e.g. the introduction of a system monitoring the employment of foreigners, highlighting the need for the effective integration of foreigners, and encouraging the analysis of the migration situation of a particular country prior to taking action to employ workers coming from that country.³⁹⁷

All in all the resolution expressed caution regarding questions relating to the liberalisation of labour immigration policy. This caution was reflected in particular by the first recommendation, where the team underlined that the employment of foreigners, as an answer to staff shortages, should represent only ‘completion of the employment policy, which should lead mainly to professional activation of Polish nationals’ and that any facilitations should be introduced gradually.³⁹⁸

Returning to the question of the geographical orientation of Polish labour immigration policy, it should be added which factors decided the directions that were chosen. The

394 I5.

395 Zespół do spraw Migracji 2007 [translation of the title – AZK].

396 Zespół do spraw Migracji 2007: § 2, § 3 and § 4.

397 Zespół do spraw Migracji 2007.

398 Zespół do spraw Migracji 2007: § 1.

resolution itself gave only the reason why Asian or other distant countries should not be preferred as countries sending economic migrants. On the contrary, it did not indicate any determinants that decided or could decide about countries that should be favoured in that regard.

The expert who was interviewed and who takes part in the work of the Team for Migration indicated a spectrum of arguments supporting the choice of the neighbouring countries. These are, for example, questions connected to geographical proximity. This allows for circular migration that is preferred by both Poland itself and the European Union, of which it is a member. Circular migration is better suited to an economy of the Polish type, which produces the need for seasonal workers. Additionally, this type of immigration is more secure and cheaper. Circular migrants can adjust better to changes in the needs of the labour market connected to changes in the economic situation. In other words, they are flexible, they can come when they are needed, go home when there is no work for them, and come back (even to the same employer) when the situation improves. Thanks to the geographical proximity, the economic and organisation costs of such migration are relatively low. The same is true of the social costs related to contacts with the migrants' families.³⁹⁹

Another advantage of choosing Poland's neighbouring countries as preferred sending countries is the question of the integration potential of Ukrainians, Russians, or Belarusians. In other words, it concerns the way they function in Polish society. The expert points out that there are no language, religious, or cultural barriers. These foreigners do not evoke any controversies or any negative reactions and they do not create ghettos but they fit into the society.⁴⁰⁰

Then there is the pragmatic question of the education and experience of these foreigners. The diplomas and qualifications of people coming from the countries neighbouring Poland are comparable to those that Poles have. Besides, these foreigners are usually experienced in working on similar machines and they are used to similar standards of industrial safety. For these reasons, Polish employers are able to judge the qualifications of these people. In the case of Asians, it is almost impossible.⁴⁰¹

Next advantage is the quality of cooperation regarding illegal migration, readmission etc. The expert paid attention to the fact that even in the case of Belarus, with which Poland has not always had good relations, and which does not have the reputation of a good partner,

399 *Ibid.*

400 *Ibidem.*

401 *Ibidem.*

there are no problems regarding combating illegal migration. This is in contrast to the cooperation with Vietnam or China.⁴⁰²

At the end, one more thing is worth noting. The expert suggested that even the fact that the circular migrants from Ukraine, Russia, and Belarus do not spend the money they earned in Poland but transfer it home does not necessarily need to be disadvantageous for the Polish economy. The first reason for this is because for Poland it is important that its neighbours profit from migration. This can contribute to the development of economically (and politically) stable surroundings. Second, these countries, especially Ukraine, are important importers of Polish goods. Hence, the money earned in Poland is partly spent on buying Polish goods.⁴⁰³ The actual effect of remittances on the economies of sending countries, as well as secondarily on the Polish economy, should, however, be examined in a separate research study.

Apart from the volume and composition of migration, foreign policy considerations are certainly not insignificant for the chosen directions of the orientation of the migration policy. This determinant, although in the more general context of migration policy as such, was indicated by other experts who were interviewed. They indicated that among the priorities of Polish foreign policy is the East, evidence of which is the project of the Eastern Partnership and that the foreign policy arguments have always been advanced by the Ministry of Foreign Affairs in the context of Polish migration policy.⁴⁰⁴

To conclude, from among all the activities that happened in 2007 in connection to the employment of foreigners the most important was the radical reduction in application fees, together with accepting the direction of measures regarding the employment of foreigners in Poland. The first of the changes happened thanks to the improvement in the state of the Polish economy. The shape of the diversification of the fee rates was then mainly the effect of the volume and composition of economic immigration. The second change resulted mainly from the volume and composition of migration and reflections of foreign policy, as well as indirectly from the influence of the EU (Poland as a border guard of the Schengen zone). Simultaneously, the state of the economy as a determinant did not influence the resolution on the directions of measures regarding the employment of foreigners but as a determinant of future steps in labour immigration policy, it appeared directly in its text (the complementary character of the foreign labour force).

402 *Ibidem.*

403 *Ibidem.*

404 E.g. I1, I7.

4.4 Analysis of developments in 2008 and 2009

In contrast to the year 2007, which was full of events concerning the employment of foreigners in Poland, the following year did not bring many changes. In January 2008, the Minister of Labour and Social Policy issued another amendment to the ordinance regulating the work of foreigners who were not obliged to obtain a work permit. The regulation modified just two things. It introduced further changes in the rules regarding employers' declarations (see 4.6). Then it again prolonged the period for which foreigners (non-EU, EEA or Swiss citizens) were allowed to work in Poland without a work permit as members of company boards, this time to six months within a twelve-month period.⁴⁰⁵

The next step concerning the question of foreigners' access to the labour market was only taken in December 2008. This was the amendment to the Act on the Promotion of Employment. Although the Act was accepted in 2008, it came into force at the beginning of 2009 and it was only published in one of the first numbers of the 2009 Journal of Laws. For these reasons, the amendment is widely called the 2009 amendment and it is also referred to as such in the current study. The Act was accompanied by two new ordinances and one amendment to the ordinance regarding the employment of foreigners, which came into force in February 2009. Further steps in the labour immigration policy were only taken in the following year.

As has already been stated, the state of the Polish economy in 2007 was considered very good.⁴⁰⁶ The effects of the global recession only reached Poland in the second quarter of 2008. It is worth noting that whereas in many countries there was an observable 'recession', in the case of Poland, one could talk rather about a 'clear slowdown of development', as is noted in the report of the Ministry of the Economy for 2008.⁴⁰⁷ The slowdown had already been observable in the second half of 2007.⁴⁰⁸ In 2008, the decreasing trend continued and GDP growth reached only 4.9 per cent.⁴⁰⁹ Nevertheless, in the EU in that particular year only Slovakia, Bulgaria and Romania had higher GDP growth.⁴¹⁰

In spite of the beginning of the crisis, the foreign trade turnover was still increasing. In 2007, the value of imports to Poland rose by 36 billion US dollars in comparison to 2006 (and reached 162 billion US dollars), while the value of exports increased by 28 billion

405 Dz. U. 2008, nr 17, poz. 106.

406 See MG 2008: 8.

407 MG 2009: 7.

408 MG 2008: 60.

409 MG 2009: 63.

410 Eurostat 2011 (according to Eurostat data, the GDP growth rate for Poland in 2008 was 5.1 per cent).

dollars (and reached 138 billion US dollars). In 2008, the value of imports grew again by another 44 billion US dollars, whereas that of exports grew by 32 billion US dollars.⁴¹¹ There were two main reasons for the better condition of the Polish economy in comparison to other EU countries' economies. The first was the effect of high internal demand. The second, paradoxically, was the quite low participation of foreign trade in Polish GDP.⁴¹²

The relatively good state of the Polish economy was also reflected in the unemployment rate. At the end of June 2008, the average unemployment rate decreased to 9.4 per cent in comparison with 12.3 per cent a year earlier.⁴¹³ The effects of the world financial crisis were to affect Poland more severely only in 2009.

The gradual overcoming of the economic problems that Poland was facing at the beginning of the millennium, as well as its entering the EU structures, contributed to the rise in the number of foreign nationals working in Poland. Since 2006, the number of both work permit applications and the number of work permits issued has been growing. In 2007, 16 thousand individual applications were made and over 12 thousand work permits were granted.⁴¹⁴ In 2008, the numbers increased to 25.5 thousand and 18.0 thousand respectively. The number of work permits granted to sub-contracting foreign companies increased from 2.6 thousand to 3.7 thousand (see Table 2.).⁴¹⁵

As always, the highest number of work permits was issued in both years to nationals of Ukraine (over 30 per cent). Whereas in 2007, Ukrainians were followed by nationals of Vietnam, Moldova, Belarus and China,⁴¹⁶ in 2008, the groups of foreigners stayed the same but the order was exactly the reverse (China, Belarus, Moldova and Vietnam).⁴¹⁷

The number of applications, along with the number of work permits issued, is evidence of the growing interest on the part of foreigners working in Poland. This is mainly because the increase in the number of work permits granted happened despite the fact that the number of foreigners exempted from the work permit obligation had also risen. As stated earlier, the number of EU nationals exempted from the work permit obligation has been growing since 2004. Apart from that, there was the category of nationals of third countries – seasonal workers that could be employed on the basis of the employer's declaration, so they

411 CSO 2008: 374; CSO 2009: 376.

412 MG 2009: 7.

413 M. P. 2008, nr 76, poz. 684; M. P. 2007, nr 71, poz. 772.

414 MPiPS 2008.

415 MPiPS 2012a.

416 MPiPS 2008.

417 MPiPS 2012a.

did not need permission. Hence, that instrument could also have contributed to the potential decrease in the number of work permits. From August to December 2007, 21.7 thousand employers' declarations were registered, over 20 thousand of them for Ukrainians alone.⁴¹⁸

The 2009 amendment to the Act on the Promotion of Employment brought some important changes in the access of foreigners to the Polish labour market. Mainly, however, it brought greater order to existing regulations, transferring some rules from the ministerial regulations to the level of the Act but also introducing some new rules.

First of all, the amendment redefined the term *an employer* or rather replaced it by the term *an entity assigning paid work to a foreigner*. This covered a business unit,⁴¹⁹ regardless of whether it has legal personality, but also a physical person who assigns a paid job to a foreigner on the basis of a contract or other legal relationship.⁴²⁰ Additionally, the law introduced a simple definition of *a work permit*.⁴²¹ Then it specified rules regarding work permits, as well as situations in which they are demanded. Thanks to that there can be found in the Act, *inter alia*, the conditions for determining the criteria for issuing work permits, the conditions for granting work permits and exceptions to them, and the conditions for the refusal of a work permit or cancelling documents that have already been issued. The most important change that the Act brought was the abolition of the promise to issue a work permit and, thanks to that, a clear simplification of the procedure. The following paragraphs present these changes in detail.

Regarding the conditions for determining the criteria for the issuing of work permits by a governor, the amendment brought some simplification. After considering the number of job offers for specific positions and requiring particular qualifications, as well as the number of people searching for employment in particular positions, a governor determines a list of professions, along with types of work, in the case of which the procedure is simplified. It means that then work permits can be issued without the local labour market test, i.e. information from a prefect⁴²² about the situation on the local labour market does not have to be taken into account. Additionally, a governor determines a list of professions in the case of which work permits can be issued for a period shorter than the one for which employers apply.

418 MPiPS 2012b.

419 Jednostka organizacyjna.

420 Dz. U. 2009, nr 6, poz. 33: Art. 1. pt 2a (regards adding point 21b in Art. 2.1 of the original act).

421 'a decision of the competent authority, which entitles a foreigner to perform work on the territory of the Republic of Poland according to conditions set in the Act and in that decision' [translation AZK]; Dz. U. 2009, nr 6, poz. 33: Art. 1. pt 2a (regards adding point 43a in Art. 2.1 of the original act).

422 Starosta – a head of a district.

The amendment enumerates several elements that should be particularly taken into account here. These are the previous periods of work and stay of a foreigner in Poland, the type of work, and the importance of the employer for the economy. The amendment maintained a clear emphasis that the criteria cannot discriminate with regard to gender, age, invalidity, race, nation, ethnicity, sexual orientation, political opinions, or religion or for being a member of a trade union or of a union of employers. The criteria are consulted with the regional council for employment.⁴²³ Moreover, the voivodeship marshal⁴²⁴ is asked to give the opinion about them.⁴²⁵

The amendment moved a few conditions for issuing a work permit from the ministerial regulation⁴²⁶ to the Act. Two of them were probably the most important: a governor can issue a work permit if a foreigner's wage is not lower than the wage of a Polish worker in the same position and if s/he gets information from the district prefect that there is no possibility of covering a particular labour demand from local sources (registers of the unemployed and people searching for a job, unsuccessful recruitment organised for the employer).⁴²⁷ These conditions underline that – as until that time – the work of foreigners should only be complementary to the work of Polish citizens and this is directly expressed in the justification (see further).

Nevertheless, the Act indicated exceptions in which there is no need for the labour market test. The first pertains to the situation when an application regards a position that is on the above-mentioned governor's list of positions/professions for which there is increased demand. The second regards the case of a work permit extension for the same person and for the same position. Additionally, special conditions for the issuing of a work permit (e.g. the labour market test, the height of the wage) need not to be taken into consideration in two further cases. The first one regards graduates of Polish schools or schools in the European Economic Area or Switzerland,⁴²⁸ while the second one pertains to foreigners who had been staying legally on the territory of Poland for three years before applying for a residence permit.⁴²⁹ At the same time, the conditions for graduates of Polish schools laid down in the

423 Wojewódzka Rada Zatrudnienia

424 Marszałek województwa – an executive body of the voivodeship self-government.

425 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 9 (regards changes in Art. 10 of the original act).

426 Dz. U. 2006, nr 141 poz. 1002.

427 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 65 (regards adding Art. 88c to the original act).

428 These who have graduated within three years prior to applying for a work permit. See: Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 65 (regards changes art. 88 c 8. of the original act).

429 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 65 (regards adding Art. 88c to the original act).

ministerial regulation (its draft was attached to the bill) brought further liberalisation in that regard.

Other things that the amendment rearranged concerned the refusal to issue a work permit (e.g. in case of false information in the application, false documents, or being punished for illegal employment of a foreigner)⁴³⁰ as well as cancelling a work permit that had already been issued (e.g. an employer has not exercised his/her legal obligations or a foreigner does not fulfil the conditions for that particular employment any more).⁴³¹

An innovation was that the work permit can be issued for a period up to three years and it can be prolonged. In the case of foreigners who act on the management boards of companies employing more than twenty-five people, a governor can even issue a work permit for five years.⁴³²

It is worth adding that the amendment introduced some form of protection of foreign workers since it determined an explicit list of the employer's obligations towards a foreigner. For instance, it obliged the employer: to adjust the foreigner's wage to the valid average monthly wages and salaries at least once a year; to present the foreigner with a contract in translation before s/he signs it, and to inform him/her about the steps that the employer takes in the matter of a work permit.⁴³³

The amendment specified categories of foreigners who – as a result of their stay status – are allowed to work in Poland (on the basis of a work permit, if needed). Then it enumerated categories of foreigners who are exempted from the obligation to obtain a work permit (e.g. family members of Polish nationals under specific conditions). Finally, it separately defined situations in which a work permit is demanded.⁴³⁴ Thanks to that, the authors of the amendment managed to avoid some ambiguity and – especially in the last case – to take into consideration the mobility of workers. In addition to the cases determined in the original Act, the amendment specified two other situations. First, a work permit is required when an alien – a third country national – holds a position on the board of a legal person and stays in Poland for longer than six months within a twelve-month period; second, when a person works for a foreign employer and is delegated to Poland for a period exceeding three months within any six months.⁴³⁵

430 Similar rules had been earlier a part of the 2006 ministerial regulation (Dz. U. 2006, nr 141 poz. 1002).

431 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 65 (regards adding Art. 88j and 88k to the original act).

432 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 65 (regards adding Art. 88e to the original act).

433 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 65 (regards adding Art. 88h to the original act).

434 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 64 (regards changes Art. 87.1, 87.2 and art. 88 in the original act).

435 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 64 (regards changes in Art. 88 of the original act).

Questions regarding the employment of company management board members were – like some other things – transferred from the ministerial regulation to the Act. However, the Act set a few clear limitations regarding the issue, which had not been in force earlier. A work permit for a member of a company management board could only be issued to an employer whose income in the preceding fiscal year was not lower than twelve times the average monthly payment in the particular voivodeship. At the same time the employer had to fulfil another condition, of employment of at least two employees who did not need a work permit for a full-time job contract for an indefinite period for at least one year. There are some alternatives to these two conditions, however. Employers can prove that they have enough financial means or they are acting in a way which means they will fulfil the aforementioned conditions in the future, in particular when their activities contribute to an increase in investments, to the transfer of technologies, the introduction of profitable innovations, or the creation of new jobs.⁴³⁶

The most important matter that the amendment established definitely concerned the simplification of the procedure for the issuing of a work permit. The Act abolished the first step of the procedure that is a promise to issue a work permit.⁴³⁷ Thanks to that, the only step that was necessary to employ a foreigner legally was to apply for a work permit directly. In this way, the amendment introduced some liberalisation of the rules regarding the work of foreigners.

Finally, one more change attracts attention. Namely, in the article which obliges a minister of labour to issue a specific ordinance regarding the procedure for the granting of work permits and other matters related to that, the factors that the minister should take into account were changed. In the previous wording of the act, the article explicitly obliged the minister to consider the needs of the Polish labour market, as well as to ensure the proper organisation of the whole procedure. In the 2009 version, the first condition was replaced by the general condition of reflecting the specificities of various situations when a work permit is required.⁴³⁸

To sum up, one can say that after the 2009 amendment came into force, the main principles of the access of aliens to the Polish labour market stayed the same, i.e. the complementary character of the work of foreigners and protection of Polish workers. Simultaneously, the rules became clearer and the procedure easier. This alone can be treated

436 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 65 (regards changes in Art. 88c 4. of the original act).

437 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 64 (regards changes in Art. 88 of the original act).

438 Dz. U. 2009, nr 6, poz. 33: Art. 1 pt 66 (regards changes in Art. 90 of the original act).

as a kind of greater openness towards economic immigrants, since unclear and complicated rules represent a barrier to the legal employment of foreigners. Some liberalisation did not necessarily reflect negatively in the situation on the labour market for at least two reasons. First, immigrant workers in Poland take positions in the emerging second segment of the labour market; second, determining the conditions for issuing work permits is one thing, while the actual enforcement of that regulation may be another.

The factors which shaped the 2009 amendment were similar to those which affected earlier rules governing the access of foreigners to the labour market, i.e. the state of the economy, the influence of the EU, and the experience with the application of the existing rules.

Specifically, the main arguments for the simplification of the procedure for the issuing of work permits, which appeared in the justification for the amendment project, were the declining labour supply and new economic challenges. In contrast to the situation in earlier years, this time the question of protection of the labour market was not explicitly referred to. The arguments for the particular changes that the justification pointed out especially were ‘growing mobility of workers and the increasing role of conducting economic activities in the transborder dimension, as well as adjusting regulations to the functioning of Poland in the Schengen area.’⁴³⁹ The last matter concerns e.g. preparations for the implementation in Poland of a procedure for issuing the so-called single permit, which means one document including a residence permit and a work permit. This is connected to the ‘Policy plan on legal migration’ package of EU directives.⁴⁴⁰ With regard to the experience with applying the existing law, the justification referred to several examples. These were, among others, a procedure that was too long, an unnecessarily complicated procedure in the case of shortage professions, not taking into account the mobility of migrant workers or specific situations on the local labour markets and, finally, ambiguous definitions or guidelines.⁴⁴¹

Apart from explaining the general reasons for the proposed changes in matters of foreigners’ employment, the government justified a few particular rules.

Concerning the extension of the period for which a work permit can be issued, the argument was the possibility of better integration of foreigners into Polish society.⁴⁴² Nevertheless, understanding it as an implicit projection that Poland is becoming or will

439 Rada Ministrów RP 2008 [translation AZK].

440 EU 2005a.

441 Rada Ministrów RP 2008.

442 *Ibid.*: 30.

become a country of rising immigration in the forthcoming years would be an exaggerated interpretation. First, it is like that because many experts and academics doubt it⁴⁴³ and second, because in many places the document repeats the principle of the complementarity of immigrants' work (implicitly referring to the need for protection of the labour market). The next argument was the interest of employers, who receive greater motivation to employ a foreigner (because of a longer period of time).⁴⁴⁴ From what was written in the justification, it is obvious that at this point the policymakers also took into consideration existing EU regulations regarding long-term EU residents: a foreigner can become a long-term EU resident after five years. Thanks to the amendment, for some foreigners it is enough to prolong the work permit only once and members of company management boards do not need to prolong their work permits at all if their documents were issued for a five-year period.

