



EU and US approaches to the management of immigration

Jan Niessen, Yongmi Schibel and
Raphaële Magoni (eds.)

Poland

Krystyna Iglicka,
Piotr Kazmierkiewicz and
Monika Mazur-Rafal
Institute for Public Affairs and
Center for International Relations





Jan Niessen, Yongmi Schibel and Raphaële Magoni (eds.)

EU and US approaches to the management of immigration

Poland

Krystyna Iglicka, Piotr Kaźmierkiewicz and Monika Mazur-Rafał
Institute of Public Affairs and Center for International Relations

With the support of the German Marshall Fund of the United States

The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels/Warsaw, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US-Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

Table of contents

| | |
|--|-----------|
| Chapter 1: The terms of the policy debates | 1 |
| 1.1. Introduction | 1 |
| 1.2. The terms of the policy debate | 2 |
| 1.3. Debate on the Polish migration policy and security | 2 |
| 1.4. Different categories of migrants in the debate | 8 |
| 1.5. Immigration and the debates about social and economic policies | 8 |
| 1.6. Demographic studies and immigration | 9 |
| Chapter 2: The stakeholders | 10 |
| 2.1. Institutional stakeholders with direct impact on Poland's policy-making | 10 |
| 2.1.1. Legislative authorities | 10 |
| 2.1.2. Executive authorities | 10 |
| 2.1.3. Appeal agencies | 13 |
| 2.2. International, non-governmental, and other organisations as stakeholders with indirect impact on Poland's immigration policy-making | 15 |
| 2.2.1. International organisations | 16 |
| 2.2.2. Non-governmental organisations providing assistance to foreigners | 17 |
| 2.2.3. Non-governmental research institutions | 19 |
| Chapter 3: European legislative proposals | 23 |
| 3.1. Aliens' employment and self-employment | 23 |
| 3.1.1. Subjects entitled to permit, permit validity period, self-employment | 23 |
| 3.1.2. Economic needs test and beneficial needs test | 27 |
| 3.1.3. Quotas | 27 |
| 3.1.4. Regularisation | 27 |
| 3.2. Family reunification | 28 |
| 3.2.1. Rules associated with the right to family reunification: definition of family members entitled to the right to family reunification, age limits for children, required financial resources, waiting periods, permit validity periods and conditions of stay | 28 |
| 3.2.2. Standstill clause and deadline clauses | 30 |
| 3.3. Status of foreign nationals who are long-term residents | 31 |
| 3.3.1. Waiting period for the long-term resident status | 31 |
| 3.3.2. Withdrawal of status | 31 |
| 3.3.3. Status of long-term residents in Poland | 32 |
| 3.3.4. Long-term residents' right to settle down in EU Member States | 34 |
| Chapter 4: Recommendations and open method of co-ordination | 35 |
| 4.1. The open method of co-ordination | 35 |
| 4.2. Poland's migration policy in the future | 37 |

Chapter 1: The terms of the policy debates

1.1. Introduction

The processes of transition in Central and Eastern Europe (CEE) with their concomitant liberalisation and transformation of political and economic systems touched off a dramatic tide of international migration between East and West and between CEE countries themselves. The countries applying for EU membership have also become countries of destination for, among others, migrants from the Third World. Migration is mostly motivated by the search for employment. Emigration from Poland, Czech Republic and Hungary is diminishing in the wake of transformational benefits. The fears of an exodus from these countries have not come true. The CIS countries still demonstrate a higher propensity for migration than Central Europe does. One of the probable causes behind this is inconsistency in the process of systemic transformation. As is the case now, migration flows from the CIS countries will continue to affect primarily the countries of Central Europe.²

Since the early 1990s, the candidate countries have had a twin labour market similar to the one operating in the present EU Member States for several decades. Next to the core labour market, there has emerged a so-called secondary market where jobs are sought, often illegally, by immigrants from the ex-USSR (particularly Ukraine). The full-scale making of the secondary labour market in the countries about to join the EU in 2004 will certainly attract even bigger migration flows. There are similarities between the EU member countries and the candidate countries in terms of the demand for skilled labour that is in short supply in some sectors of the labour market. As the candidate economies continue to develop, they will probably also grow short of specialists in high technologies or of foreign language teachers.³

The purpose of this study is to compare Poland's migration policy with its counterpart being developed at the EU level and the related legislative proposals. The exercise also affords an opportunity to trace the policy debate on Poland's migration policy, its major stakeholders and their relevant activities. Subsequently in this study we will compare the Polish legal regulatory regime on aliens with the relevant provisions of EU directives. The analysis will serve as the basis for presenting the main directions in which the Polish migration policy could develop.

It is important to note that the proposals for legislation brought forward by the European Commission make reference only to third-country nationals. Polish legislation does not contain such a concept; rather it refers to the aliens in general. According to the Polish legal acts, an alien is any person who does not hold Polish citizenship. As far as EU citizens are concerned, relevant legislation was enacted in October 2002, but it will go into effect only after Poland's accession to the EU. As the result of the adaptation of Polish law to the EU standards, the legal state of play being described here will soon change.

It is difficult to characterise the political debate on migration policy, since Poland has no comprehensive migration policy but only its framework. This study approaches the question by presenting the political debate on a succession of amendments to the Polish law on aliens, a law that contains elements relating it to the Polish migration policy. The analysis is influenced by the fact that while the Polish law on aliens was being amended; clear

² *The Common Challenge – Members and Candidates Facing the EU Future Migration Policy*, in *On The Future of Europe* series, policy paper no. 5, Batory Foundation, Institute of Public Affairs, Institute for Social Studies (Warsaw University): Warsaw 2001.

³ *Ibidem*.

procedures for holding a political debate were not yet in place in Poland. The interrelations among the main stakeholders were developing parallel to the amendments to the law on aliens, which makes it impossible to document a network of interdependencies between the government, non-governmental organisations and the academia in a comprehensive manner.

1.2. The terms of the policy debate

Characterising the Polish policy debate on economic migration (settlement migration as well as family reunification) is a daunting task because of the absence of a comprehensive immigration policy in Poland. Also, the debate on the policy toward aliens was largely uncontroversial and conducted in a limited manner. In fact, economic immigration never achieved the status of a separate debate issue. Given these circumstances, the authors resolved to limit the scope of this part of the report to the discussion over migration policy⁴, carried out in the Polish parliament while amending the law on aliens, with a special emphasis on economic migration. The issues of asylum and repatriation have been excluded from the analysis, following the project guidelines. Nevertheless, it is difficult to exclude the aspect of asylum altogether because the construction of legal foundations of migration policy and the debate surrounding this process have been closely related to those issues. The dominance of asylum issues is evident from the selection of institutions which have taken part in the debate on foreigners in Poland.

1.3. Debate on the Polish migration policy and security issue

The year of 1989 marks a turning point in the migration process in Poland. Profound political, legal and institutional changes in the country brought about, *inter alia*, opening borders and abolition of limits on movement. The arrival of various categories of foreigners and their numbers created a qualitatively new migratory situation⁵. At the same time, all the countries of Central and Eastern Europe were undergoing change. A possibility of East-West mass migratory movements was seriously considered in light of the break-up of the Soviet Union. There were fears of the eruption of ethnic conflicts and acts of violence, which could facilitate the exodus as well as large-scale returns of Poles to the homeland⁶. The Polish State was neither prepared for this new migratory