With a view to making the labour market more accessible for foreigners who are graduates of Polish schools and schools in the European Economic Area or Switzerland, the amendment stated that in this case neither the situation on the local labour market nor the criteria regarding the level of payment have to be taken into account.⁴⁴⁵

In this way, the amendment of the Act changed a state that had already been judged to be wrong for a long time. In the 2003 Report on the State Migration Policy prepared by the Government Population Council⁴⁴⁶ the question related to the treatment of foreign students and graduates of Polish schools was highly criticised. The report emphasised that other countries, such as the United Kingdom or Germany, made a profit by attracting foreign students, letting them study and work on their territory⁴⁴⁷ and afterwards – when they were already highly educated and highly skilled persons – settle there. In contrast, Poland was supporting young Poles to study abroad, where they often stayed after graduating from university, and at the same time, it was making foreign students' life in Poland difficult. It was not only a question of rules, which were e.g. discriminating against university students or graduates applying for a settlement permit or wanting to undertake a part-time job in Poland. It was also a matter of strict enforcement of the rules. The report indicated that governors often refused to prolong these students' stay status and required them to leave Polish territory. The side effect of such a policy was that students and graduates were applying for asylum in Poland in order to legalise their stay at least for some time. The report

443 E.g. I2.

444 Rada Ministrów RP 2008: 32.

445 Rada Ministrów RP 2008.

446 Rządowa Rada Ludnościowa

447 E.g. Work and Study Programmes, in the United States, Australia, Canada, New Zealand etc.

also pointed out some more examples of that negative attitude of the Polish authorities towards foreign students and graduates.⁴⁴⁸

It is necessary to stress that the first signs of liberalisation in the approach to foreign students and graduates had already been brought by the 2006 ministerial regulation. It was still not enough, however. Many academics kept calling for a change in the policy towards that group of foreigners.⁴⁴⁹

While introducing some simplifications, at the same time policymakers underlined in the justification that the principle of restriction of access to the labour market was maintained: issuing a work permit depends on the situation on the local labour market and foreigners' work should be complementary in its character and not substitutive to the employment of Polish workers.⁴⁵⁰ These two issues are often repeated in the current study, because they frequently appear in the labour immigration policy debates too.

In relation to these two further matters are worth repeated attention. First, a governor determines the criteria for issuing work permits and the list of professions in the case of which the procedure for granting a work permit in a particular region is simplified. Second, local social partners can influence the criteria and the list (regional councils for employment revise the criteria). It means that the criteria can differ in various regions of Poland but at the same time they are tailored to the specific needs of local labour markets, so they do not correspond to the simple average of the needs of the national labour market. It seems that at this point policymakers were inspired by the opinion of Kryńska, expressed in the commentary on the draft of the 2007 amendment. In the context of the fee rates, the expert notified that the situation on the national labour market is only the result of the situations on the local and regional labour markets. While in one region there can be shortages, e.g. of wood technologists, in other parts of the country there can be too many of them.⁴⁵¹ It does not mean, however, that Polish wood technologists from those regions are ready to take jobs on the other side of the country.

An analysis of the parliamentary debates that accompanied the passing of the amendment only confirms what has been repeated by experts and academics: immigration has not been a topic of political debate in Poland. There were only a few voices regarding questions relating to foreigners' access to the labour market and they vanished in other parts

448 See Rajkiewicz et al., 2003: 11-12.

449 E.g. Kaczmarczyk and Okólski 2008.

450 Rada Ministrów RP 2008: 31.

451 Biuro Analiz Sejmowych 2007c: 23.

of the debate that concentrated around rules regarding Polish employers and employees.⁴⁵² After all, it is also something that distinguishes discussions about the Act on Aliens, which, as a whole, deals with questions concerning foreigners from the Act on the Promotion of Employment, for which matters pertaining to aliens represent only a part, and possibly even a marginal one. The bill of the 2009 amendment was accepted with almost no changes to the proposed measures regarding foreigners.

An interview with the author of the parts of the amendment project which concerned foreigners revealed his reasoning about whether or not to introduce particular changes. He pointed at two main factors influencing the solutions that he chose: ‘On the one side there was an analysis showing that Poland is not an attractive country for immigrants and there will not be any bigger inflow of immigrants in the next few years, and on the other side there was a desire to make the legal employment of foreigners easy and to escape from the shadow economy and check how it will work during a period of a year or a year and a half. We cannot be sure how it will work since migration is a phenomenon of which the development is difficult to predict’.⁴⁵³

The statement proves that this time too – even though it was not highlighted in the justification – one of the main reasons for the simplifications that were introduced was the desire to limit the illegal employment of foreigners. This was particularly important in a situation of increased labour demand.

The challenge for the policymakers was to create rules suitable for addressing employers’ needs in times of economic prosperity. At the same time, however, they had to consider signals regarding the forthcoming economic slowdown, which was mentioned at the beginning of the section, in order to protect the labour market.

The bill of the amendment to the Act on the Promotion of Employment was accompanied by drafts of the amendment to a few ministerial regulations concerning the work of foreigners. These were, specifically, the ordinances on the procedure for granting work permits and a simplified version of the procedure and the cases excluded from the obligation to obtain a work permit. The following paragraphs discuss these changes.

The 2006 ministerial regulations on the procedure and conditions for the issuing of work permits were in force until 1st February 2009. As a result of changes made by the 2009 amendment to the Act on the Promotion of Employment, the minister issued a new regulation

452 Sejm RP 2008a: 52-73; Sejm RP 2008b: 340-356; Senat RP 2008.
453 I2 [translation AZK].

on the issuing of work permits that replaced both previous orders, i.e. the one related to foreigners in general and the one related to foreigners working in export services.⁴⁵⁴

The new ordinance introduced five types of work permits that remain valid until now. Type A concerns foreigners working for entities located in Poland. Type B regards foreigners acting as members of the boards of legal entities for a period longer than six months within any given twelve months. Types C, D, and E pertain to those who work for foreign employers: C is for foreigners delegated to Poland for a period exceeding thirty days, D applies to export services or similar temporary and occasional services, and finally E is relevant for other cases when foreigners are delegated for a period exceeding three months within any given six months (§ 2).

In contrast to the previous regulation, the new one clearly enumerates the documents that must be submitted with the application for a work permit (§ 6). To simplify the procedure, in a few cases the employer can add (instead of the document) only a declaration about particular requirements being fulfilled. To avoid the misuse of that rule, the regulation provides that in the case of justified suspicions about the authenticity of the information that has been presented, the governor can summon the employer to deliver documents confirming the declared state of affairs (§ 7).

The principle of the complementarity of foreigners' work in relation to the work of Polish nationals should be maintained, not only thanks to the obligation of the prefect to analyse the situation on the local labour market. Now the prefect does not only provide the governor with information about the results of the local labour market test. The prefect is additionally obliged to inform the employer about the possibilities of addressing the employer's job offer. The information newly covers the results of searches made in the registers of the unemployed and those who are looking for a job – the prefect does not also need to spread the offer among people who are neither unemployed nor looking for a job, as was the case earlier (§ 5). Thanks to these changes, the procedure – at least from the perspective of an employer – was simplified.

The draft of the regulation went through interministerial consultations, as well as through consultations with social partners. A few of their comments were taken into consideration when the final wording of the ordinance was being prepared. A few others became immaterial during the works on the regulation because of the changes that were made

454 Dz. U. 2009, nr 16 poz. 84.

simultaneously with the amendment of the Act itself.⁴⁵⁵ In general, the final wording of the ordinance did not change much in its substance in comparison to the draft. In fact, the only important matter was that although the draft provided that the test of the labour market would be maintained only in the case of a type A work permit, in the end it was preserved for all types of work permits, as a result of the remarks of the All-Poland Alliance of Trade Unions.⁴⁵⁶

Issuing a new regulation was done in order to adjust the existing regulation' to the new rules set in the 2009 amendment to the Act on the Promotion of Employment. Its main goal was to make legal employment in Poland easier and more attractive for employers and foreigners.⁴⁵⁷ For these reasons, the final regulation was clearer and more specific and the procedure for issuing a work permit became simpler.

When the 2009 amendment came into force, the minister also provided a new regulation concerning a simplified procedure for the issuing of work permits, i.e. issuing the work permits regardless of whether the detailed conditions were fulfilled. Let us recall that the 2006 regulation enumerated cases in which work permits would be granted irrespective of the local labour market situation or the criteria set for the particular region. The 2009 regulation reformulated the original wording of the 2006 ordinance. First of all it omitted EU nationals and nationals of Turkey. This was because their situation became regulated directly by the Act (in the first case) and by the rules of decision No. 1/180 of the Association Council (in the second case).⁴⁵⁸ Then the regulation distinguished three categories of foreigners in whose cases the governor does not take into account a few conditions for the issuing of work permits that are laid down in the Act. These foreigners are family members (the first category), as well as private servants (the second category) of foreigners in diplomatic posts or employees of international organisations. The third category is foreigners entitled to work on the basis of legal acts related to the Agreement establishing an Association between the European Economic Community and Turkey. Then the 2009 regulation enumerated cases in which the work permit is issued without the local labour market test being performed. The ordinance repeated the categories listed in the previous ordinance. Furthermore, it introduced two other cases. The first one concerns a foreigner – a national of a country neighbouring Poland or of a country with which Poland cooperates within the frame of the Mobility

455 Rada Ministrów RP 2009a.

456 OPZZ 2008.

457 Rada Ministrów RP 2008.

458 Rada Ministrów RP 2009b.

Partnership (in 2009 it meant Moldova and Georgia), who works for physical persons in households as a carer or a domestic help. The second case is connected to another labour immigration policy instrument, employers' declarations of intent to employ a foreigner. It concerns a foreigner who had been working for a period not shorter than three months for the same entity on the basis of the employer's declaration. Performing other work for the same entity without a work permit is possible only under the condition that the employer presents the specified documents. These are the registered employer's declaration and the confirmation of employment (or a contract), together with confirmation about paying the national insurance premium, if demanded.⁴⁵⁹ Originally, the last rule was in force only until the end of 2010; nevertheless, the next ministerial regulation removed that limitation.⁴⁶⁰

It is worth pointing out that the final wording of the ministerial regulation presented above introduced a few significant changes in comparison to its draft. The draft was much more liberal. It provided that the test of the local labour market would not be performed in cases of foreigners working as private servants – in general, without any limitation. Two arguments were indicated in the justification to support such a liberal proposal. The first one pointed out the high level of interest in services of this kind. The second one paid attention to the great trust that the employer needs to have in the potential employee, which limits the possibility of covering the labour demand through the labour offices. Eventually, this broad category of private servants became limited to the above-mentioned category of carers and domestic help coming from the selected countries. The arguments accompanying the introduction of the rule were the same as in the case of 'private servants'.⁴⁶¹

Another category that cannot be found in the final wording of the Act is foreigners whose work is related to 'the need to perform the work personally because of unique skills, talents or experience'.⁴⁶² Similarly, the idea was given up of giving consideration to cases in which the wage of the foreigner stated in the work permit application exceeded the amount of the average monthly wage in the particular voivodeship. It was justified that the category would cover specialists whose salaries are higher than the average wage and that the rule should help to attract such people with unique qualifications.⁴⁶³

459 Dz. U. 2009, nr 16 poz. 85: § 3. 2) and 3).

460 Dz. U. 2010, nr 236 poz. 1560.

461 Rada Ministrów RP 2009b.

462 Rada Ministrów RP 2008 [translation AZK].

463 *Ibidem*.

In contrast, the draft did not list foreigners whose situation is related to the Agreement establishing an Association between the European Economic Community and Turkey, which was eventually included in the ministerial ordinance.

Finally, the last difference concerned cases of people who were already working on the basis of the employer's declaration. The category was taken into account in the regulation to ensure efficient participation in the labour market of those who were already employed in Poland. Originally, it was laid down that the category could enjoy the simplified procedure for the period until the end of the year 2012.⁴⁶⁴ As pointed out earlier, in the end the period was preventively shortened.

In both cases, i.e. the draft and the final version of the regulation, the justifications provided were that it was expected that 'the regulation would contribute to an increase in the attractiveness of legal employment'.⁴⁶⁵

Lastly, in February 2009, the amendment to the ministerial regulation establishing exceptions from the work permit requirement came into force. It brought some order to the previous wording of the ordinance and introduced a few changes, mainly of a liberalising character.

With regard to ordering changes, it first of all removed the rules concerning nationals of the European Union, the European Economic Area, and Switzerland from the list of foreigners who do not need a work permit to be employed in Poland. This change was made because of these cases being transferred directly to the Act on the Promotion of Employment.⁴⁶⁶ Also of an ordering character was the change regarding Turks and their family members. The new wording of the regulation replaced three rules concerning these categories of foreigners by just one rule referring to the legal acts related to the Agreement establishing an Association between the European Economic Community and Turkey.⁴⁶⁷

Among the rules of a liberalising character, definitely the most significant were those related to employers' declarations, which are, however, discussed separately (see 4.6). The other two most important changes regarded teachers (of foreign languages or teachers teaching in foreign languages) and graduates of Polish schools.

In relation to the first category, the amendment to the ordinance removed the requirement relating to the mother tongue. The change was justified by the lack of teachers of

464 *Ibidem*.

465 *Ibid.*: 19 [translation AZK].

466 Dz. U. 2009, nr 6, poz. 33: Art. (regards changes in Art. 87. 2 8 and Art. 88. 2 of the original Act).

467 Dz. U. 2009, nr 21 poz. 114: § 1.1 d.

foreign languages or teachers teaching in foreign languages who would be interested in employment in schools, kindergartens, or other education centres, especially in state ones. In the justification for the draft of the amendment, it was notified that because of low wages the shortages were particularly severe in small towns and the countryside.⁴⁶⁸

With regard to the second category, graduates of Polish schools, the amendment of the regulation simply took a further step in the liberalisation of that issue which had begun in the amendment to the Act on the Promotion of Employment. Let us recall that the 2009 amendment to the Act had already established a simplified procedure for issuing work permits (i.e. with the omission of a few regular conditions) for graduates of Polish, EU and EEA schools.⁴⁶⁹ Further liberalisation introduced by the amendment of the ministerial regulation completely opened the doors to the labour market for graduates of Polish secondary schools and universities, including doctoral study programmes, regardless of the specialisation they had studied. It did not concern only internships but employment proper. In the justification, it was underlined that as a result of their having stayed for a few years in connection with their studies, those foreigners usually know the Polish language and their potential for integration is high. Thanks to their knowledge and experience, they can contribute to the economic development of Poland.⁴⁷⁰ In that way, the government finally exempted from the work permit requirement the category of highly skilled foreigners, something for which academics had already been calling for a few years.

It is worth mentioning that the draft was also intended to liberalise the rules regarding work done by students. Specifically, whereas the 2006 ordinance stipulated that students could work without a work permit only during academic holidays, i.e. from July until the end of September, the draft of the 2009 amendment to the ordinance was to remove that limitation.⁴⁷¹ Eventually, however, the rule was maintained in its previous wording.

Unfortunately, the Ministry of Labour and Social Policy is no longer in possession of the justification for the final wording of the ordinance amendment.⁴⁷² This fact makes searching for the determinants of the rules it includes difficult.

To conclude, the year 2009 was very important from the point of view of the clarification and simplification of the rules related to foreigners' employment in Poland.

468 Rada Ministrów RP 2008.

469 Dz. U. 2009, nr 6, poz. 33: Art. (regards changes in Art. 88c. 8 of the original Act).

470 Rada Ministrów RP 2008.

471 *Ibidem*.

472 Próchnicka 2012.

The evidence of the first is provided by the increase in the number of articles regulating these matters in the Act: from five in 2007 to as many as fifteen in 2009.

The replacement of the two-stage procedure for the issuing of work permits by a single-stage one was the most significant simplification that the Act introduced. Changes made to the ministerial regulations further simplified the access of a number of foreigners to the Polish labour market. Despite the beginning of the economic slowdown, it was recognised that the state of the economy (mainly the low labour supply and new economic challenges) allows such steps, the more so because the criteria for the issuing of work permits were still believed to ensure the complementary character of foreigners' work.

4.5 Analysis of developments in 2010

From February 2009, when the ministerial regulations discussed in the previous sections came into force, no changes were made to the Polish labour immigration policy for almost two years. The only exceptions were two small modifications made in June 2010 to the ordinance on cases exempted from the work permit requirement. The list of cases was enlarged by the addition of the category of foreigners performing work in relation to international sports events who are sent to Poland by an appropriate organisation. It was justified by the commitments Poland made to international sports organisations related to running sports events. It specifically concerned the forthcoming 2012 UEFA European Football Championship organised by Poland and Ukraine, as well as the 2014 Summer Youth Olympic Games, for the organisation of which Poland was applying.⁴⁷³ Additionally, the category of foreigners who are graduates of Polish schools was broadened by the addition of graduates of research institutes. In this way, the ministry only corrected an evident inadvertent omission which had happened during earlier work on the ordinance.⁴⁷⁴ The next changes, which were only small ones, were introduced after almost two years – at the end of 2010.

The economic situation of Poland was not conducive to the continuation of the gradual liberalisation of the labour immigration policy that started in 2006. In 2009, in particular in its first three quarters, Polish macroeconomic outcomes were – as a result of the world crisis – definitely worse than in previous years. The level of investments decreased.⁴⁷⁵ The value of

473 In February 2010, it was announced that the 2014 Summer Youth Olympic Games would be organised by China.

474 Interestingly, the omission was noticed only by a foreigner who gained the title of Ph.D. from a research institute and who, because of the omission, was obliged to apply for a work permit. The ministry introduced the amendment on the basis of his appeal (I6).

475 MG 2010: 9.

imports fell by 60 billion US dollars and that of exports by 36 billion US dollars in comparison to 2008.⁴⁷⁶ In this way, both figures declined below the level from 2007. The unemployment rate increased and reached 10.6 per cent in the middle of 2009.⁴⁷⁷ Reacting to such developments, the government came up with the bill of the Act on Mitigation of the Impact of the Economic Crisis on Employees and Entrepreneurs. The bill was accepted by the Sejm in July 2009.⁴⁷⁸

Despite these unfavourable economic outcomes, it must be admitted that the situation of the Polish economy in 2009 was still relatively good in comparison to other EU countries' economies. The average level of Polish GDP decreased to 1.8 per cent⁴⁷⁹ (according to Eurostat data even to 1.5 per cent) but in contrast to other EU countries, the balance was favourable (the EU-27 average was -4.6 per cent and the EU-15 average even -4.8 per cent⁴⁸⁰). Thanks to that, the difference in the level of economic development between Poland and the so-called old EU countries diminished again.

In 2010, the situation slowly started to improve. GDP increased to 3.8 per cent, mainly thanks to domestic demand; foreign turnover also grew.⁴⁸¹ However, the level of investments decreased further and the level of unemployment deepened and reached 11.7 per cent at the end of June 2010.⁴⁸²

Regardless of the economic slowdown, or rather thanks to the fact that the crisis was not that deep in Poland, the number of work permits issued to foreigners continued to increase. Let us recall that in the year of the best economic development in Poland, i.e. 2007, the number of work permits granted individually exceeded 12 thousand and in 2008, it was slightly higher than 18 thousand. In the crisis years, 2009 and 2010, the numbers exceeded 29 thousand and 36 thousand respectively. Interestingly, in 2009 as few as 52 applications for a work permit were rejected. The number of applications rejected in 2010 is not available. In 2009, most work permits were granted again to nationals of Ukraine (32 per cent) and then to nationals of China, Vietnam, Turkey and India. In 2010, Ukrainians received 35 per cent of all work permits. High numbers of work permits were also granted to nationals of China, Vietnam, Nepal and Turkey.⁴⁸³

476 CSO 2010: 385.

477 M. P. 2009, nr 64, poz. 854.

478 Dz. U. 2009, nr 125 poz. 1035.

479 MG 2010: 7.

480 Eurostat 2011.

481 MG 2011: 7.

482 M. P. 2010, nr 71, poz. 910.

483 MPiPS 2012a.

The main economic sectors of foreign employment in 2009 were retail and wholesale trade (24 per cent), manufacturing (17 per cent), financial intermediation and real estate activities (14 per cent) and the construction sector, as well as hotels and restaurants (10 per cent each).⁴⁸⁴

The largest groups of work permits were issued for qualified workers (31 per cent), managers (19 per cent) and workers performing simple jobs (16 per cent).⁴⁸⁵

The above paragraphs present data regarding not only 2009 but also 2010 since the 2010 modifications to the rules regulating the employment of foreigners were made in their context – they came as late as in December 2010. First, a few changes were made to the ordinance on cases in which a work permit is issued regardless of the specific requirements of granting work permits, as well as the one on cases exempted from the obligation to obtain a work permit. Second, the Act on the Promotion of Employment was amended once again.

In the case of both ministerial regulations, all rules starting with the words ‘a national of a state bordering the Republic of Poland or a state with which Poland cooperates in the scope of economic migration in the framework of a mobility partnership arranged between the state and the European Union’ were replaced by records directly enumerating the nationals of which countries they concerned, i.e. nationals of Ukraine, Russia, Belarus, Moldova and Georgia.⁴⁸⁶ It was argued that thanks to such a change the rules would not relate automatically to all countries with which Poland would cooperate within this framework, which is to be developed in the forthcoming years.⁴⁸⁷ Additionally, in the case of all rules aimed at nationals of the above-mentioned countries that were included in both ordinances, the amendments definitely cancelled the time limit for which they were to be in force.⁴⁸⁸ In the justification to the draft of the ordinance on issuing work permits, regardless of the specific requirements for granting work permits, it was noted that the implementation of the rules did not cause any controversies in the labour market and that the ministry had not received any information about the simplified procedure being misused. There was an expectation that further application of the rules laid down by the ordinance would contribute to meeting employers’ needs and to increasing the attractiveness of the legal employment of foreigners. Furthermore,

484 *Ibidem*.

485 *Ibidem*.

486 Dz. U. 2010, nr 236 poz. 1559; Dz. U. 2010, nr 236 poz. 1560.

487 Rada Ministrów RP 2010b.

488 Dz. U. 2010, nr 236 poz. 1559; Dz. U. 2010, nr 236 poz. 1560.

it was pointed out that previous experience had shown that the rules did not affect the situation of domestic workers negatively.⁴⁸⁹

The 2010 amendment to the Act introduced some changes resulting from the 2009 Act on Mitigation of the Impact of the Economic Crisis on Employees and Entrepreneurs. The adoption of the latter one was preceded by numerous consultations with major social partners that ended up with the conclusion of an Anti-Crisis Pact, which became a basis for the Act.⁴⁹⁰ According to the modified rule of the Act on the Promotion of Employment, the work permit remains valid in the case that – on the basis of the particular articles of the ‘anti-crisis act’ – the amount of working time was reduced for a period not longer than six months and not more than up to half of the working hours. The decrease in the working time is proportionally connected to the decrease in payment. These changes have to be reported to the governor immediately.⁴⁹¹

In the justification for the bill, the government explained that the introduction of such a rule would help employers who found themselves in temporary financial difficulties to introduce shortened working hours (and payment) without the need to apply for a new decision relating to a work permit.⁴⁹²

As far as the opinions of social partners are concerned, the Polish Chamber of Commerce⁴⁹³ evaluated the proposed changes regarding foreigners positively. On the other hand, the All-Poland Alliance of Trade Unions⁴⁹⁴ criticised that rule. Nevertheless, the government did not consider the latter opinion, emphasising that the aim of the rule was to treat employees equally with regard to working time and payment.⁴⁹⁵

During the work of the parliamentary sub-commission, a few smaller modifications to the existing rules were introduced. Probably the most important was that they made it possible for foreigners who were victims of human trafficking to use a simplified procedure for the issuing of a work permit, as well as extending the right to gain information about foreign workers to the regular officials of the National Labour Inspectorate (earlier it was the right of NLI district inspectors). Finally, they redefined the factors that the minister should take into account when issuing a regulation on cases in which a work permit is not needed.

489 Rada Ministrów RP 2010c.

490 See Stelina 2010.

491 Dz. U. 2010, nr 257 poz. 1725: Art. 1 (46) (regards changes in Art. 88i of the original Act).

492 Rada Ministrów RP 2010a.

493 Krajowa Izba Gospodarcza

494 Ogólnopolskie Porozumienie Związków Zawodowych

495 Rada Ministrów RP 2010a: 25.

The amendment broadened the range of factors by considering international aid programmes, requirements related to the employer, the period of employment, and Polish foreign policy.⁴⁹⁶

To sum up, most of the changes made in December 2010 were introduced to preserve the existing rules relating to the employment of foreigners. This concerned the closure of the list of third countries whose nationals enjoy special treatment in Poland's labour immigration policy (which was mainly motivated by foreign policy considerations). The same was true of the ending of the pilot phase of applying the rules regarding work on the basis of or in relation to employers' declarations. Other changes, again motivated by the state of the economy, were to help employers to manage the unfavourable economic situation without the liquidation of jobs, including those occupied by foreigners.

The next amendments to the rules regulating the access of foreigners to the Polish labour market appeared only in July 2011, which lies beyond the scope of this study. Before that the Polish migration policy strategy, which many had been waiting for for a long time, was published. The main guidelines with regard to labour immigration policy that it introduced are presented in 4.9.

4.6 Special case 1: Employers' declarations

The picture of Polish labour immigration policy that the previous sections presented shows Poland as a country with a generally passive approach to questions of the access of foreigners to the labour market. Nevertheless, such a picture is not full. Probably the most important instrument of the policy has not been presented yet. This is an employer's declaration of intent to employ a foreigner, which has already been referred to many times but has not been discussed yet. The employer's declaration represents a special case within Polish labour immigration policy and it is aimed at seasonal workers. Evidence of its exceptionality is provided, *inter alia*, by the numerous controversies accompanying its introduction and continued use, as well as the great numbers of foreigners using it. From September 2006, when the instrument was established,⁴⁹⁷ until the end of 2010, almost 550 thousand employers' declarations were registered. For these reasons, a separate section is devoted to this matter.

An employer's declaration of intent to employ a foreigner is an original Polish instrument of labour immigration policy, the goal of which is the facilitation of the access of foreigners to the labour market. It is a kind of back door: foreigners are allowed to work in

496 Dz. U. 2010, nr 257 poz. 1725: Art. 1. 41) – 46).

497 Dz. U. 2006, nr 156 poz. 1116.

Poland on the basis of the employers' declarations registered in the district labour offices instead of going through the whole work permit procedure. On the basis of that document, they can also be granted a proper visa to come to Polish territory.

The introduction of employers' declarations represented a revolutionary step that set up the simplification of the employment of seasonal workers coming from selected countries. Originally, these were only countries bordering Poland and which did not belong to the European Union (Ukraine, Belarus, and Russia), together with Germany. The instrument used to concern only work in agriculture performed for a period of three months within six months (§ 27).

Employers' declarations have probably been the most discussed element of Poland's labour market access policy. Whereas employers representing various sectors were interested in broadening the possibilities of using the instrument, labour unions, on the contrary, were indicating the risks that it entails for the domestic labour force and pointing at cases in which it was misused. Therefore, the last few years have been a time of searching for the best way of enforcing employers' declarations.

Every single year, particular ministerial regulations changed the conditions connected to employers' declarations: revoking the sectorial limitation;⁴⁹⁸ extending the period for which a foreigner can work on the basis of the declaration;⁴⁹⁹ changing the list of countries they concern,⁵⁰⁰ and extending the period for which the rule as such was valid. Finally, in the middle of 2011 – i.e. at the end of the period that is the centre of interest of the current study – the rule read that nationals of Belarus, Georgia, Moldova, Russia, and Ukraine can work in Poland on the basis of an employer's declaration for at the most six months within twelve consecutive months, regardless of the type of work.⁵⁰¹ Moreover, since February 2009 those who stay in Poland on the basis of a residence permit for a specified period of time granted in connection to work performance can use an employer's declaration to perform some additional work (i.e. work different from that for which the residence permit was issued).

From August until December 2007, almost 22 thousand employers' declarations were issued. In the whole year of 2008, the number reached almost 157 thousand. In 2009, it increased to over 188 thousand. In 2010, the number was slightly lower – over 180 thousand. The decrease in the interest in employers' declarations was, however, only temporary: in the

498 Dz. U. 2007, nr 120 poz. 824.

499 Dz. U. 2008, nr 17, poz. 106.

500 Dz. U. 2009, nr 21 poz. 114, Dz. U. 2010, nr 109 poz. 716.

501 *Ibidem*.

first half of 2011 alone, the number of documents issued reached almost 164 thousand. Easily the highest number of all declarations was issued to Ukrainians (always over 90 per cent). Declarations for jobs in agriculture clearly predominated.⁵⁰²

In the justification of the first regulation introducing the declarations, i.e. in 2006, the minister underlined that they were created because of the great labour shortages reported by producers.⁵⁰³ Economic prosperity and the great numbers of people who emigrated from Poland (see 3.2) were recognised as the two elements responsible for labour force shortages. For instance, a research study conducted in September 2006 among big companies employing more than 250 people revealed that 52 per cent of the employers who were examined had problems with finding staff and 8 per cent were affected by the problem indirectly, since they cooperated with companies that had staff shortages.⁵⁰⁴ The whole situation made employers more willing to look for foreign workers and to press the government to facilitate the employment of foreigners.

The ministerial justification of the draft of the original ordinance pointed out that the labour shortages were of greatest concern to fruit growers and producers of soft fruits, who intervened in various ways at the ministry. As it was indicated, nationals of ‘old’ EU countries are reluctant to take jobs in agriculture since these jobs are hard and badly paid and similarly Poles have been unwilling to work in that sector in recent years. Declarations were intended to help employers to face such a situation. At the same time, it was believed that the rule would result neither in an increase in the unemployment rate nor in social discontent just because of the low wages available in the sector it pertained to.⁵⁰⁵

Simultaneously, it was an open secret that there are many foreigners from countries neighbouring Poland in the East who work illegally in agriculture in Poland. Therefore, a further motivation to introduce employers’ declarations was the desire to limit the illegal employment of foreigners in that sector.⁵⁰⁶

The original choice of the four countries, i.e. Ukraine, Belarus, Russia and Germany, mainly resulted from foreign policy reflections. It had already been established in the Act on the Promotion of Employment that in granting exceptions to the work permit requirement the minister has to consider, *inter alia*, international agreements. In the case of these four countries, a legal basis already existed – agreements regarding employment – that allowed

502 MPiPS 2012b.

503 MPiPS 2006b: 2-3.

504 Jagiełło and Węsierska 2007: 11.

505 MPiPS 2006b: 2-3.

506 *Ibidem*.

that kind of instrument. Additionally, the ministry pointed out the geographical proximity of these countries, which made it legitimate to employ nationals of neighbouring countries for short-term work in agriculture.⁵⁰⁷ Including Germany in the rule can be surprising here, when one takes into consideration the above-mentioned reference to the unwillingness of EU nationals to take low-paid jobs. However, the reason for that was simple. Free movement of workers had existed between Poland and all the EU countries bordering it, i.e. the Czech Republic, Slovakia, and Lithuania. The only exception was Germany, which decided to introduce a transitional period for the free movement of labour from the new member states i.e. also from Poland. Hence, Poland decided to follow the principle of reciprocity with regard to German nationals and to impose a work permit requirement on them. Simultaneously, not including Germany in the rule on employers' declarations would be discriminatory towards one of the states *bordering Poland*, which was, moreover, an EU state.⁵⁰⁸ This is why Germany was originally included in the regulation.

As usual, the draft of the ministerial regulation was subjected to consultations with social partners. Only the All-Poland Alliance of Trade Unions had some reservations about the employers' declarations. It noticed that the regulation did not introduce minimum standards regarding wages and work and that no analysis of the labour market in the agricultural sector had preceded the regulation. The alliance indicated there were over one million unemployed living in the countryside. It therefore pointed out that even if locally there were some labour shortages in agriculture it did not mean that in general there were not enough people who could do the job. The problem was not the lack of people but the too-low wages that were offered them, as well as the lack of incentives for professional mobility. Additionally, the alliance called for the elaboration of a data-based migration policy.⁵⁰⁹ These were the same arguments that the alliance used every time the government endeavoured to introduce some facilitation of foreigners' work.

In 2006, however, no criticisms were taken into consideration because of the argument that the introduction of the facilitation in agriculture was urgent.⁵¹⁰ The ministerial regulation was issued only at the end of August and came into force immediately because even then for many farmers it was already too late.

507 *Ibidem*.

508 I5.

509 OPZZ 2006a.

510 MPiPS 2006: 4.

Much more light was shed by the interviews with experts on the introduction and, partly, development of employers' declarations. Since this has been the only instrument of the labour market access policy aimed at the direct facilitation of the admission of foreign workers, the experts were mostly talking exactly about declarations when asked about the factors shaping Polish labour immigration policy. Altogether, in their answers, the following reasons for introducing the employers' declarations were mentioned: lobbying connected to labour market shortages resulting from economic prosperity and the emigration of Poles as well as the political factors. The reasons underlying the choice of the particular countries to be enumerated in the rule were also indicated: the volume and composition of migration, along with foreign policy considerations.

Thinking about the original wording of the rule, some of the persons who were interviewed highlighted the fact that the instrument was introduced in haste and without proper analyses and consultations, because of great lobbying by employers' unions, as well as particular employers, mainly in agriculture (afterwards also in construction).⁵¹¹ Some experts noted that the reason was the fact that one of the ruling parties⁵¹² at that time was connected to the agricultural sector. Therefore, there are opinions that declarations were set up to answer the needs of that party's electorate or pressure from it.⁵¹³ The *needs* were additionally highlighted by the media, which pointed out that the lack of a domestic labour force resulted from the emigration of Poles. In summer 2006, they reported great labour shortages in agriculture and threatened that tonnes of strawberries would rot since there was nobody to pick them.⁵¹⁴

However, there were also other experts who did not believe in the influence of any political factor. They confirmed that the lobbying was the main determinant (or rather 'a bearer' of actual factors) but according to them employers' declarations could also have been introduced in a political constellation different from the one that existed in 2006.⁵¹⁵ Subsequent developments confirmed these assumptions.

The introduction of declarations only in agriculture soon gave rise to many controversies: as one of the experts notified, whereas picking apples is work in the fruit-growing sector, packing the same apples into boxes and then loading them onto a truck is

511 I1, I2, I3.

512 Samoobrona; its leader, Andrzej Lepper, was a vice prime minister and the minister of agriculture at that time.

513 I2, I3, I4, I6, I7.

514 Gazeta Prawna 2006 based on Klaus 2007: 30.

515 I5, I7.

already – according to Polish law – work in transport.⁵¹⁶ Additionally, employers in other sectors, sometimes supported by particular ministries, started to lobby for the introduction of declarations in their own spheres, suggesting that they also needed workers for different seasonal jobs. For example, appeals appeared to extend the declarations to work in the refrigeration industry, fruit and vegetable processing, or clothing production, but in particular, in construction.⁵¹⁷ The media supported the employers to a certain extent. The following year, when the Poles, together with the Ukrainians, were chosen to be the hosts of the 2012 UEFA European Football Championship, the media were calling to Polish emigrants ‘Come back from England to build stadiums’, thus indicating labour shortages in construction.⁵¹⁸ For these reasons, in June 2007, the minister changed the wording of the regulation and revoked the sectorial limitation of the rule.⁵¹⁹ Furthermore, in 2009, a regulation of the new minister – the new government was formed in autumn 2007 by what had up till then been the opposition – extended the number of countries that it concerned. Because of the special relations of the European Union with Moldova and Georgia (Mobility Partnership) since February 2009, these facilitations also started to concern nationals of those two countries.⁵²⁰ Then, thanks to the generally good experience with the instrument, each of the following ministerial regulations extended the period for which the rule regarding employers’ declarations was in force by one or one and a half years. Finally, in December 2010 a new ministerial regulation completely abolished the time limit for which the paragraph regarding declarations was to be in force.⁵²¹ All these developments are evidence that although a political factor might be important as a trigger, the background of the introduction and, subsequently, of the development of the system was much more complex.

As may be obvious from what has already been said, the main determinant of the introduction and extension of employers’ declarations was the labour shortages that had been pointed out. This could be treated, however, as *interpretation* of the labour market situation, which evoked some controversies. On the one side, the Ministry of Labour and Social Policy, together with some other ministries, as well as various employers’ organisations,⁵²² was pointing out labour shortages in various sectors of the economy, which eventually contributed

516 I6.

517 E.g. MPiPS, BA: DMI, Notyfikacja MRRW; MPiPS, BA: DMI Notyfikacja MB.

518 Woźniak and Styczek 2007.

519 Dz. U. 2007, nr 120 poz. 824.

520 Dz. U. 2009, nr 21 poz. 114.

521 Dz. U. 2010, nr 236 poz. 1559.

522 E.g. MPiPS, BA: DMI, Stanowisko Konfederacji Pracodawców Polskich.

to the cancellation of the sectorial limitation of the rule on declarations. On the other side, a few regional institutions⁵²³ and labour unions, along with some other ministries, were – especially in 2007 – calling attention to the threats to Polish employees resulting from the extension of the possibilities of the application of the instrument. They reproached the Ministry of Labour and Social Policy with the fact that the draft of the new wording of the rule on declarations had not been preceded by detailed analysis of the needs of the labour market with regard to particular spheres, as well as the qualifications demanded.⁵²⁴ Let us recall the unemployment rate in selected years: 15.9 per cent in 2006, 9.4 per cent in 2008, and 11.9 in 2010. Moreover, opponents of the extension of the declarations system pointed out that Poles were not willing to undertake particular jobs because of the low wages offered for them.⁵²⁵ They further expressed concerns that the rule would contribute to discontent on the part of Polish employees because of the fear of losing their jobs or of their wages being reduced and to the growth of employment in the *grey zone* (without contracts, insurance, etc.)⁵²⁶ or even that foreigners would push out Polish workers from some positions.⁵²⁷ For these reasons, some of these bodies called for the application of employers' declarations to be limited to scarce professions.⁵²⁸ Simultaneously, they pointed out the need to take action to compensate for some of the labour shortages with the domestic labour force: to activate the Polish unemployed, to support requalification, and to facilitate commuting. They also called attention to the exploitation of employers' declarations. The ministry however, did not listen to these voices. On the one hand, one can suppose that this was because in fact it would mean developing a very complex, multi-data-based approach to questions of the balance between labour demand and labour supply. On the other hand, such a situation might be evidence of the strength of Polish employers and their great influence on the government.

Neither was the question of whether labour shortages resulted from the emigration of Poles that obvious. The experts who were interviewed pointed out it was not (only) emigration that was responsible for labour shortages in some sectors. For instance, I4 explicitly said that those who left Poland were in many cases 'representatives of frustrated

523 E.g. Voivodeship Labour Office in Warsaw (MPiPS, BA: DMI, Stanowisko Dyrektora Wojewódzkiego Urzędu Pracy w Warszawie) or Vice-governor of the Lublin Voivodeship (MPiPS, BA: DMI, Stanowisko Wicewojewody Lubelskiego).

524 MPiPS, BA: DMI, Notyfikacja MSWiA; Ogólnopolskie Porozumienie Związków Zawodowych 2007a.
525 Ogólnopolskie Porozumienie Związków Zawodowych 2007a.

526 MPiPS, BA: DMI, Stanowisko Wicewojewody Lubelskiego; MPiPS, BA: DMI, Stanowisko Wojewody Dolnośląskiego.

527 MPiPS, BA: DMI, Decyzja Prezydium Komisji Krajowej NSZZ Solidarność.

528 E.g. MPiPS, BA: DMI, Stanowisko Rady Forum Dyrektorów Powiatowych Urzędów Pracy.

years⁵²⁹ who graduated from universities in specialisations which the Polish economy had not necessarily needed, such as administration or management, i.e. even though they stayed, they would probably not be addressed by the employers.⁵³⁰ At the same time, I7 believed that the size of emigration was not on so great a level that it was equivalent to labour demand.⁵³¹

The fact is – as revealed by the Labour Force Survey⁵³² – most Polish emigrants have been relatively well-educated people. For example, in the second quarter of 2006, as many as approximately 62 per cent of the total number of migrants comprised people with at least secondary-level education. Those with a university diploma accounted for 14 per cent of all migrants (again in the second quarter of 2006).⁵³³ The question therefore is if these people would have been willing to undertake simple jobs in agriculture, where they were needed. The answer which suggests itself is: yes, many of them would undertake such employment, but not in Poland. It is mainly a question of wages, but to some extent also of prestige: what some would not mind doing abroad, they would never do in their home country.

Besides emigration, a few of the experts who were interviewed noted several other important circumstances contributing to the increased labour demand, especially in different sectors of agriculture. They noted that the most important factor was, generally speaking, the economic boom.⁵³⁴ I4 suggested it was connected to some further matters. Among these were access to structural funds, which allowed the financial means for investments to be gained and, in that way, contributed to stable development. Another matter was the remittances of Polish emigrants. They enabled people to develop their own businesses. Both these factors helped the investment boom in the building industry but the owners of building companies did not have enough hands to do the work.⁵³⁵ Nonetheless, at this point, it is worth noting that the report of the Ministry of the Economy on the effects of Polish emigration on the economy did not confirm the aforementioned remarks regarding remittances. According to the report, most remittances were used for consumption. Even though they also contributed to the development of the economy, such an effect was only indirect.⁵³⁶

The next thing that the expert referred to was the fact that – once the economic situation started to improve – unemployed Poles were not interested in some work, e.g. in

529 ‘...przedstawiciele sfrustrowanych roczników’.

530 I4.

531 I7.

532 Badanie Aktywności Ekonomicznej Ludności.

533 Kępińska 2006: 38.

534 I4, I3, I7.

535 I4.

536 MG 2007c: 33-38.

agriculture. There was a great need for seasonal work especially but Polish workers did not want to take these jobs, despite the fact that some instruments designed to act as stimuli, e.g. connected to commuting or lodgings, were offered.⁵³⁷ It was the beginning of the formation of the so-called second segment in the Polish economy. A further factor was connected to the availability of foreign workers: whereas before the introduction of visas for nationals of Poland's Eastern neighbours seasonal foreign workers were easily available (although usually it was a case of illegal work – see 'incomplete migration' in 3.2), afterwards the barriers connected to access to the territory resulted in shortages in the seasonal foreign labour force. Those foreigners no longer had the chance to come to Poland flexibly.⁵³⁸ They became a lack that was clearly felt. For all these reasons, it is correct to say that the emigration of Poles was largely misused by the media, as well as by some politicians, as an argument supporting the introduction of employers' declarations, first, because there was a cluster of reasons that contributed to labour shortages, as well as to the perception of labour shortages, and second – as one expert noted – because 'it was populist to say to farmers that the solution to their problems is a foreign labour force.'⁵³⁹

The form of employers' declarations – which was a Polish idea, not an instrument taken over from the experience of other countries – was chosen for several reasons. First, because of the existing EU regulations and upcoming access to the Schengen zone, it was known that some special instrument must be prepared.⁵⁴⁰ Second, at the time when the regulation introducing it came into force, the regular procedure of the issuing of work permits was quite complicated. It could not easily address needs related to seasonal work, since getting a work permit took too long. Third, employers' declarations are a simple form, which is better adjusted to the 'client', i.e. in many cases a farmer, who is often not used to going through very complex administrative procedures, as one of the experts who was interviewed pointed out. The declarations – the expert added – are registered by district employment offices since they are relatively close to the employer and they fulfil assignments connected to the local labour market.⁵⁴¹ Fourth, such an instrument already had some basis in Polish law.⁵⁴² Finally, and fifth, the choice of declarations as the instrument of an active labour immigration policy was undoubtedly influenced by the fact that they concern circular or

537 *Ibid.*

538 I6.

539 I7 [translation AZK].

540 *Ibid.*

541 I6.

542 I4.

temporary immigration, which is preferred not only by Poland itself, but by the European Union as a whole.⁵⁴³ From the perspective of the destination country such types of migration are expected to bring numerous advantages. They should not result in the eventual settlement of foreign workers, a change in the national structure of the receiving society, and problems with immigrants' integration or cultural clashes. Such migration simultaneously means, however, 'labour without people' and migrants with 'ill-defined rights',⁵⁴⁴ which are not merely flexible but also easily abused. The section below confirms that Polish policymakers also took these elements into consideration when introducing and developing the system of declarations.

The experts justified the limitation of the access to that simpler procedure to the four aforementioned neighbouring countries by the specific character of the work for which the procedure was prepared, as well as the volume and composition of immigration.⁵⁴⁵ The work is seasonal; it often depends on the weather, and therefore it requires flexibility and a fast procedure but also a short time between informing or finding foreigners and the day on which they start work. Neighbouring countries are the closest possible sending countries. As one expert from the Ministry of Labour and Social Policy said, the system was set up in such a way as to make access to the labour market easy, but, at the same time, the ministry is aware that this kind of system does not give a worker any special guarantees. Therefore, it is important that in the event of losing their job, foreigners can easily return home, and on the contrary, if they are needed again, they can easily come back to Poland. In the case of a neighbouring country, it is not a problem with regard to the costs or with regard to the organisation of transport. The system was tailored to seasonal, occasional jobs.⁵⁴⁶ Another matter was who was interested in these kinds of jobs. No special analysis was performed to find it out, but— as the expert who was interviewed said — experience showed that a large number of such people live in Ukraine.⁵⁴⁷

Further, a question mentioned in various documents and one which is no way meaningless is Poland's foreign policy. Poland's interest is in the integration of its eastern neighbours and other countries established after the collapse of the USSR with the idea of a common Europe.⁵⁴⁸ The East has been always important for Polish diplomacy. This was

543 E.g. I2; I5.

544 Wickramasekara 2011: 3.

545 I5, I52, I6.

546 I6.

547 *Ibid.*

548 MPiPS, BA: DMI, Stanowisko Ministerstwa Spraw Zagranicznych.

underlined by almost every prime minister and Minister of Foreign Affairs. A few years later,⁵⁴⁹ this fact became reflected in the Polish initiative (with the assistance of Sweden) of an Eastern Partnership, which covers the Eastern dimension of the European Union's external relations. All these reflections, along with considerations regarding the cultural and civilisational proximity of the nationals of Poland's eastern neighbours, contributed to employers' declarations being aimed at exactly these groups of foreigners. The same arguments appeared in the above-mentioned document setting the geographical orientation of Polish labour immigration policy in autumn 2007 (see 4.3).

The original limitation of the period for which a foreigner can be employed on the basis of an employer's declaration of up to three months within six consecutive months resulted from the unemployment rate at that time⁵⁵⁰ (in 2006 it was still almost 16 per cent⁵⁵¹) or rather from caution after the Polish labour market had been suffering from a high unemployment rate for several years. As early as in 2007, voices appeared that were calling for the period to be prolonged to six⁵⁵² or even nine⁵⁵³ months within any consecutive twelve months. An extension, but in its shorter version (six months), was introduced only in 2008.⁵⁵⁴

In spite of the fact that the way in which the facilitations were introduced was criticised, the instrument was not revoked by the new government that came to power in November 2007. On the contrary, as presented earlier, the government extended the possibilities for using the declarations. As one of the experts who were interviewed said, declarations only contributed to the legalisation of practices that had formerly been illegal.⁵⁵⁵ Taking into account the fact that in 2007 the first symptoms of the world economic crisis were evident, some people may be surprised by this kind of liberalisation. Nevertheless, other experts pointed out, it would be absurd to abolish a generally good instrument only because of a crisis that is a temporary phenomenon. Additionally, despite the fact that the crisis had started and the unemployment rate was increasing, there were not enough Polish workers interested in taking jobs in the second segment, especially in agriculture.⁵⁵⁶ Besides, as another interviewee observed, declarations concern short-term economic immigration that is closely connected to the employers' needs. In a crisis, labour demand decreases, and hence

549 The programme was launched in 2009.

550 I3.

551 M. P. 2006, nr 67, poz. 693.

552 MPiPS, BA: DMI, Wniosek Unii Polskiego Przemysłu Chłodniczego.

553 MPiPS, BA: DMI, Wniosek PKPP Lewiatan.

554 Dz. U. 2008, nr 17, poz. 106.

555 I6.

556 I7, I42.

employers may issue fewer declarations. Therefore – in comparison to long-term or permanent immigration – in this case state intervention is not of any special importance. Another thing is that the vast majority of foreigners using declarations have been Ukrainian circular immigrants. For them it is easy – as already mentioned – to adjust to changes in the trade cycle. Finally, Poland was affected by the crisis to a much smaller extent than other countries.⁵⁵⁷

In contrast to these statements, there is frequent information about the exploitation of the system of declarations. Almost since the beginning, there has been some evidence that employers' declarations are widely exploited in various ways. It was common knowledge that a trade in declarations was flourishing on Poland's eastern border and that many foreigners had never met the employers who issued the declarations to them. There were many reasons for such situations: the employers disappeared, or the foreigners never wanted to meet them but were searching for other, better-paid jobs, or the foreigners used the declarations to receive a visa more easily, to cross Poland, and to seek their fortune further west. An anonymous official admitted in a press interview that 'A farmer who has a few hectares is able to issue over three hundred declarations to Ukrainians. We know it is not for real but there is nothing we can do about that.'⁵⁵⁸ As the chief of the Warsaw Labour Office said, the law had obliged labour offices to register the declarations but there were no instruments of control.⁵⁵⁹ It was not only the media that reported such situations; similar information is confirmed by researchers.⁵⁶⁰

Despite that, for a very long time the Ministry of Labour and Social Policy was blind to these reports. Only in July 2011, which, however, lies beyond the scope of the present study, did rules regarding employers' declarations become slightly restricted for the first time. The new rules specified what information regarding the foreigner's work the employer must write in the declaration (name of profession, place, and date of beginning and period of performing the work, wage level, and type of work contract). This was introduced to monitor the system of declarations better. Then employers are obliged to declare that they are acquainted with the legal rules regarding the employment of foreigners and that there is no way to meet their labour needs from the local labour market. However, they do not actually need to prove it. Hence, such a declaration could be a barrier to the exploitation of the system

557 I52.

558 Ćwieluch 2011.

559 *Ibidem*.

560 Stefańska 2011: 5; Szulecka 2010.

only if it had a psychological effect on a particular employer. Next to that change in the 2011 amendment, the possibility of working on the basis of employment for a period longer than six months that was introduced at the beginning of 2009 for foreigners who have a fixed-term residence permit in Poland and related to performing another job was abolished. Policymakers decided that the rules relating to an employer's declaration should concern only seasonal work.⁵⁶¹

In conclusion, the introduction, maintenance, and development of the system that facilitated access to the labour market through employers' declarations were the result of a cluster of determinants. It could be said that undoubtedly the main one of them was labour market shortages that resulted chiefly from economic prosperity.⁵⁶² In the face of the persistent relatively high level of unemployment (from 15.9 in 2006 per cent through 9.4 per cent in 2008 to 11.9 in 2010) the state of the economy certainly could not be the only determinant here. It seems that the activity and strength of the employers who were lobbying the Ministry of Labour and Social Policy, as well as other ministries, had an extremely important influence. Exactly because of their actions one can consider whether the case of Polish labour immigration policy and, specifically, the case of the declarations does not confirm the hypothesis of *client politics*, which Gary P. Freeman talks about (see 2.2.4). In other words, the shape of the policy depends on which group is stronger in advancing its interests or would be listened to by the government. Polish entrepreneurs appear to be much better organised in advancing their interests than other groups, e.g. employees. Evidence of their strength could be the fact that declarations were introduced by a government whose orientation did not favour foreigners. Let us recall that among the governmental parties there was the extreme nationalist conservative League of Polish Families. Besides, the strongest of them, Law and Justice, which was originally a conservative party, over the course of time – mainly after the lost elections in 2007 and even more after the Smolensk catastrophe⁵⁶³ – also displayed a disposition towards radicalisation.

Nevertheless, the good state of the economy, in connection to the lobbying of the employers, would not necessarily be a sufficient reason for introducing the declarations, if there were not the factor of the volume and composition of immigration. Many foreigners, mainly from beyond Poland's eastern border, were interested in work in Poland even in the

561 MPiPS 2011.

562 See introductory sections to each sub-chapter.

563 The 2010 crash of the Polish air force TU-154, in which 96 people died, mainly Polish officials and politicians, including the Polish President Lech Kaczyński and his wife.

second segment of the labour market. The availability of such a labour force contributed to the decision that these people should be used in the official labour market.

The fourth determinant, but this time a rather implicit one, could be considered to be the complexity of the labour market problems. Solving the problems of the imbalance of labour supply and labour demand related to the structural maladjustment, regional differences in the labour market, and high labour costs, along with low wages in particular professions, is extraordinarily difficult. It requires a fundamental transformation of the labour market policy. In the face of such a complex problem, the introduction of the employers' declarations represents a simple solution which can remedy at least some difficulties.

The selection of countries whose nationals can use employers' declarations resulted mainly from the volume and composition of immigration and reflections of foreign policy. With regard to its composition, it should be said that it referred mainly to foreigners' cultural, linguistic, and geographical proximity. In relation to foreign policy considerations, there is no doubt that they had had an important effect on Polish labour immigration policy. Simultaneously, the influence of the EU on the selection of the countries that were addressed, e.g. through the Mobility Partnerships, was rather marginal here. Evidence of that is provided, *inter alia*, by the fact that in 2010 it was explicitly stated that future partners in the programme would not automatically become the beneficiaries of the rule on employers' declarations.

Finally, it is important to underline that the concept of employers' declarations appeared in the specific atmosphere of the revival of the idea of a temporary migration. Temporary and circular migration started to be promoted once again by particular Western European countries, as well as by the European Union itself. Evidence of the last matter is provided by, for example, the content of the 2008 European Pact on Immigration and Asylum⁵⁶⁴ or of the 2010 Stockholm Programme⁵⁶⁵, which encourage the exploration of the two types of immigration. The problem is, however, that as the history of immigration to Western European countries shows in the case of guest worker programmes, treating temporary immigration as a remedy for the labour market problems of the receiving countries can lead to *the boiled frog syndrome* (a metaphor that found its place e.g. in psychology). If one places a frog in boiling water, it will jump out, but if one puts it in cold water which is slowly heated, the frog will not perceive the danger, and hence it will be boiled to death.

564 EU 2008b.

565 EU 2010.

A few decades ago, immigrants were accepted in Western European countries as temporary workers, guest workers, who would come, work, and then go home. Over the course of time, as a result of a range of factors such as employers' demands or the evolution of the idea of human rights, it was found that not only was the expected return only an illusion, but it was impossible to stop immigration. Eventually, this *temporary* migration brought various difficulties connected to the integration of immigrants, such as problems regarding the descendants of the immigrants or the rise of anti-immigrant extremism. It was too late.

Nonetheless, economic immigrants are still needed. Hence, today, countries are looking for new models. The Polish instrument of employers' declarations seems to fit perfectly to the idea of using foreign labourers where they are needed but only for as long as they are needed. The fact that the countries whose nationals are entitled to use that instrument are limited to Poland's eastern neighbours is intended to ensure that the migration will be actually of a *circular* nature.

The actual impact of employers' declarations, which is related – as already mentioned – to the misuse of the instrument by both employers and foreigners seems to be evidence of a policy gap. However, these questions – mainly with regard to the policy gap – require further research.

4.7 Special case 2: Polish Charter

The year 2007 brought one more change in the matter of foreigners' access to the Polish labour market and one more amendment to the Act on the Promotion of Employment, which was not discussed earlier because of its extraordinary character. In September, the Sejm passed the Act on the Polish Charter that had been in the course of preparation for many years. The act gave special rights to foreigners belonging to the Polish nation who are citizens of countries of the former Soviet Union.⁵⁶⁶

Questions connected to the Polish Charter are treated rather in terms of fulfilling moral obligations towards Poles living abroad and maintaining their ties with the motherland than in terms of economy or immigration policy. Therefore, the act is only mentioned exceptionally in the context of the labour market. If it is present in the context of immigration policy, then it is rather discussed within areas such as access to territory, settlement or citizenship policy.

⁵⁶⁶ I.e.: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kirgizstan, Lithuania, Latvia, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

Nevertheless, the fact is that the Act on the Polish Charter⁵⁶⁷ opened the Polish labour market to an unknown number of foreigners of Polish origin. For this reason, it is worth presenting in the current study.

The complex history of Poland left many Poles outside the territory of their motherland as a result of the displacement of state borders and deportations to Siberia and the Central Asian republics, but also as a result of both forced and voluntary emigration to countries all over the world. Today, it is estimated that the Polish diaspora includes as many as roughly twenty million people.⁵⁶⁸ These people enjoy a very special position in Polish migration policy. Referring to Article 52 (5) of the Constitution,⁵⁶⁹ they can apply for settlement in Poland. On the basis of the 2000 Act on Repatriation⁵⁷⁰ they can immigrate to Poland. Finally, they are entitled to stay in the country in order to study there according to a specific set of rules.⁵⁷¹ The Act on the Polish Charter simply brought one more *gate* through which migrants of Polish origin (this time only those living in the countries of the former Soviet Union) can gain access to their motherland.

The Act does not represent anything unusual in relations between a nation-state and people who live outside the country but who have some feeling of belonging to it. Similar acts also came into force in other countries, e.g. Hungary or Ukraine. In Poland, the idea was patterned upon solutions applied by Austria, Slovakia and Greece.⁵⁷²

From the point of view of the study, there are two very important things connected to the Act: who is entitled to be granted the Charter and what kinds of rights – especially economic ones – the Charter brings to its holder. As far as the first matter is concerned, the document is intended for people who have neither a settlement permit in Poland nor Polish citizenship, but who cannot even receive the latter because the legislation of the countries they live in (i.e. the countries of the former Soviet Union) does not enable them to have dual citizenship. By giving these people some rights, the Charter acts as a substitute for Polish citizenship, therefore it can be called semi-citizenship.⁵⁷³

The Polish Charter may be issued to people who can prove their relationship with Polishness by at least a basic knowledge of the Polish language, which they consider their

567 Dz. U. 2007, nr 180 poz. 1280.

568 Walaszek 2001: 7.

569 'Anyone whose Polish origin has been confirmed in accordance with the statute may settle permanently in Poland.' (Dz. U. 1997, nr 78 poz. 483).

570 Dz. U. 2000 nr 106 poz. 1118.

571 Stefańska 2010: 85.

572 Błaszczak in Sejm RP 2007d: 80.

573 Górny et al. 2003: 4.

mother tongue. These people also have to demonstrate knowledge of Polish traditions and customs, together with the fact that they actually cultivate them. Then they submit a written declaration of belonging to the Polish nation, as well as proving Polish ancestry. The last matter means that at least one of their parents or grandparents or two great-grandparents were of Polish nationality or had Polish citizenship. Since for many people it could be difficult to submit any document confirming their or their ancestors' Polish nationality or citizenship, there also exists an alternative. The person can present an attestation of a Polish or Polonial organisation⁵⁷⁴ acting on the territory of one of the former Soviet Union states, confirming that they have been actively involved in activities on behalf of the Polish language and culture or the Polish national minority for a period of at least the past three years (Art. 2).

Concerning the second matter, i.e. the rights of a Polish Charter holder, there is a wide range of them. Although the Charter does not entitle a person to cross the border freely or to stay in Poland without a relevant visa, it makes access to Polish territory easier because its holder may apply for an exemption from a visa application fee or for a refund of the fee - this concerns the fee for a country Schengen visa entitling the holder to enter Poland only (Art. 5). Apart from the right to various forms of education,⁵⁷⁵ together with the right to participation in research and development work, Charter holders may use healthcare services in emergency situations, as well as are able to enjoy the right to discounted railway tickets or free admission to state museums.

It is important to enumerate all these rights because originally, the bill of the 2007 Act (like the 1999 bill of the Act on the Polish Charter, which the Sejm did not pass⁵⁷⁶) established only these particular rights and the whole justification of the Act was related to them. The right to exemption from the obligation to have a work permit, together with the right to run a business on the same basis as citizens of Poland (Art. 6) – which are the most important from the point of view of the current study – were added to the Act only in a later stage of the legislative process.

The following sections focus on two things. The first one is the question of the reasons behind the way in which the target group of the Act on the Polish Charter was specified. The second one regards factors which affected the decision that such a large group of foreigners is (potentially) entitled to work in Poland without a work permit. Other issues connected to the Act, e.g. the procedure for granting the Polish Charter, are omitted here.

574 I.e. organisation of Poles living beyond the territory of Poland.

575 Polish Charter holders retain the right to apply for scholarships and other forms of aid for foreigners.

576 Sejm RP 1999.

Like few other legal acts, the Act on the Polish Charter is provided with a preamble that reflects the reasons for its being issued. The first one is realisation of the constitutional clause stipulating that ‘The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage’.⁵⁷⁷ The second reason included in the preamble is the need to fulfil a ‘moral obligation towards Poles living in the East who as a result of the vicissitudes of the Motherland’s fortune lost their Polish citizenship’. Then the preamble refers to the need to realise the ‘expectations of those who have never been Polish citizens but because of their sense of national belonging long for confirmation of their belonging to the Polish nation’. Finally, it points out the wish to ‘reinforce the ties connecting Poles in the East to their Motherland’ and to ‘support their efforts to maintain the Polish language and cultivate national traditions’.⁵⁷⁸ The same pathetic and emotional reasons are present in the justification for the bill; they were also repeated during parliamentary debates, as well as during the work of the Sejm commission.

The fact that the Charter was to deal merely with ‘Poles living in the East’ evoked many controversies. It was the most discussed issue concerning the Act. Many members of the parliament criticised such a reduction of the target group (the 1999 bill was aimed at all Poles living abroad). The discussion during the first sitting of the parliamentary commission proceeded mainly on that matter. Some deputies pointed that it is unjust to make the Polish Charter available only to some privileged category of Poles and that the Act should cover all Poles living abroad, regardless of whether they are in the East or West, the more so because for many people the Charter would have an important symbolic meaning. Meanwhile others drew attention to the costs of such broadening as a result of the aforementioned estimations of the size of the Polish diaspora.⁵⁷⁹ The parliamentary debates proceeded in the same spirit and the question of why the Polish Charter is limited to the Poles from the East remained the key issue there.

The government included some of the reasons for the limitation of the target group in the preamble and some in the justification of the bill. During the sittings of the commission, as well as during parliamentary debates, its representatives only repeated these arguments.⁵⁸⁰ The government indicated that the main reasons for focusing on Poles living in the East were their legal and material situation. First, for citizens of the former Soviet Union – unlike

577 Dz. U. 1997, nr 78 poz. 483: Art. 6.

578 Dz. U. 2007, nr 180 poz. 1280 [translation AZK].

579 Komisja Łączności z Polakami za Granicą 2007a.

580 Rada Ministrów RP 2007c: 77-90.

citizens of other countries – it is impossible to have dual citizenship. Second, because of their usually bad financial situation, most of them would not be able to come to Poland to maintain contacts with their motherland. As far as Poles living in other countries are concerned, the government stated that it was preparing an amendment to the Act on Citizenship which would entitle these people to regain Polish citizenship and the rights ensuing from it.⁵⁸¹ The government never mentioned that the reason for the limitation of the target group could be the costs.⁵⁸² However, even if the target group was reduced, in the justification it explicitly noted that the number of people who could be interested in enjoying the rights that the Act gives is ‘unknown and impossible to estimate’. At the same time, it attached to the justification an assessment of the production costs of one million cards.⁵⁸³

The question of free access to the labour market appeared only later, during the discussion in the first sitting of the parliamentary commission. The then chairman of the ‘Polish Community’ Association,⁵⁸⁴ the non-governmental organisation dedicated to strengthening ties between Poland and people of Polish origin living abroad, noted it is wrong that whereas Koreans or Vietnamese are brought to Poland to work in shipyards or other companies,⁵⁸⁵ Poland restricts the access to the labour market of people of Polish origin. He pointed that opening the labour market to Polish Charter holders, as well as enabling these people to run a business, is a very important matter for Poles living abroad.⁵⁸⁶ By and large his proposal met with support on the part of the commission members; nevertheless, one of the deputies formulated concerns that ‘the Polish Charter would become the most attractive item in the countries of the former Soviet Union’ if free access to the labour market were added to the rights originally established in the bill. The deputy was afraid that it would be misused as a backdoor by people who do not feel a sense of belonging to the Polish nation but simply want to work in Poland on better conditions than other foreigners.⁵⁸⁷ In the end, the commission accepted the bill without changes but broadening the rights of Polish Charter

581 Such a rule was included only in the new Act on Citizenship, which was accepted in 2009 but came into force as late as in 2012: Dz. U. 2012, nr 0 poz. 161.

582 Rada Ministrów RP 2007c: 292-296.

583 Rada Ministrów RP 2007c.

584 Stowarzyszenie "Wspólnota Polska".

585 Let us recall the negotiations of the Minister of Labour and Social Policy with Asian countries on the conditions of Asian nationals’ employment in Poland from the first half of 2007.

586 Stelmachowski in Komisja Łączności z Polakami za Granicą 2007a.

587 Senyszyn in Komisja Łączności z Polakami za Granicą 2007a.

holders with free access to the labour market and running a business on the same conditions as Polish citizens became recorded as a minority proposal.⁵⁸⁸

During the parliamentary debate the same proposal was made simultaneously by some deputies from one opposition party, as well as by the government. The government admitted that it had taken into account 'appeals and demands of the biggest organisations and associations, such as the "Polish Community" Association'.⁵⁸⁹ There was no voice raising doubts about the rightness of the change. On the contrary, deputies supported the change with reference to plans connected to the employment of Asians in Poland.⁵⁹⁰ Except for two people, all the deputies who were present at the sitting accepted the amendment itself. Concerning the whole Act, both the Sejm and the Senate passed it, with some other, rather small modifications, although there was much controversy surrounding it. This included, for instance, fairness towards other Poles abroad, procedural questions (e.g. how to prove that someone cultivates Polish traditions), or questions of the invalidation of the Charter. Being aware that the Act is imperfect, members of the parliament accepted it, recognising that it is an important thing for compatriots from the East, but also taking into consideration that if the procedure were to be prolonged, the Act would not be passed during that term and might have to wait another few years for its next chance.⁵⁹¹

It is also worth recalling in a few words the political circumstances of the work on the Act. The bill came to the Sejm at the beginning of July 2007. A few weeks later, as a result of a governmental crisis, the coalition broke up and the prospect of earlier elections appeared on the horizon (they took place on 21 October). On 24 August members of Polish organisations in the East organised a demonstration of support for the Polish Charter.⁵⁹² Taking the whole situation into account, it is understandable that the ruling party, Law and Justice – which has a national-conservative profile – was eager to pass the bill.

The Act on the Polish Charter came into force in March 2008. As for amendments that are important from the point of view of this study, it is worth mentioning that in October 2008 the target group was broadened with the addition of the category of stateless persons living in the countries of the former Soviet Union, mainly because of Poles living in Estonia and Latvia

588 Komisja Łączności z Polakami za Granicą 2007a.

589 Błaszczak in Sejm RP 2007d: 90.

590 See: Łukacijewska in Sejm RP 2007d: 80.

591 Komisja Łączności z Polakami za Granicą 2007b.

592 Związek Polaków na Białorusi 2007.

who do not have citizenship of these countries. The broadening of the target group did not significantly influence the number of documents issued.⁵⁹³

The estimates stated that in 2008 from 200 to 400 thousand people would apply for a card and eventually it would be one million.⁵⁹⁴ In fact, by the end of 2011 only less than 80 thousand people had applied for the charter. Only in 178 cases was the decision about issuing the document negative. The highest numbers of applications were made at the consulates in Lviv (over 27 thousand) and Grodno (over 18 thousand).⁵⁹⁵



As the analysis of the LIP development in Poland confirmed, there had been a wide range of determinants that influenced the policymaking there. The meaning of particular factors, however, and the way, how they affected the policymaking differed. The following part of the study puts together findings from this chapter and simultaneously it brings further and deeper analysis of the factors determining the policy outcomes.

593 Komisja Łączności z Polakami za Granicą 2008.

594 Senat RP 2007.

595 Ministerstwo Spraw Zagranicznych 2012c.

5 ANALYSIS OF KEY FACTORS FOR LABOUR IMMIGRATION POLICY

As the previous chapter indicated, a cluster of factors have affected Poland's labour immigration policy in recent years. The current chapter discusses them across the whole period under examination and completes the list with a few more determinants. Despite the fact that the latter were not explicitly indicated in any legislative materials, they often had an important impact on the policy outcome. Their identification was possible thanks to the interviews with experts. Hence, the following sections are devoted to altogether as many as ten determinants. These are the state of the economy, foreign policy considerations and – this time discussed separately – the influence of the European Union, the volume and composition of immigration, and security considerations (together with questions of lobbying), i.e. factors pointed out in the hypotheses of the current study. Then, the analysis of all the materials gathered for the purpose of the study additionally made it possible to identify the role of political factors and the human factors, as well as the experience of other countries and the experience of Poland with applying earlier rules.

5.1 The state of the economy

In the study it is supposed that the factor of the state of the economy is the most important for the development of the labour immigration policy. The current section demonstrates the relationship between the two elements in the whole period under examination. Then it sums up the findings on lobbying, since – at least in the case of Poland – it is mainly connected to the economic situation.

In the years 2004-2005, when the Polish economy was gaining new strength after a few years of economic problems, the question of the access of foreigners to the labour market seemed to remain beyond the interest of policymakers. The rules pertaining to the employment of foreigners were complicated and rather strict. Since 2006, when its economic development accelerated, Poland has started to introduce some facilitation of the employment of foreign workers. In 2006 alone, the channel for the access of foreigners to the labour market became slightly wider – employers' declarations were introduced, but originally only for a short time and only for work in agriculture. The year 2007 was, in a way, the golden year of the decade with regard to the economic prosperity of Poland. Simultaneously, many things happened then in terms of the labour immigration policy. Thanks to the extension of the possibilities of using employers' declarations to all sectors, and thanks to the reduction of the application fee rates, but also because of the introduction of the Polish Charter, the

channel through which foreigners could access the Polish labour market legally widened again. At the beginning of 2008, i.e. a time when the situation of Poland's economy was still favourable, the period for which a foreigner could work on the basis of a declaration was extended. As already stated, the world financial crisis came to Poland with a delay, so the macroeconomic indicators for 2008 were very good. The unemployment rate was even the lowest in the decade. It was in this context that the 2009 amendment to the Act was prepared; the amendment which clearly simplified the procedure for issuing a work permit. Together with the amendment to the Act, at the beginning of 2009, a ministerial regulation was issued that extended the possibility of using employers' declarations for nationals of further countries – signatories of mobility partnership agreements – and for work permit holders who would use them for some additional job. In 2009, the world financial crisis affected Poland. Nonetheless, as already stated, the government did not perceive that situation as a *crisis* but rather as an economic *slowdown*, since in contrast to most EU countries, Poland had positive economic outcomes. Nothing was done to narrow the channel for the adoption of foreigners on the labour market, despite the fact that the economic slowdown was severe for many Poles, who lost jobs at that time – between 2008 and 2010 the unemployment rate increased from 9.4 to 11.7 per cent. On the contrary, in 2010 the pilot phase of the implementation of the employers' declarations ended and they became introduced permanently. The fact is, however, that even the increased unemployment rate was lower than the unemployment rate that existed in the 'golden' year of 2007, when it reached 12.3 per cent.

Looking at the dynamics of Poland's economic development on the one hand and the changes in the labour immigration policy on the other hand, one can say that the latter reflected the former to a large extent. The relation between the two elements was not, however, directly proportional (i.e. the better the economic situation, the more liberal the LIP is). It was especially the case for the year 2006. The truth is that the state of the economy was improving in that year; however, there was still an unemployment rate of almost 16 per cent. In such a situation the government decided to open the labour market to foreigners for work in agriculture. The analysis proved that it was done because of extraordinary pressure from agricultural producers, who initiated the change by complaining about labour shortages. The abolition of the sectorial limitation of the usage of employers' declarations in the following year also occurred because of the initiative of the various organisations of employers.

The analysis of the available materials showed that it was not so much the state of the economy that was used as an argument in the matter of rules regarding the employment of

foreigners as the state of the labour market. On the one side, reference was made to there being an insufficient labour supply. On the other side, it had been repeated that the access of foreigners to the labour market was subject to the needs of the labour market: foreigners' work could not substitute for the work of Poles. It must only be complementary to it.

In relation to this principle, it should be borne in mind here that one of the main objections to declarations was the fact that the decision was made without an analysis of the actual needs of the labour market. Together with its increased involvement in the development of the LIP in 2006, the Ministry of Labour and Social Policy started to care more that the policy was based on adequate analyses, so the above principle was followed. For this reason, the MLSP ordered a few research studies. Among them was the research project *Migration policy as an instrument for the promotion of employment and restraining unemployment*.⁵⁹⁶ While the bill of the 2009 amendment to the Act on the Promotion of Employment was being worked out, its results were already known.⁵⁹⁷ The results are interesting enough for at least some of them to be presented here.

That comprehensive research, realised by the Centre of Migration Research of Warsaw University, involved as many as seven complementary research procedures. One of its findings regarded, for instance, the complementarity of the employment of foreigners in Poland. According to experts involved in the Delphi research study of the Centre of Migration Research, it is not only a desirable phenomenon, but a foreign labour force was actually complementary in its character and it would be complementary even if the number of foreign workers employed in Poland increased. Apprehension regarding substitutability was justified only to a very limited extent: only a few experts noted that in the case of small companies with foreign capital it happened that some workplaces were *created* for foreigners (family members, friends) but generally, this phenomenon was limited. These conclusions were also confirmed by the research conducted into employers: foreigners did not endanger the position of Polish workers. First of all, it was like that because in general foreigners were not a cheaper labour force, although sometimes it was worth employing them for their social capital. Then, and this is the main thing, it was because the employment of a foreign workforce resulted from shortages in the domestic labour force and the shortages appeared because Poles were reluctant to work in some segments of the labour market or because they did not have proper qualifications. Finally, according to employers, many workplaces were

⁵⁹⁶ Kaczmarczyk and Okólski 2008.

⁵⁹⁷ The project was co-financed by the European Social Fund. A summary of its results was presented in the publication 'Does the Polish Economy Need Foreigners?': Grabowska-Lusińska and Żylicz 2008.

only temporarily occupied by foreigners: in the course of time, foreigners were expected to be replaced by Poles returning from emigration.⁵⁹⁸

Another issue that is worth noting is the matter of the declining labour supply, which later became one of the main arguments in the debate over the bill for the 2009 amendment to the Act. Especially since 2005, entrepreneurs have faced growing difficulties with finding qualified employees, as well as problems resulting from increasing labour costs. They indicated those two matters as the main barriers to the development of their companies. The percentage of entrepreneurs who made the first point reached 14.3 per cent in the fourth quarter of 2007, while the number for whom the main barrier to development was the second point reached 6.7 per cent. The situation was especially difficult in the building industry, but also in the processing industry and trade.⁵⁹⁹

Concerning the reasons for labour shortages, different research procedures confirmed that these were e.g. a low level of interregional mobility, the reform of vocational schools (connected to limiting the number of that type of schools or the lack of interest in this kind of education), the low number of places and lack of opportunities for professional retraining, the seasonal emigration of Poles contributing to the deactivation of their qualifications, demographic changes, the deactivation of older employees, the social system, structural maladjustment, or business cycle factors.⁶⁰⁰ Similar explanations were given in the 2007 report of the Ministry of the Economy, which was referred to in the sub-chapter 3.1.

The lack of a domestic labour force contributed to the increased interest in the employment of foreign workers. In 2007, the scale of the employment of foreigners in the group of companies that was examined was rather small. There were only 71 thousand foreigners who were legally employed in Poland. According to Grabowska-Lusińska, there could be two main reasons for that: the shortage of a foreign labour supply in Poland, together with administrative difficulties, such as the length and costs of the procedure or the costs of accommodation. The research of the Centre of Migration Research revealed that the potential demand for foreign workers at that time was at the level of 535 thousand. The greatest potential demand was noted for two general categories: coal mining, industrial processing and energy production (as one category), as well as the building industry.⁶⁰¹

598 Żylicz 2008: 79-80.

599 Grabowska-Lusińska and Żylicz 2008: 28 based on the quarterly report of the National Bank of Poland for the fourth quarter of 2007.

600 Żylicz and Grabowska-Lusińska, 2008: 25-27.

601 Grabowska-Lusińska 2008, 62-65.

Interestingly, the findings of the above research project are partly in contrast to the report of the Ministry of Labour and Social Policy regarding the situation on the labour market in 2007 (published in April 2008).⁶⁰² The report revealed that in fact a labour surplus existed in Poland. The vacancies reported to the labour offices were not able to cover the labour demand. Hence, it is not surprising that labour unions referred to the report repeatedly when opposing the facilitation of the employment of foreigners.

With regard to labour shortages in the building industry, it is remarkable that the findings of the above research project differ from what is written in the 2007 report. According to the report, at the national level the number of job offers in that sector and the number of unemployed who had formerly worked in it stayed in balance. Labour shortages in the building industry were only found in three voivodeships (out of sixteen).⁶⁰³ Besides, at the national level labour shortages were noted in financial mediation, real estate services, public administration, and education, together with extraterritorial organisations and bodies, so in different categories than were indicated by the other research.⁶⁰⁴

Contrariwise, a labour surplus was found in agriculture. This is interesting, especially in relation to the original introduction of the employers' declarations only in agriculture, with reference to the labour shortages reported by the producers. According to the 2007 report, in the section 'agriculture, hunting, and forestry' the number of unemployed who had formerly worked in that sector outnumbered the job offers in all voivodeships. The report admits that such a situation can be surprising, mainly because of the fact that the employers (and the media) had called attention to the shortages in the seasonal labour force in agriculture. It explains that 'the fundamental reason for the lack of workers [in agriculture and horticulture] is that offers of seasonal jobs are not reported to the labour offices [...], which requires legal employment to be offered.'⁶⁰⁵ In addition to that explanation, one could bear in mind that the lack of suitable Polish workers in various areas could be explained by a range of reasons listed among the findings of the above research project (from the low level of interregional mobility, through structural maladjustment, to the business cycle factor). Besides, another factor contributing to the unwillingness of Poles to undertake employment in some sectors was the low wages offered there. The last argument was mentioned again and again by the labour unions.

602 MPiPS 2008b.

603 *Ibid.*: 11.

604 *Ibid.*: 14.

605 MPiPS 2007c: 10 [translation AZK].

The above paragraphs show that the situation on the labour market was complex. While it was proved that the state of the economy (or rather of the labour market) was the main determinant of the development of the labour immigration policy, it was also found that an important intervening factor was lobbying on the part of the employers. With regard to the first two changes in employers' declarations, one can even talk about the existence of *client politics* in the development of the LIP in Poland, as stated earlier. The employers – as the carriers of the determinant (i.e. of the state of the economy/labour market) – were presenting an *interpretation* of the situation on the labour market to the government. The general complexity of the problems of the labour market and the lack of analysis of the actual state of the labour market – in particular, before the introduction of the declarations – contributed to the fact that the government gave an ear to the employers' arguments.

There is, however, one more issue worth referring to. It pertains to preferred categories of economic immigrants. The main instrument for widening the channel of foreigners' access to the labour market, i.e. the employers' declarations, concerned only circular and temporary foreign workers, i.e. regardless their professions or qualifications. The list of other cases released from the work permit requirement hardly changed at all in the period under examination. It happened that the conditions related to particular professions were changed and thanks to that more (as in the case of teachers of foreign languages) or less (as in case of media correspondents) foreigners were allowed to be accepted on the labour market. Nevertheless, within these few years, the list of cases was enlarged only by the addition of foreign nationals engaged in various types of exchange programmes (in 2007), people who were graduates of Polish schools (in 2009), and those whose work was related to international sports events (in 2010). In general, a clear majority of all the categories released from the work permit requirement was narrow, allowing only relatively small groups of foreigners free access to the labour market. A similar situation pertained to cases in which work permits could be issued without a local labour market test being conducted. With regard to that matter, it should be admitted that the governors could have extended the list in relation to their voivodeships.

Concerning the question of categories of immigrants accepted on the labour market, it can be concluded that the government did not decide to simplify access to the labour market for particular categories of foreigners because of labour shortages in those categories. The greater liberalisation concerned particular types of economic immigration, i.e. circular and temporary ones. The Polish Charter represented a separate case.

5.2 Foreign policy considerations

An Eastern orientation, specifically focused on Poland's eastern neighbours, has been the second priority of Polish foreign policy for many years, i.e. just after relations with the European Union. Bearing this in mind, for some it could be obvious that the liberalisation of some elements of the Polish labour immigration policy, as well as the regions prioritised in that policy, are the result of foreign policy considerations. These considerations could therefore be perceived as being the second – just after the needs of the labour market – most important determinant of the LIP. In reality, the relations among the various determinants of the policy are much more complex.

The analysis of documents relating to Polish foreign policy, as well as the policy statements made by prime ministers, the ministers of foreign affairs of a few governments, and also other politicians, confirmed that Poland attaches particular importance to relations with its eastern neighbours and in particular with Ukraine. One of the main aims of Polish foreign policy for many years has been a stable and predictable situation in its immediate neighbourhood. Support for democratisation, modernisation, and economic development in Ukraine, Belarus, and Russia have repeatedly appeared in statements made by high-ranking politicians. Poland stood up for those countries' closer relations with Western European states and it wanted to offer its Eastern neighbours its 'experience in developing and consolidating democratic and pro-European transformation'.⁶⁰⁶ It wanted to play the role of a 'good advocate of the region'⁶⁰⁷ and 'a key supporter of Ukrainian democracy or Ukrainian rebirth'⁶⁰⁸ and a 'patron and promoter' of EU eastern policy.⁶⁰⁹ Poland was prepared to be and actually already was active in diplomatic, economic, and cultural areas of relations with its Eastern neighbours. The East was a 'Polish speciality'⁶¹⁰ with which Poland wanted to gain a good neighbourhood, improve its international position and – last but not least – ensure its energy security.⁶¹¹

All those statements were not just empty words. As early as in 1998, Bronisław Geremek called for the creation of an Eastern Dimension of the EU in his speech inaugurating Poland's accession negotiations.⁶¹² Poland was trying to use various ways to bring Eastern

606 Rada Ministrów RP 2005.

607 Rada Ministrów RP 2003 [translation AZK].

608 Rada Ministrów RP 2006.

609 Sikorski 2008 [translation AZK].

610 *Ibidem* [translation AZK].

611 E.g. Rada Ministrów RP 2007a.

612 Kapuśniak 2010: 9-10.

European countries, in particular Ukraine, and the EU nearer (e.g. the 2003 Polish project for the Eastern Dimension of the EU). For several years, Poland had been repeating that the EU formula of relations with Eastern European countries, i.e. the European Neighbourhood Policy, was not sufficient. While the EU remained indifferent towards those initiatives, a new Polish-Swedish project, the Eastern Partnership, which was intended to complement the European Neighbourhood Policy, was successfully inaugurated in May 2009. A widely understood migration area remained one of the most important issues within the concept of the Eastern Partnership. The long-term aim would be visa-free movement within the countries of the Eastern Partnership and the short-term aim would be the facilitation of the visa regime. The concept called for a road map to achieve visa-free border crossing with the Eastern countries.

It is difficult to spread the idea of democracy and modernisation and convince somebody about one's friendship and at the same time to restrict cross-border movement, which prevents human contacts. Thanks to the Eastern Partnership, Poland was able to realise what it had already been making efforts towards for many years, i.e. to ensure easier access for nationals of its Eastern neighbours (in particular Ukraine) to EU territory. In November 2010, the European Union set 'an action plan for Ukraine toward the establishment of a visa-free regime for short-stay travel'.⁶¹³ A similar action plan for Moldova was announced by the European Commissioner for Home Affairs in January 2011.⁶¹⁴

Poland's labour immigration policy developed against the background of the above-mentioned statements, as well as developments in Poland's foreign policy. Interestingly, the importance of foreign policy considerations for the LIP was not so great as it might seem. In the process of the preparation and enactment of the 2004 Act on the Promotion of Employment or its amendments, it did not appear at all. However, the Act itself obliged the minister of labour to take into account international agreements and the principle of reciprocity when issuing an ordinance on cases exempted from the work permit requirement. Only in 2010 was the rule amended and it was explicitly said that the minister must consider, *inter alia*, the foreign policy of Poland.

In relation to ministerial regulations, foreign policy considerations were explicitly referred to to a much smaller extent than might be expected. The argument of foreign policy priorities was raised in connection with the employers' declarations (but rather in the

613 Rompuy van 2010.

614 European Union 2011a.

interviews with experts). Apart from that, the foreign policy reflections remained in the background of the 2007 document setting the directions of Poland's labour immigration policy. In all these cases, the priorities of Polish foreign policy mainly meant relations with Poland's Eastern neighbours and then with other former Soviet republics, which, for Poland, remained the most important partners, just after the European Union. Referring to different aspects of the engagement of Poland in international relations appeared only sporadically – examples can be found in relation to the 2006 ordinance on the exceptions to the work permit requirement.

The secondary analysis of the available materials (including the records of the interviews) calls into question the assumption that foreign policy considerations would be the second most influential determinant of the development of the LIP. The priorities of Polish foreign policy, if they appeared in relation to some changes, were only *mentioned*, usually far behind other influencing factors. After the labour market needs, the most important factor was the volume and composition of immigration, which – thanks to geographical proximity – addressed the demands of the policymakers regarding the type of migration that was welcomed (circular and temporary). Interestingly, the experts who were interviewed and who were directly connected to the Ministry of Labour and Social Policy did not indicate foreign policy reflections among the determinants of the labour immigration policy at all. Moreover, another expert explicitly said that e.g. in the case of the employers' declarations, the priorities of Poland's foreign policy were used in the justifications only because there was a need to find diplomatic explanations for those facilitations; to have more arguments against possible opponents of that solution.⁶¹⁵ Other experts who were interviewed mentioned the importance of foreign policy, but rather in the context of migration policy as a whole, and not with particular regard to the access of foreigners to the labour market.⁶¹⁶ If somebody related foreign policy priorities to the LIP, it was mostly only the Ministry of Foreign Affairs.

The fact is that regardless of whether the second most important determinant was the volume and composition, together with the type of immigration that was required, or foreign policy considerations, the liberalisation of the labour immigration policy would concern the same groups of foreigners. This is because clearly the greatest number of foreign workers in Poland came from Ukraine and the priority for Polish foreign policy was Ukraine too.

615 I2.
616 I1.

There are, however, some signs that the importance of foreign policy reflections may grow in the future. The 2011 document on the Polish Migration Policy explicitly said that ‘Migration policy has to take the priorities of the state’s foreign policy into account.’⁶¹⁷

To conclude, foreign policy represented an important background for the development of the labour immigration policy. Reflections of it were one of the factors shaping the LIP in the period under examination. They supported the liberalisation of the rules concerning nationals of Eastern European countries. However, their role was much smaller than might seem at first glance. Other factors were found to be more important. Poland has started to notice immigration only recently. There is a chance that it will make better use of the possible interdependence between foreign policy and labour immigration policy in the future.

5.3 Influence of the European Union

Immigration is a sensitive topic that is considered to be a question of national sovereignty and security, and therefore EU states have been reluctant to alter their right to determine who, when, and under what conditions can enter and stay on their territory. Nevertheless, they have been systematically harmonising their policies, cooperating more and more closely in questions of immigration and crossing borders, and deciding on more and more common rules regarding those issues. Whereas the existence of the Schengen area has facilitated finding compromises in relation to policies concerning access to common territory and asylum policies, questions of the access of nationals of third countries to the labour market have been more complex. Nonetheless, the EU has been making attempts to harmonise the principles of opening the labour market to nationals of third countries while at the same time leaving the member states the right to decide about the number of economic migrants they are willing to accept.

This is not the place to discuss in detail the common EU policy towards labour migration. Nevertheless, the general development in that area is outlined in the following paragraphs. After a brief presentation of the EU approach, the current section discusses the influence of the EU on the creation of Poland’s labour immigration policy.

Poland joined the EU in a period when it was searching for the best ways of using economic migration, as well as the best ways of cooperating within the EU and with migrants’ countries of origin. For instance, in the 2004 Hague Programme, the European Council called on the Commission to present a programme on legal migration that would include the

617 Zespół do spraw Migracji 2011: 122.

procedures allowing a flexible response to be made to fluctuating demands for migrant labour.⁶¹⁸ The year 2005 brought the Policy Plan on Legal Migration,⁶¹⁹ which was the result of the Green Paper on an EU Approach to Managing Economic Migration.⁶²⁰ The Policy Plan included very concrete solutions regarding labour migration, i.e. proposals for five directives. One of them regarded a general framework directive. This was a proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work on the territory of a member state and on a common set of rights for third-country workers legally residing in a member state. Other proposals were related to specific directives. These were a proposal for a directive on the conditions of entry and residence of highly skilled workers (the so-called Blue Card Directive); a proposal for a directive on the conditions of entry and residence of seasonal workers; a proposal for a directive on the procedures regulating the entry into and temporary stay and residence of Intra-Corporate Transferees, and a proposal for a directive on the conditions of entry and residence of remunerated trainees.⁶²¹ Apart from ‘the Blue Card Directive’, which gained its final shape in May 2009, in the middle of 2011 all the other proposals were merely under discussion.

In general, it could be said that since 2005, circular and temporary migration has been recognised more and more often as a remedy for the labour market shortages in the European Union. It has been underlined what kind of advantages it can bring and simultaneously it has been pointed out that it can be related to some challenges and risks. Among the former, the European Commission indicates that if well managed, circular migration can counterbalance labour supply and demand in various countries.⁶²² Furthermore, it underlines e.g. that ‘In the context of an ageing Europe, the potential contribution of immigration to EU *economic performance is significant.*’⁶²³ Additionally, the promotion of legal labour migration could reduce the tendency to stay and work in the EU illegally. Among the latter, i.e. the challenges and risks, the Commission mainly pointed out the risk that originally circular migration would transform into permanent settlement, often of an illegal nature.⁶²⁴ In that matter the EU can take a lesson from the history of economic migration to countries such as Germany or

618 EU 2005b.

619 EU 2005a.

620 EU 2005c.

621 EU 2005a.

622 E.g. EU 2007c.

623 EU 2008a (the highlighting is original).

624 E.g. EU 2007c.

Switzerland, which – to paraphrase the famous sentence of the Swiss novelist Max Frisch – wanted just *hands* but then realised that *people* came. The people came and stayed.

The key instrument of the common policy on legal labour migration became mobility partnerships established between the European Union and third countries. On the basis of these, the third countries oblige themselves, *inter alia*, to cooperate with the EU in combating illegal migration and thanks to that, their nationals got easier access to the EU labour market. The European Commission had come up with the idea of such a form of cooperation with third countries in 2006.⁶²⁵ By the middle of 2011, the EU had launched three mobility partnerships: with Moldova and Cape Verde in 2008⁶²⁶ and with Georgia in 2009.⁶²⁷ Preparations were also under way to establish the fourth such partnership – with Armenia.

Apart from the 2005 Green Paper and the Policy Plan that accompanied it, the key political document referring to migration questions was the 2008 European Pact on Immigration and Asylum, accepted by all EU member states during a meeting of the European Council. The Pact stated, among other things, that the EU labour immigration policy should be selective. On the one side, the European Council recognised the freedom of each member state to create its own labour immigration policy. On the other side, it underlined that it should be borne in mind that steps taken by one member state can influence the situation of others. For these reasons, it agreed on the need for cooperation within the EU in questions of labour migration and the need to bear in mind potential human resources within the European Union, as well as taking into account all the needs of the labour market of each member state. Furthermore, it was important that the European Council agreed to increase the attractiveness of the EU for highly qualified workers and to facilitate the reception of students and researchers. Additionally, it underlined e.g. the necessity to ensure that circular and temporary migration promoted by the EU would not end up in a brain drain for the sending countries.⁶²⁸

From what has already been said, it is obvious that the European Union was trying to harmonise the actions of its member states in the area of labour migration more and more. Nonetheless, by the end of the period that is under examination in the current study, no EU regulation or decision immediately enforceable as law in EU member states had been released. Moreover, no directive directly related to labour migration was issued within that period.

625 EU 2006a.

626 EU 2008d; EU 2008c.

627 EU 2009c.

628 EU 2008b.

The only exception was the Blue Card Directive,⁶²⁹ which, however, was not implemented by Poland (and five other countries) within the prescribed period, i.e. by 19 June 2011.⁶³⁰

In spite of that, the influence of the EU on the development of the Polish labour immigration policy was indisputable. It was so for at least two reasons. First, Poland, as a member state, took part in all the meetings at the EU institutions at which the above-mentioned issues connected to labour migration were discussed. Second, the awareness of the role of Poland as a border guard of the Schengen zone was always present in the background.

With regard to the first matter, Polish officials and politicians took part in works of the EU bodies. As it was stated, and they had a chance to listen to the opinions of others regarding migration and the employment of foreigners. They became influenced by the whole atmosphere of these meetings. This seems to be very important, even though only the indirect effect of the EU on the shape of the Polish rules regarding labour migration and directions of policy development. This fact was confirmed by almost all the experts who were interviewed.

For example, I4 noted that the 2005 Policy Plan on Legal Migration triggered a debate about labour migration and induced the Polish MLSP to search for new solutions.⁶³¹ According to I2, the debate about migration in Poland only started in 2007, spurred on by the first experience with employers' declarations and, as he emphasised, in connection to developments in the EU, because the topic of immigration achieved top priority during the French presidency. According to I2, Poland had to take a position on that question and the government decided to prepare something more comprehensive. A result of that was the initiative that led to developing the strategy called the Polish Migration Policy.⁶³² Additionally, I3 noted that the influence was not only one-sided. The EU affected the policies of its individual member states, but at the same time, the member states affected e.g. the shape of directives. They could also influence the shape of their proposals, but Poland had not used that possibility, mainly because of its modest experience with immigration.⁶³³ The influence of Poland on the EU was, however, evident in the case of the initiative of the Eastern Partnership, which was partly connected to migration issues.

629 If we omit the 2003 directive concerning the status of third-country nationals who are long-term residents, which is not directly related to labour migration. Additionally, the target group of the directive remains beyond the scope of the current study.

630 Przedstawicielstwo Komisji Europejskiej w Polsce 2011.

631 I4.

632 I2 .

633 I3.

In relation to the second matter, i.e. Poland as an Eastern rampart of the Schengen zone, the awareness of that helped to stop the proposal for opening the Polish labour market to non-Europeans. It was argued, *inter alia*, that Poland could become a gateway for people who would get into the Schengen zone legally and then later stay and move there illegally. The case of the resolution on the directions of measures regarding the employment of foreigners in Poland was similar. The awareness of being a watchdog of the Schengen zone indirectly affected the orientation of the Polish labour immigration policy. Furthermore, the influence of the EU was mentioned in the justification to the bill of the 2009 amendment to the Act on the Promotion of Employment. It was indicated that the need existed to adjust the rules to the functioning of Poland in the Schengen area. Then, elsewhere in the justification, it was added that the adoption of the amendment would represent a first step in preparations for the future implementation of the single permit directive that was being discussed at that time in the European forum.⁶³⁴

It is interesting that in the case of the employers' declarations, an instrument that is evidently focused on circular or temporary migration, i.e. the type of migration preferred in the EU, the EU did not appear even as an additional argument supporting their introduction and then their maintenance. The influence of the EU was visible to some extent in the case of including countries that had signed agreements on the mobility partnership with the EU in the 2009 amendment to the rule on employers' declarations. Nonetheless, it should be noticed that Georgia and Moldova, the main countries it concerned, had been among the countries belonging to the preferred region sending economic migrants anyway.

Taking into account the developments in the common labour immigration policy which were presented above, it is justified to suppose that the influence of the EU on the Polish LIP will clearly increase in the future.

5.4 Volume and composition of immigration

The volume and composition of economic immigration was found to be the second most important determinant of Poland's labour immigration policy in the period that was examined. The factor was repeatedly indicated in various documents and during various debates, mainly since 2006. For this reason, it has already been intensively discussed in the current study. Therefore, the following paragraphs only put together a few main findings related to the issue.

634 Rada Ministrów RP 2008.

The influence of the volume and composition of immigration on the labour immigration policy appeared more visibly together with the introduction of employers' declarations in 2006. Concerning that specific situation, it could be argued that the pressure of employers required fast solutions and addressing the nationals of Poland's neighbours was simply the fastest one. This was true not only because specific agreements had been concluded between Poland and these countries, but just because the highest number of economic migrants (both these working legally and illegally) in Poland had always come from Ukraine.⁶³⁵ In other words, the policymakers decided to address the foreign labour force that was waiting for such a step.

Nevertheless, the 2007 resolution on the directions of measures regarding the employment of foreigners in Poland was not passed in a hurry. It was passed after a series of long and stormy discussions and the preference for Eastern Europeans became confirmed. Despite the increasing interest of Asians in employment in Poland and the support they got from the Minister of Labour and Social Policy, the Team for Migration stated that the preferred sending countries are Poland's Eastern neighbours and then other former Soviet Union countries, and countries of the Western Balkans, together with countries associated with the European Union. The facilitated reception of nationals of states from other regions became explicitly related to fulfilling a range of conditions.⁶³⁶ In other words, the volume and composition of the potential immigration again, i.e. similarly to the case of the idea of recruitment of non-Europeans that had been discussed a few months earlier, acted as a brake on the liberalisation of the access of particular groups of foreigners to the Polish labour market.

The experts who were interviewed indicated a spectrum of arguments supporting the preference for Eastern Europeans. They pointed out, *inter alia*, the cultural closeness of these foreigners, which would facilitate their integration into Polish society, along with their geographical proximity, which would permit the flexible use of that labour force. Underlining the last two factors – geographical proximity, together with the flexibility of a labour force

635 Whereas Ukrainians always clearly outnumbered economic migrants coming from all other countries, the position of the other two Eastern neighbours of Poland was not that strong. Belarus was in third place only until 2005 – behind Vietnam – and in the first two years of that period the Russian Federation did not get higher than to fifth position. After 2006 more and more Asians were interested in employment in Poland. Apart from Vietnamese, who had already been present on the Polish labour market for many years, Poland received mainly Chinese and Indians. Since 2009, there has been growing interest on the part of nationals of Nepal in work in Poland. Eventually, in the first half of 2011, nationals of Belarus were in fifth position with regard to the number of work permits issued, whereas nationals of the Russian Federation were as low as fourteenth - MPiPS 2012a. 636 Zespół do spraw Migracji 2007.

that can come and go – the experts confirmed that the types of migration preferred by Poland are circular and temporary ones.

Even more important than the preference for the Eastern Europeans was the openness to people of Polish origin. In the resolution, the interministerial Team for Migration noted their potential in the very first place. It recommended taking steps to reinforce their relations with Poland, including the development of their professional careers in Poland. In that way, the TM confirmed the correctness of the decision to open the labour market to holders of the Polish Charter, which had been made in August that year (see 4.7). In that case, the composition was the main determinant of the decision. As was evident in the rhetoric of the legislative process, these people, even though they were nationals of other countries, were not treated as foreigners, but simply as Poles.

All these preferences regarding the composition of economic immigration were further confirmed by the 2011 migration strategy.⁶³⁷

5.5 Security considerations

As might be expected, security considerations related to so-called hard threats (criminality or terrorism) did not appear as a factor affecting the policy oriented towards the access of foreigners to the labour market. To some extent, they were present in connection with the soft threats, and, specifically, with two types of them. The first concerned the endangerment of the position of Polish employees and unemployed on the labour market, while the second pertained to settlement immigration. Both of these issues were additionally related to illegal employment and illegal migration.

With regard to the protection of the labour market, the security considerations seemed to loom behind all decisions regarding the labour immigration policy. Sometimes they were expressed explicitly (e.g. the justification to the bill of the 2004 Act on the Promotion of Employment), when *protection* of the labour market or *combating* the illegal employment of foreigners were talked about. Mostly, however, the factor was present implicitly. During the whole period under examination, from 2004 to the middle of 2011, it was frequently repeated that the fundamental principle of Poland's labour immigration policy is that the work of foreigners should be complementary in its character and not substitutive to the employment of

⁶³⁷ Zespół do spraw Migracji 2011: 33.

Polish workers. The recommendation to maintain the principle was also expressed in the 2011 document Polish Migration Policy.⁶³⁸

Explicitly, security considerations were present in particular in various debates that took place in 2007 in connection with the idea of facilitating the access to the labour market of Asians. As already stated, the main argument against opening up labour migration from Asia was the fear of the fact that what was originally temporary migration would transform into long-term migration and then into settlement, which would not only raise integration problems but would mostly be illegal.⁶³⁹ Asian countries, in particular China and India, were denoted as countries from which there was an increased *risk* of immigration.⁶⁴⁰ Similar arguments were raised when the Team for Migration passed a resolution on the directions of measures regarding the employment of foreigners in Poland. The resolution explicitly linked Asian countries with the threats of illegal migration and transborder criminality, i.e. partly with hard threats.⁶⁴¹

5.6 Political factors

Apart from the determinants that have been discussed above, the analysis of the available materials allowed a few more factors to be identified and one of them were the political factors. Their influence on the development of the labour immigration policy remained an interesting and debatable question. The analysis of written materials did not confirm anything in that sense. The opinions of the experts who were interviewed were, however, inconsistent in that regard. For instance, I5 stated that if politics does matter for immigration policy, it is politics connected to international relations.⁶⁴² I1 did not refer to the existence of political factors at all. I2 believed that it was only thanks to the government which came in in autumn 2007 that greater involvement in migration issues started in Poland, since the government gave the green light to the work of the Team for Migration. Simultaneously, although he numbered politicians among the actors shaping immigration policy, he underlined that they are less important. He pointed out that the decisions are made by undersecretaries who are not politicians. In contrast, as previously stated, I3 stated that decisions are always political.

Two questions that might be connected to politics were the introduction of the employers' declarations and passing the Act on the Polish Charter.

638 *Ibid.*: 23, 32.

639 I42.

640 See e.g., MPiPS, BA: DMI, Notatka z konferencji uzgodnieniowej, also I42.

641 Zespół do spraw Migracji 2007: § 4 and § 5.

642 I5.

In the case of the former, it must be said that the opinions pertaining to the possible influence of the political factor were divided. Some experts were convinced that their introduction was an effect of a political decision of the party Self-Defence of the Republic of Poland, whose leader was the minister of agriculture at that time. Thanks to the declarations, the party wanted in that way to meet the demands of its electorate – producers in agriculture. As already stated, other experts who were interviewed did not believe in the influence of such a determinant and subsequent developments confirmed their assumptions.

In relation to the second question, one can surmise that maybe not the content of the Act on the Polish Charter but chiefly the moment when it was passed could be an effect of political considerations. The Act was passed shortly before parliamentary elections took place.

The fact is that migration issues, and, in particular, questions relating to the inflow of foreigners, did not represent a matter for political or public debates. Immigration was non-existent in the public sphere, with the exception of sporadic incidents commented on by the media. The topic of foreigners in Poland appeared only marginally in political discussions. The question was not politicised at all. It was not a topic that society was interested in, and therefore it could not bring any political advantages for politicians.

Everything that was written in this section leads to the conclusion that the political factors did not shape the Polish LIP in the examined period. One may suppose, however, that together with a possible increase in the level of politicisation of immigration issues in Poland, the importance of the political factor may also increase.

5.7 The ‘human factor’

Something that is much more important for the development of the labour immigration policy in Poland seems to be another determinant that the interviews with experts revealed. This was the human factor. Its importance was underlined by almost all the persons who were interviewed. Since it is a factor whose influence was not observable in the preparation of any particular legal act, it has not been analysed above. As the interviews proved, it was, however, definitely present every time.

The analysis of the experts’ statements allowed two general groups of elements to be defined of which the human factor consists. On the one hand, there was policymakers’ knowledge about and experience with issues related to immigration in general and its regulation in particular. On the other hand, there were policymakers’ personalities and interpersonal relations.

With regard to the first of these, I1 indicated, for example, that the human factor was responsible for the lack of coherence in terms of both rules and action. People interested in migration issues and taking part in the work of the interministerial Team for Migration see more relationships between migration and other areas, whereas others do not. For instance, the Ministry of Infrastructure was interested in the arrival of a great number of Chinese workers who were expected to build a road. That ministry was interested in the final effect of their work – the road – and did not take into account other issues such as health insurance, social security, work conditions, accommodation etc. Similarly, the Ministry of Science reported a need to accept more foreign students. Nonetheless, they usually did not take into account the fact that a foreign student could pay just for one semester and move (a question of security and of the image of Poland as a Schengen partner) or there was the question of whether the student could work and what was connected to that.⁶⁴³

I5 stated that before the Team for Migration was established, there had not been any wider group of people in the administration who knew something more about migration in all its dimensions.⁶⁴⁴ I5 highlighted the importance of the human factor for policymaking; nonetheless, he put it into the wider context of the professionalism, education, and efficiency of offices in Poland and the progress which had been made in that regard in comparison to the beginning of the 1990s.⁶⁴⁵

Pertaining to the second question, i.e. policymakers' personalities and interpersonal relations, it is worth pointing out that one of the experts even indicated it as being in the very first place when asked about factors shaping Poland's immigration policy. I6 referred specifically to temperament in terms of pressing particular decisions, together with political conditions related to the institutional structure, where the personal relations are significant. He also drew attention to interest in migration questions and the will to dedicate effort to them.⁶⁴⁶ I2 directly said that policymaking 'must be based on individualities'. According to him, depending on who in the particular ministry dealt more with migration issues, then these or the other factors (labour market, security, formal or legal issues etc.) affecting the shape of the immigration policy prevailed.⁶⁴⁷ The question of personalities was, *inter alia*, responsible for the unequal position of the Ministry of Internal Affairs and the Ministry of Labour and

643 I1.

644 I5.

645 *Ibidem*.

646 I6.

647 *Ibidem* [translation AZK].

Social Policy, where the former clearly dominated in policymaking concerning immigration as such.

The human factor therefore seems to be an important but invisible determinant in policymaking. It is the most important intervening factor which can be placed among the influencing variables in the model of the study.

In some sense the human factor is closely related to the notion of ‘administrative discretion’ that some authors refer to.⁶⁴⁸ Nevertheless, the discretionary power of policymakers is mainly related to the matter of policy implementation (in particular at the local level), and it remains one of the reasons of policy failure, so the determinant affecting the policy impacts. But the idea of human factor is wider in my perception. It covers the discretion power too but also other elements such as above-mentioned ones. Besides, the human factor may be a determinant of both, policy outcomes as well as policy impacts.

5.8 Experience with previous law enforcement

Various parties, such as the labour offices, the district or voivodeship offices, or institutions like the National Labour Inspectorate, inform the Ministry of Labour and Social Policy about the advantages and disadvantages of the rules that are in force. References to the experience with the application of particular rules appeared at every time and at various moments in the legislative process. For instance, in 2009 the proposed changes to the amendment of the Act on the Promotion of Employment were justified, *inter alia*, by the overly long procedure, unnecessarily complicated procedure in the case of shortage professions, failure to take into account the mobility of migrant workers or specific situations on the local labour markets, and, finally, ambiguous definitions or guidelines.⁶⁴⁹

It is worth bearing in mind that the employers’ declarations were originally introduced as a pilot project. In the justification it was therefore underlined that one should be aware that in the case of negative experience with their application, the work permit obligation would be reintroduced for the categories of foreigners that the declarations concerned.⁶⁵⁰ Nevertheless, in spite of the exploitation of the system of declarations (see 4.6), which the Ministry must have known about, the instrument was not only maintained but developed. It is evidence that the advantages related to the declarations were found to be more important or that the harmfulness of the exploitation was found to be too small.

648 See e.g. Caponio and Borkert 2010.

649 Rada Ministrów RP 2008: 136.

650 MPiPS, BA: DMI, Uzasadnienie (dot. DZ.U. 2007 nr 120 poz 824).

Experience is an important intervening factor shaping Poland's labour immigration policy. It makes the policymaking dynamic (arrows in the model of the analysis).

In this context, it is worth mentioning that Poland did not only build on its own experience. It drew inspiration for the development of its labour immigration policy from the practices of other countries. Politicians and officials do not only learn this at the above-mentioned international meetings. The results of research studies conducted by order of the Ministry of Labour and Social Policy are also used. An example might be the use of the reports on the migration policies of thirteen countries (eight from the EU, and five from outside the EU) prepared by the Institute of Social Policy.⁶⁵¹ As I3 admitted, the possibility of using money from EU funds for carrying out the research had great value in gaining that mediated experience.⁶⁵²

651 I2.
652 I3.

6 NEW POLICY DEVELOPMENTS: ‘THE POLISH MIGRATION POLICY’

For many years now, some academics, as well as policymakers⁶⁵³ observing the approaches of the Western European countries to migration issues, have been complaining that Poland does not have a migration policy. They have been claiming that what exists in Poland a part of which has been presented in earlier chapters, cannot be called *a policy*. In their view, everything that is done regarding the matter of migration is *ad hoc* and *post factum* reactions to the existing situation or attempts to meet commitments resulting from the EU *acquis communautaire*. They have been condemnatory of the fact there is no leading *idea* behind the regulations, no migration doctrine expressed in at least the form of one sentence and stating whether Poland is a country for immigrants or possibly for what kind of immigrants.⁶⁵⁴ They perceived the formulation of a migration doctrine and a migration strategy as a condition of the development of a migration policy.

Attempts to elaborate such a strategy or principles of Poland’s migration policy have been made since the 1990s. However, they became successful only recently. At the beginning of April 2011, the Minister of the Interior and Administration presented the document ‘Polish Migration Policy – the State of Play and Proposed Measures’⁶⁵⁵ (further referred to as the PMP or the strategy).⁶⁵⁶ The document was drafted by the Team for Migration, made up of representatives of all the major ministries and institutions responsible for issues connected to migration. The PMP constitutes a programme. It presents both the current situation in particular components of the migration policy and a wide range of recommendations regarding each of them.

The following sections present the PMP document. There are two main reasons for that. First, it helps to predict future developments in Poland’s migration policy, including labour immigration policy, which is the topic of the current study. Second, it presents determinants shaping that policy, i.e. factors which the authors of the document took into consideration while preparing the document, as well as factors which they recognise as important to take into account in the future. Additionally, the Polish Migration Policy reveals to some extent the background to decisions regarding rules that have been adopted in recent

653 E.g. Iglicka, 2003; experts interviewed by Weinar: Weinar 2006.

654 Iglicka 2005.

655 Zespół do spraw Migracji 2011.

656 The document was prepared by the Working Group for the Polish Migration Strategy, which was established within the Team for Migration. Both academics and policymakers commonly call the PMP ‘the strategy’. Hence, at many places in the study it is also referred to as the strategy.

years. This is because some authors of these regulations are ITM members. Participation in the work of the team has thus influenced their proposals for amendments.⁶⁵⁷

The PMP document is comprehensive and it addresses all aspects of migration policy, including immigration and emigration, the protection of foreigners, the integration of aliens, citizenship and repatriation, the functioning of the legal and institutional system, the international conditions of the Polish migration policy, links between migration policy and other policies, and monitoring of migration processes. However, the following sections focus on foreigners' access to the labour market and a few general issues related to that (i.e. matters relating to the institutional or monitoring system, international relations, and links between various policies and labour immigration policy). The chapter addresses both policy recommendations presented in the Polish Migration Policy and determinants shaping immigration control policy in the area relevant to the study.

6.1 Recommendations for labour immigration policy

The generally low level of inflows to Poland, despite the existence of factors that could lead to their increase, is a specific feature of the Polish migration situation.⁶⁵⁸ In spite of the relatively low number of foreigners living in Poland, the Team for Migration perceives the development of a comprehensive migration policy as important for several reasons. It is interesting that most of these reasons mainly concern labour market access policy. Hence, they are presented below.

First, it is expected that Poland will become a country more and more attractive for immigrants, mainly from the former Soviet Union region but maybe even from Far Eastern countries. Second, there are not enough data regarding the actual migration situation in Poland, in particular concerning illegal migration and illegal employment. The scale of cross-border movement, as well as the success of the employers' declarations programme, indicate that on one hand Poland is attractive for economic migrants and that on the other hand Polish employers are open to a foreign workforce. A third reason is the complementarity of foreigners' work with regard to the work of Polish nationals which exists today. The authors of the PMP are of the opinion that such a state should be preserved in future. The fourth reason concerns demographic and social changes that support the emergence and development of the secondary segment of the labour market. Finally, the fifth reason is of a general

657 E.g. I2.

658 Zespół do spraw Migracji 2011: 7-10.

character. Even though today temporary immigration prevails in Poland, in future the situation can easily change, depending on social and economic factors, as well as immigration regulations in other countries. Therefore, there is a need for the creation of an effective integration policy.⁶⁵⁹

The reasons for the development of the comprehensive migration policy presented above indicate that questions connected to labour market access policy are and will remain one of the most important issues of the policy. The Polish Migration Policy evaluates the existing system, in which in general a work permit is required but at the same time there is a range of exemptions from that rule, as generally good. For this reason, the document suggests that it should be maintained and developed, but that the rules should be made clearer and its administration simplified. Moreover, exemptions from the obligation to have a work permit should be revised and brought up to date to ensure that the principle of the complementarity of foreigners' work remains indeed superior. Today there exists a situation in which the number of foreigners working in Poland legally but without a work permit exceeds the number of these with work permits granted through the regular procedure several times, which gives rise to some doubts about ensuring the principle of complementarity.⁶⁶⁰

Apart from calling for smaller modifications to the present measures, the strategy brings a package of a few other recommendations for labour market access policy. It points out categories of immigrants who should be treated preferentially, as well as calling for new approaches in the labour market access policy, i.e. for the development of a proactive policy and recruitment programmes, for considering the potential of foreign entrepreneurs, and for developing the policy on the basis of the monitoring of various phenomena. All these issues are presented below.

Among the groups of foreigners that should enjoy a privileged position in migration regulations are entrepreneurs and economic immigrants with the required qualifications. Referring to the demographic prognosis for Poland (see 3.1), as well as expected social and economic changes, the PMP calls for greater professional activation of Polish nationals but at the same time it emphasises the need to increase the general number of employed people through the inflow of workers from abroad. Entrepreneurs and economic immigrants are

659 *Ibid.*: 10-11.

660 *Ibid.*: 32.

mentioned just next to students, researchers, and graduates of Polish universities, whose usefulness for Poland (mainly for its labour market) is also underlined by the document.⁶⁶¹

The preference for entrepreneurs and economic migrants with the required qualifications is further connected to a few other criteria. The first one regards the high ‘integration potential’ or ‘professional activity potential’ of immigrants. For this reason, access to the labour market should preferentially be simplified for the foreigners who already have a residence permit (and for their family members) and who intend to move the centre of their life to Poland. The second matter concerns circular migration, including that of a seasonal nature, for which proper conditions should be created. For instance, the Polish Migration Policy encourages further development of the simplified system (e.g. employers’ declarations). The third criterion is geographical preferences in economic immigration: those set in 2007 should be maintained.⁶⁶²

A new aspect that appears in the strategy is the question of recruitment programmes and a proactive policy that would search for optimal solutions from the point of view of Polish economic development. Nothing like that has been applied in Poland so far and Poland has been losing the race for hands and brains with other European countries that have been using various instruments to attract foreigners with particular potential. The document suggests that on the one hand, the solutions should be adjusted to labour market priorities and the principle of the complementarity of the foreign workforce should definitely be preserved. On the other hand, however, labour market access policy should be treated as an instrument of ensuring the competitiveness of the Polish economy, and therefore the active recruitment of foreign workers with specific skills is desirable. The idea is to establish a system of facilitations for foreigners with particular qualifications. The document does not mention only highly skilled workers, however, but it also recognises the need for low-skilled ones. Nonetheless, other instruments should be applied in both cases.⁶⁶³

Active recruitment – it is suggested – could be carried out, for instance, through some national preferential system, similar to the European Blue Card, or other measures (a list of favoured sectors of activity, unique qualifications, or preferred education) that would enable workers with scarce skills and qualifications to be attracted. Apart from that, it is worth considering whether preferential treatment should not be extended to persons who have been

661 For more see: Zespół do spraw Migracji 2011, 13. Statements regarding graduates of Polish schools prove that the rules for exempting these foreigners from the work permit requirement set by the 2009 ordinance echoed the ITM works.

662 Zespół do spraw Migracji 2011: 14, 32-33.

663 *Ibid.*: 11-23.

granted a ‘blue card’ in another EU country. Furthermore, some system of active recruitment of foreign workers could be established on the basis of comprehensive bilateral international agreements that would simultaneously contribute to strengthening ties between Poland and the other parties to the agreements.⁶⁶⁴

The new approach also regards questions of businesses being run by foreigners. This matter has not in fact been addressed by the current immigration policy at all and for this reason it is neglected in the study. The PMP underlines that investors and entrepreneurs are potentially important for the labour market and economy. Taking into consideration the role of business (also small business and self-employment), it is important to establish regulations regarding the access of foreigners to that segment, as well as significantly to simplify procedures concerning their stay and running a business. The strategy perceives all these things as potential stimuli for making investments in Poland.⁶⁶⁵

Finally, the Polish Migration Policy raises a question of monitoring different phenomena connected to foreigners’ access to the labour market. A properly established system could serve as a measure that would help to improve other instruments of immigration policy in that area. Monitoring of the labour market (e.g. labour market demand and supply of the domestic labour force), together with monitoring of other issues (e.g. the supply of a foreign labour force, trends in economic migration and the policy concerning access to the labour market in other countries) would allow flexible reactions to the present situation: it would help to address needs, support positive phenomena, and avoid the negative ones. As far as the last matter is concerned, the PMP calls attention to e.g. the weakest groups of Polish nationals, those without qualifications or with the lowest ones, who could be exposed to permanent exclusion from the labour market as a result of the inflow of a foreign labour force to the secondary segment of the labour market.⁶⁶⁶ The current state of the monitoring of all these issues in Poland leaves a lot to be desired.

6.2 Other relevant recommendations

As stated at the beginning of the chapter, the strategy addresses not only all areas of migration policy (international protection, integration, citizenship, and repatriation, together with the emigration and return migration of Poles), but also many issues of a more general character. Hence, it includes a range of recommendations pertaining to the legal and institutional system,

664 *Ibid.*: 33-34.

665 *Ibid.*: 32-33.

666 *Ibid.*: 32, 34. The whole last chapter of the PMP document is devoted only to the system of monitoring

the international circumstances of migration policy, and linkages of migration policy to other policies, along with monitoring of migration processes and migration policy itself. Below, just a few of the proposals are presented, i.e. those which are most related to the employment of foreigners. They illustrate what kind of labour migration policy Poland is endeavouring to have. It should be an elaborated, coherent, and flexible policy which takes various factors and relations into consideration.

When presenting and evaluating the current legal and institutional system, the Polish Migration Policy refers to two main things. On the one hand, the strategy disapproves of the existing rules, mainly because of their complexity, which makes their application difficult. On the other hand, it criticises the diffused organisational structure of today's management system since such a situation impedes the coordination of activities, as well as the realisation of the policy in a uniform way. Consequently, it has a negative influence on the efficiency of the system.⁶⁶⁷

As for the first matter, for the aforementioned reasons the document calls for the simplification of the existing law, but additionally for greater harmonisation of the regulations regarding foreigners' arrival and departure with those concerning foreigners' education, health insurance, employment, and running a business, as well as questions of social welfare.⁶⁶⁸ As for the second issue, the Polish Migration Policy proposes changes in the scope of the competencies of particular institutions. The strategy focuses on the need for reinforcement of the position of the Head of the Office for Foreigners. Today, the Head of the Office for Foreigners is the central authority regarding the legalisation of stays, expulsion, and granting to foreigners of some international protection, the organisation and management of reception centres for asylum seekers, and the administration of the central information system on foreigners, called the 'STAY System' ('System POBYT').⁶⁶⁹ With regard to labour market access policy, the PMP recommends extending the list of the competencies of the Head of the Office for Foreigners to the issuing of work permits (as a second stage) if a single permit is introduced. Currently, a second stage for issuing work permits is the minister responsible for labour and social policy issues. Apart from that, the strategy takes note of the need to reinforce the control of the Head of the Office for Foreigners over policy concerning the legalisation of stay, work permits and expulsion that is

667 *Ibid.*: 95.

668 *Ibid.*: 18.

669 Additionally, it acts as the Central Visa Authority (cooperation regarding the Common Visa Code for Schengen states).

implemented at the level of voivodeships. On the other hand, neither issues related to visa policy nor to combating foreigners' irregular stays or employment would be among the tasks of the institution. It is expected that these changes would ensure the greater coherence of decisions.⁶⁷⁰

Migration is an international phenomenon and as such, it cannot be addressed by the policy of a particular country without consideration of international circumstances. As stated elsewhere (2.2.2), there are many linkages between migration and migration policy on the one hand and international relations on the other hand. For this reason, the Polish Migration Policy programme pays great attention to these matters and it postulates intensifying Polish activities at the international level, both in a bilateral and multilateral dimension. It defines priorities concerning migration on the level of the European Union, bilateral relations, multilateral relations and other organisations and processes.⁶⁷¹ Issues of labour immigration policy are explicitly referred to only in the first two cases. Therefore, only those two are presented below.

Unsurprisingly, one of the most frequently emphasised matters is cooperation with the Eastern neighbours of Poland, understood as Belarus and Russia, together with Ukraine. Therefore, the strategy serves as a reminder that one of Poland's European policy priorities is activities within the European Neighbourhood Policy and, in particular, within the scope of the Eastern Partnership. Poland's work within the EU structures should support the definition of a *road map*, which – after fulfilling particular conditions and requirements – would enable a visa-free regime with these countries to be introduced that would definitely increase cross-border movement and various phenomena accompanying it, including economic migration. Additionally, the PMP explicitly notifies the need for the intensification of economic migration from Poland's Eastern neighbours, *inter alia* within the scope of the Mobility Partnership programme. The strategy considers it in the national interest and specific needs connected to Poland's activities within the EU structures. These activities, however, should be clearly reinforced, since today Poland remains rather a passive participant in EU migration debates. A good start for the change could be the six-month European Union Council Presidency that began in July 2011.⁶⁷²

670 Zespół do spraw Migracji 2011: 19, 96-98.

671 *Ibid.*: 110-117.

672 *Ibid.*: 110-114.

Regarding bilateral cooperation on issues of labour immigration policy, the Polish Migration Policy programme calls chiefly for agreements to be concluded regulating migration questions, e.g. in the areas of employment or education.

In addition to recommendations connected to the international circumstances of migration policy, there are recommendations on the relationship of migration policy to other policies. The PMP suggests that although today the number of immigrants in Poland is not great in comparison to Western European countries, migration as a multidimensional phenomenon should not be neglected by other policies. The document pays special attention to labour market policy, demographic policy, integration policy, foreign policy, internal security and public order, education, and, finally, public information. Recommendations regarding these policies are of a general character.⁶⁷³ They can largely be considered rather in terms of factors that should be taken into account in future migration policymaking.

Finally, there is the question of monitoring. It is present at different places in the whole Polish Migration Policy programme, since it is exactly the lack of monitoring that is recognised as one of the main reasons for the inefficiency of migration policy. A few words regarding recommendations for a monitoring system in relation to labour market access policy have already been said. Nevertheless, what was presented above would be only a part of the whole system. The strategy calls for the establishment of a system that would be comprehensive and coherent and that would serve as an instrument enabling migration policy to be created and implemented better but which would not, however, be a system of control. It should monitor migration flows, the demand for a foreign labour force, the process of completion of foreigners' studies, the violation of regulations regarding stays and employment, the fate of foreigners whose stay was legalised within the regularisation programme, the attitude of Polish nationals towards migrants, the scale of economic emigration and finally, the efficiency of the measures taken. Questions connected to developing such a comprehensive tool would require, for instance, the integration of the existing 'STAY System' with other registers where the data on foreigners are gathered, as well as broadening the competencies of the minister responsible for internal affairs with the monitoring of the implementation of migration policy.⁶⁷⁴

⁶⁷³ *Ibid.*: 118-125.

⁶⁷⁴ *Ibid.*: 20-21.

6.3 Factors influencing labour immigration policy trends

In addition to a wide range of recommendations regarding various aspects of Polish migration policy, the strategy presents in detail the current state of play in the area, together with expectations regarding social, economic or demographic changes which could take place in Poland in future. Thanks to that, apart from a great package of policy proposals, the document also brings reasoning to them. From the reasoning, there emerge factors which directly and indirectly influenced the final content of the recommendations and which should be taken into consideration while preparing the migration policy of Poland. Some of these factors concern mainly or partly the policy focused on the legal employment of foreigners.

As could be expected, ‘the state of the economy’ is considered the main factor that should shape Polish migration policy regarding access of foreigners to the labour market and that was taken into account during the work on the strategy. However, ‘the state of the economy’ is a general term. Therefore, it is worth presenting what issues the interministerial Team for Migration refers to specifically.

The most important things are the needs of the labour market, along with economic interests. In the Polish Migration Policy, it means protecting the domestic labour force – including the weakest, less skilled individuals, who could be at risk of exclusion from the labour market – and at the same time responding to the needs of employers. In other words, the strategy calls for combining the principle of the complementarity of foreigners’ work (which has been the motto of the current labour market access policy) with the principle of competitiveness of the Polish economy. This rule is repeated at several places in the PMP.⁶⁷⁵ Moreover, the document calls for attention to be paid to other areas directly connected with the presence of economic migrants on the labour market, which are important for the creation of the labour market access policy, i.e. economic development and innovations, international economic cooperation, and the risks of illegal migration, along with the prevention of exploitation.⁶⁷⁶

Recognising labour market needs as the determinant of labour market access policy has led the authors of the PMP to observe the relations between labour market policy and migration policy. A result of that is the conclusion that not only the contemporary situation on the labour market but also anticipated developments and policy directions connected to them

⁶⁷⁵ E.g. Zespół do spraw Migracji 2011: 14, 23, 32.

⁶⁷⁶ Zespół do spraw Migracji 2011: 118-120.

and regarding the labour market should be taken into account while preparing migration policy.⁶⁷⁷

Concerning anticipated changes, the Polish Migration Policy pays attention to the economic development of Poland in recent years, which is expected to continue. The economic development, in combination with the ageing of Polish society and the fact that more and more Polish nationals refuse to do some types of jobs, contributes to the emergence of the secondary segment of the labour market. This in turn creates a demand for a foreign labour force. While considering these issues, the document refers to the Population Projection for Poland 2008-2035,⁶⁷⁸ as well as to the 'Poland 2030' Development Challenges Report.⁶⁷⁹

It is noteworthy that it is the first time when demographic changes have appeared in the context of the development of migration policy.⁶⁸⁰ Although demographic factors have already been widely discussed in many countries for many years when addressing migration policy issues, in Poland they have been ignored (at least in connection to immigrants). The PMP refers to population projections for Europe in general and for Poland in particular. It calls attention to labour shortages, as well as problems with the stability of the social security system which the anticipated demographic changes would bring. It is important to underline, however, that the strategy takes note of the limits of treating immigration as a remedy for that. After the 'Poland 2030' Development Challenges Report, the PMP calls to mind the experience of other countries, showing that it is impossible to reverse long-term demographic trends with immigration. Moreover, a high number of foreigners contributes to changes in ethnic structure, as well as to problems in the matter of social cohesion.⁶⁸¹ The report states explicitly that Poland is not prepared for such phenomena, and thus the effects of immigration could be even more negative than in Western European countries. Consequently, from the long-term perspective Poland needs to manage its labour shortage problems rather by the extension of the period of professional activity of individuals. Nevertheless, migration policy should be developed in such a way as to prepare Poland for future inflows of immigrants who – it is assumed – could indeed occur in higher numbers.⁶⁸² This leads to the conclusion that the demographic changes should not be counted among the

⁶⁷⁷ *Ibid.*: 31, 32, 98.

⁶⁷⁸ GUS 2008.

⁶⁷⁹ Zespół Doradców Strategicznych... 2009 (only the abstract of the report is available in English).

⁶⁸⁰ If we do not take into account the remarks of Kryńska in her expert opinion on the bill of the 2007 amendment to the Act on the promotion of employment and labour market institutions.

⁶⁸¹ Zespół do spraw Migracji 2011: 12.

⁶⁸² Zespół Doradców Strategicznych...2009: 81.

main determinants of the labour market access policy since immigration will not solve the problems they bring. Nevertheless, as the PMP assumes while talking about linkages between migration policy and demographic policy, to some extent, economic immigration can mitigate the negative effects of ageing (the experience of other countries shows that).⁶⁸³

The next factors which the PMP recognises as important determinants of the creation of (future) labour immigration policy concern international relations. The strategy focuses chiefly on the influence of the EU and then on the foreign policy considerations pertaining to particular countries or regions.

The strategic Polish foreign policy priority, for many years repeated in the *exposé* of the foreign affairs ministers, says *Poland – strong in Europe – as an EU member*.⁶⁸⁴ Therefore, the influence of the EU is evident at many places in the strategy. The PMP calls to mind recent developments in the common EU migration policy connected e.g. to the Communication from the Commission ‘Towards a Common Immigration Policy’ of December 2007 or ‘A Common Immigration Policy for Europe: Principles, Actions and Tools’ of June 2008. It also refers to a range of valid and prepared directives such as the one on the single permit⁶⁸⁵ or the one on sanctions against employers of third-country nationals who stay illegally.⁶⁸⁶ Finally, it pays attention to the external dimension of EU migration policy and notes the Global Approach to Migration (with its agreements on mobility partnership) and the aforementioned Eastern Partnership, as well as other regional processes. It is obvious that all these elements of common EU migration policy, together with decisions of the Court of Justice of the European Union, which often act as precedents, (will) determine Polish migration policy and the way it is perceived. However, as already said elsewhere, the strategy emphasises that Poland should not remain only a passive *recipient* of particular migration rules (or frames for migration rules, as in the case of EU directives).⁶⁸⁷ On the contrary, its representatives should participate actively in the development of common regulations. Thanks to that, the influence of the EU on Polish migration policy would not be of a one-way character. Poland itself would affect the shape of the EU common policy in the area of migration.

Other foreign policy reflections (are and) should also be key determinants of the (future) migration policy of Poland, including its part aimed at labour immigration. These

683 Zespół do spraw Migracji 2011: 121.

684 *Ibid.*: 122.

685 EU 2011b.

686 EU 2009a.

687 Zespół do spraw Migracji 2011: 102-110.

mainly concern Eastern European countries (Belarus, Russia and Ukraine), as well as the countries in the Caucasus, which have already been important economic and political partners of Poland for many years. Additionally, their citizens belong among the most numerous groups of immigrants in Poland.⁶⁸⁸ The Polish neighbourhood policy aimed at supporting the transformation of Poland's Eastern neighbours remains the second main foreign policy priority. Migration policy simply cannot neglect it.

Apart from the state of the economy, influence of the EU, and foreign policy considerations, other determinants shaping labour immigration policy are referred to only to a lesser extent. As is evident from what has already been said, here and there the Polish Migration Policy points to the volume and composition of economic immigration in Poland. Additionally, questions of security are considered important for the creation of migration policy, chiefly in relation to illegal migration. Nevertheless, they appear rather in the context of border protection than the illegal employment of immigrants.⁶⁸⁹

To sum up, the Polish Migration Policy was elaborated after many years of appealing for the development of a migration *policy*. On the basis of acquaintance with some of its parts that are presented above, one can already assume that the document represents a comprehensive and ambitious strategy. Its implementation would take many years but its result could be a coherent and effective policy. A basis for the coherence and efficiency would be a sophisticated system monitoring various phenomena related to migration – the proper data, both in terms of quality and quantity, remain the starting point of development of a policy which corresponds to the actual situation and the actual needs.

As regards the question of the labour market access policy, the strategy is clear. Today's principles of complementarity of foreigners' work and subordination of the policy to the needs of the labour market are to be preserved but applied better. Similarly, the geographical preferences with regard to immigrants' countries of origin are to be maintained. Nationals of Eastern European countries – the key partners for Poland's foreign policy – are to remain the main addressees of the simplified rules for access to the Polish labour market.

An important change regards the activity of Poland as a country receiving economic immigrants. The future policy is to be proactive, attempting to attract both entrepreneurs and workers with the required qualifications to make Poland a serious competitor in the European

688 *Ibid.*: 114.

689 *Ibid.*: 123-124.

race for hands and brains. Apart from establishing rules and programmes, greater attention is to be devoted to questions of effective policy enforcement.

The main determinants of the labour market access policy are to be the same as at present. This means the state of the economy, and, specifically, the needs of the labour market, the activities of the European Union (which, it seems, will be more intense in future in questions of economic immigration from third countries), and Polish foreign policy. The meaning of further possible determinants would be secondary at the most.

At present,⁶⁹⁰ the Polish Migration Policy is going through a process of public consultation. At a further stage of the works, the Action Plan is to be added.

690 Summer 2011

CONCLUSION

In contrast to many studies devoted to immigration policy, which deal with countries that have received great numbers of immigrant workers for many years, this study examined the case of Poland. It is a country of net emigration which started to receive immigrants only two decades ago, which is not very experienced with immigration issues, and where the topic has not been politicised yet. In taking this case under examination, the study was intended to add another perspective to existing theories of immigration policies. Its aim was to explain immigration control policy towards labour immigration.

The study was searching for the answer to the question *What factors shape immigration control policy towards legal labour immigration, and how?* The main hypotheses indicated that clearly the chief determinant in the case of the labour immigration policy is the state of the economy. It was expected that the LIP would prove to be also shaped by foreign policy considerations and to a lesser degree by the volume and composition of immigration or by security considerations. Additionally, it was stated that the influence of these factors might be modified by pressure from interest groups, political parties, and public opinion.

Considering that the chapter V. provides detailed conclusions with regard to identified determinants of the Polish labour immigration policy, here I will concentrate on referring to the hypotheses but I will not go into details again in order to avoid repetition.

The research confirmed that clearly the most important determinant of the LIP was the state of the economy and in particular the state of the labour market. Questions of an insufficient labour supply on the one side, and of the complementarity of foreigners' work on the other side, were two basic components of the labour market factor. Nevertheless, in the case of this determinant an important intervening factor was the lobbying of the employers and of the Polish organisation. When the rules on employers' declarations were introduced and when they were amended for the first time, employers even acted as *carers* of the determinant. As stated in the chapter discussing factors, in these two particular cases one can even talk about the existence of *client politics* in the Polish labour immigration policy.

There were two sub-hypotheses regarding the state of the economy. The first of them, i.e. *Recessions cause a host country to accept fewer immigrants (i.e. to restrict immigration), whereas economic prosperity causes them to accept more immigrants (i.e. to liberalise the policy)*, was generally confirmed. In 2004 and 2005, when – after a few years of economic problems – the Polish economic situation was still relatively bad, there was no discussion about any liberalisation of the access of foreigners to the labour market. The same ideas,

e.g. concerning a reduction in application fee rates, which were later accepted without any problems, were rejected in 2004 (interestingly, with reference to other countries' praxis and not to the state of the economy). The improvement of the economic situation, and also the situation on the labour market, led to gradual openness to the employment of foreigners. The economic slowdown, which Poland experienced clearly only in 2009 because of the world financial crisis, did not lead directly to restrictions on economic immigration. Simultaneously, however, no further facilitations for foreigners were accepted at that time.

The second sub-hypothesis, i.e. *The situation on the labour market determines the state policy towards particular categories of economic immigrants*, was proved to be false. Despite some attempts to examine the labour demand, the way the labour market situation was monitored left a lot to be desired. In the whole of the period that was examined there was not sufficient data which would allow the principle that the labour immigration policy is adjusted to the needs of the labour market to be applied. The lists of categories of foreigners exempted from the work permit requirement, together with cases in which the simplified procedure for the issuing of a work permit can be applied, included mainly (although not only) categories that would not concern a great number of foreigners. Besides, they were not based on some database of shortage professions. Being aware of the regional differences, as well as of the insufficiency of national data, the policymakers left the governors to set the criteria for issuing work permits in their regions (including lists of professions exempted from the work permit requirement in those regions). Nevertheless, the actual situation on the labour market in particular regions was not sufficiently well known. This is a reason why the Polish Migration Policy document places so much stress on the need for deepened monitoring of multiple aspects to be applied in migration policymaking.

A surprising finding was that in the case of Poland the second most important determinant of the policy was not foreign policy considerations, but rather the volume and composition of economic immigration. The knowledge of the importance of relations with the eastern neighbours of Poland (in particular with Ukraine) for Polish foreign policy, together with the awareness of the meaning of international relations for migration policymaking, led to it being supposed that the second most important determinant of LIP would be foreign policy. It was found, however, that its impact on the shape of legal acts was narrow (an example is records about taking bilateral agreements into consideration when issuing particular ordinances). Its influence on the shape of ordinances was also less than expected. The research brought the conclusion that the volume and composition of immigration, and, in particular, the availability of Ukrainians as circular and temporary immigrant workers, had a

much greater influence on the LIP than the foreign policy of Poland, e.g. towards Ukraine. Foreign policy was rather an additional and supporting factor shaping labour immigration policy, its influence being underlined mainly by the Ministry of Foreign Affairs, but other actors mostly neglected it. Nonetheless, where foreign policy reflections appeared directly or indirectly (being a part of the whole context), they contributed to the liberalisation of the policy towards nationals of particular countries. In other words, the sub-hypothesis stating that *Foreign policy considerations tend to facilitate the liberalisation of labour immigration policy (in terms of the size and composition of immigration)* was confirmed, but the meaning of the factor as such was not great and mainly it was not direct. If the Polish Migration Policy is put into practice, the last matter may change, since the document highlights the relations between foreign policy and migration policy.

The importance of what was found to be the second most important factor shaping the LIP of Poland up to now, i.e. the volume and composition of economic immigration, was connected to several things. The first is who is easily available as a foreign labour force for Polish employers. The second is who can come to with the purpose of only circular and temporary immigration, which is preferred by Poland. The third is the question of integration and adjusting to conditions in Poland (mainly language and culture, but also the experience with work on similar machines, a comparable education system etc.). The last finding corresponds to the fifth sub-hypothesis: *The more labour immigrants are considered as similar to the domestic workforce, the more the state is willing to liberalise its policy towards them*. The preference for nationals of the countries neighbouring Poland to the east, but, even more, opening up the labour market for people of Polish origin (the Polish Charter) confirmed the correctness of the statement.

Similarly, the last sub-hypothesis, i.e. *Security considerations tend to hinder the liberalisation of the LIP*, was validated. Security considerations were related mainly, although not exclusively, to *soft* threats. In cases where security considerations were taken into account, they mostly slowed down or even blocked ideas of the liberalisation of the access of foreigners to the labour market. The most evident example was giving up the idea of facilitating access to the labour market for Asians. The threats of illegal permanent immigration and illegal employment and even of an increase in criminality and terrorism were raised among the first arguments against the easier acceptance of Asians.

Finally, the research revealed what a great influence on Poland's LIP the European Union had. In relation to that several matters are worth pointing out. Despite the fact that a common immigration and asylum policy had been undergoing development from the second

half of the 1990s until the end of the period that was examined, no EU regulation or decision immediately enforceable as law in EU member states, nor any direction with regard to the access of third nationals to the labour market, was released. As already stated, the exception was the Blue Card Directive; this, however, was not implemented by Poland within the prescribed time period. The direct influence of the EU on the Polish LIP was observable only in the case of facilitations for Turks and their families and – but to a smaller extent – in the inclusion of Moldova and Georgia in the rules on employers' declarations because of mobility partnerships between the EU and these countries. Nevertheless, even in the last case, over the course of time Poland stopped linking the possibility of using employers' declarations with mobility partnerships between the EU and third countries.

In spite of these facts, one can say that the influence of the EU on Poland's LIP was great. This influence was, however, indirect: through the awareness of Poland of being an EU rampart, through the topics raised at various international meetings, and the prevailing attitude to some migration issues, i.e. the preference for circular migration. The development of the common immigration policy indicates that the direct impact of that regional integration scheme on the labour immigration policies of its member states will also grow with regard to the employment of nationals of third countries.

Apart from influencing factors, the study also identified a few intervening factors which can modify the effect of the former on the creation of the LIP. The hypothesis indicated pressure from interest groups, political parties, and public opinion. Nonetheless, the research brought different results from that statement to some extent.

The influence of employers' organisations in the case of the employers' declarations and Polish organisations in the case of the Polish Charter was undeniable. Nevertheless, if one can talk about the influence of political parties, it might be merely in connection with the very introduction of employers' declarations. The same is true of public opinion and only if one considers the media as the voice of public opinion. Immigration is not a politicised topic in Poland. It is almost non-existent in political or public debates. There are some symptoms, however, which suggest that the matter may change in the near future.

In addition to these intervening factors, the study found out the existence of one important interviewing factor, i.e. the human factor (e.g. the experience of people involved in immigration policymaking and their character and commitment to migration issues). The great significance of the last invisible determinant was one of the most surprising findings of the research. Most of the studies devoted to migration policy I came across did not even mention the existence of something like a human factor. Only a few of them refer to

‘administrative discretion’ but at the phase of policy implementation at the local level. The reason could be that the human factor is taken for granted. The other explanation could be that in countries that have longer experience with a migration policy, the meaning of the human factor at the phase of the work on policy outcomes is smaller. This could become a subject of further research. In fact, I consider it an important question that was not answered in the study. In Poland, a country that does not have much experience with its immigration policy, does the human factor have greater meaning than in countries that have more experience of immigration and where the immigration policy is well developed?

To sum up, the factors affecting Poland’s labour immigration policy were chiefly the state of the economy (related, to various extents, to the influence of interest groups), and then the volume and composition of economic immigration and finally (mainly *soft*) security considerations. Only behind these factors was the influence of foreign policy and the European Union, whose influence was rather indirect. An additional but important intervening determinant was the human factor.

These findings differ from the theses of Meyers’ theory of socioeconomic and foreign policy factors shaping immigration policy. In spite of the fact that the current study did not directly test its theses, it is possible to formulate a few conclusions with regard to Meyers.

Concerning his thesis on labour migration, if we neglect the ‘war-migrant labour link’ and racist/liberal ideology as irrelevant for the current study, three determinants would remain, i.e. the state of the economy, foreign policy considerations, and the volume and composition of migration.

The state of the economy was expected to be the main factor affecting the LIP and was verified as such. Nevertheless, in contrast to Meyers’ study, this one did not confirm foreign policy considerations as the second most important determinant of the LIP. In Poland, they were rather in the background of policymaking with regard to economic migration. On the other hand, for Meyers the volume and composition of migration represent only less important factors, whereas here they are recognised as the second most influential one. Additionally, Meyers did not consider intervening factors, with the possible exception of interest groups, which he indicated in the operationalisation of the hypothesis.

There are a few possible explanations of the differences between Meyers’ theses on the determinants of labour immigration policy and the findings of this study. First, as already stated, in the case of Poland, regardless of the fact that the volume and composition of economic immigration or foreign policy considerations are more influential factors, the liberalisation of the labour immigration policy would concern the same groups of

foreigners, i.e. nationals of the Eastern neighbours of Poland, mainly Ukrainians. Second, the findings of the current study may be biased because the period examined is short. Third, the differences are an effect of structural factors. These structural factors (e.g. economic structure, geopolitical position, demographic situation and political system), which are normally stable and hard to change, have changed quite recently in the case of Poland. The demographic situation of Poland is an especially important factor. As stated many times, Poland receives relatively small numbers of immigrants in contrast to the countries chosen by Meyers. It is a country of net emigration, where immigration has not yet been *a problem to be solved*. This may be a reason why particular determinants shape the Polish LIP differently from the labour immigration policies of the countries examined by Meyers. After all, such an explanation would correspond to one of Meyers' theses, i.e. the one stating that 'the structural factors of each country and its preference for permanent or temporary immigration, both of which are relatively stable, produce the differences between immigration policies at any given time.'⁶⁹¹

The most surprising findings of the study concerned the fact that foreign policy considerations had only secondary influence on Poland's labour immigration policy and the great influence of the invisible human factor. Additionally, it was unexpected that the demographic argument (connected *inter alia* to the ageing of society) did not appear in the legislative process (with one exception), as was the fact that immigrant organisations were not present at all during the policymaking process.

The study brought several questions that could be examined further. Two pertain to Poland alone: the first concerns the existence of a policy gap in the case of employers' declarations of intent to employ a foreigner and the second is connected to the presence of holders of the Polish Charter on the Polish labour market. Then two questions of a more general character could be raised. The first one has already been indicated; it relates to the significance of the human factor for migration policymaking; the second pertains to the process of the politicisation of migration, especially the conditions that accompany its rise.

To sum up, the research revealed that in the case of Poland, the labour immigration policy is partly shaped differently than is the case with Western European countries and the United States. Since the study represented a case study it is hard to make generalisations with regard to e.g. other new EU member states or even other labour emigration countries. I hope that it will encourage academics or students, especially of political science, to verify its theses through the examples of various non-Western European and non-settlement countries.

691 Meyers 2004: 25.

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Appendix

List of interviewed experts

- I1** Director of the Department of Migration Policy, Ministry of Interior and Administration; date: 9.06.2010; time: 10.00-11.30; place: the directors' office (the director did not agree for recording the interview on the dictaphone – the content of the interview became written down manually);
- I2** A researcher of the Institute of Social Policy of the University of Warsaw, a member of the team of strategic advisors of the Prime Minister for migration and a member of the interministerial Team for Migration (the Group for Migration Strategy of Poland); date: 8.06.2010; time: 9.00-9.45; place: the office of the advisor in the Institute of Social Policy;
- I3** Vice-director of the Department for Labour Market, Ministry of Labour and Social Policy; date: 8.06.2010, time: 11.30. – 13.05; place: vice-director's office;
- I4** Former director of the Department for Migration, Ministry of Labour and Social Policy date: 8.06.2010, time: 14.00. – 15.15; place: director's office;
- I5** Head of the Section for Migration Analyses in the Department for Migration Policy, Ministry of Interior and Administration and a member of the interministerial Team for Migration (the Group for Migration Strategy of Poland); date: 9.06.2010; time: 11.45-13.15; place: head's office
- I6** Former head of the Section for Migration Policy in the Department for Migration, Ministry of Labour and Social Policy; date: 11.06.2010; time: 9.00-10.00; place: head's office
- I7** Member of the team of strategic advisors of the Prime Minister for migration and a researcher of the Centre of Migration Research, University of Warsaw; date: 11.06.2010; time: 14.00-14.45; place: researcher's office in the Centre of Migration Research;
- I42** Former director of the Department for Migration, Ministry of Labour and Social Policy (additional phone interview); date: 13.7.2010 (questions had been earlier sent to the director by email);
- I52** Head of the Section for Migration Analyses in the Department for Migration Policy, Ministry of Interior and Administration and a member of the interministerial Team for Migration (the Group for Migration Strategy of Poland) (additional email). Email received 12.07.2010, 11:04 to the address agnieszka.zogata@upol.cz.

Abstract

The study is searching for the answer to the question *What factors shape immigration control policy towards legal labour immigration, and how?* In contrast to many studies, which deal with countries that have received great numbers of immigrant workers for many years, it examines the case of Poland - a country of net emigration, which is not very experienced with immigration issues, and where the topic has not been politicised yet. In taking this case under examination, the study was intended to throw a new light on the theories of immigration policy. The study focuses on the period between the access of Poland to the European Union and the middle of 2011. Its main finding is that the factors affecting Poland's labour immigration policy were chiefly the state of the economy, the volume and composition of economic immigration and finally (*soft*) security considerations. Only far behind these factors was the influence of foreign policy and the European Union. An additional but very important intervening determinant was the human factor. The research revealed that in the case of Poland, the labour immigration policy is partly shaped differently than is the case with Western European countries and the United States.

Abstrakt

Předložená práce hledá odpověď na otázku, *jaké faktory ovlivňují politiku vůči legální pracovní imigraci a jakým způsobem*. Oproti mnoha jiným studiím, jež se věnují politikám zemí přijímajících početné ekonomické migranty po mnoho let, práce zkoumá případ Polska - země známé především kvůli vystěhovalcům, která nemá příliš zkušeností v oblasti imigrace a kde téma přistěhovalců nebylo dosud zpolitizováno. Díky tomu studie hodlá teoretickým přístupům k imigrační politice přidat novou perspektivu. Práce se soustředí na období od vstupu Polska do Evropské unie do poloviny roku 2011. Její hlavní závěr je, že faktory ovlivňující tvorbu polské politiky vůči pracovní imigraci byly: ekonomická situace, počet a složení pracovní imigrace a konečně úvahy na téma měkké bezpečnosti. Až v pozadí těchto determinantů zůstává vliv zahraniční politiky a Evropské unie. Dodatečným, ovšem velmi důležitým intervenujícím činitelem se ukázal být lidský faktor. Studie odhalila, že politika vůči pracovní imigraci je v případě Polska do určité míry formována odlišně, než je tomu v zemích západní Evropy a Spojených států.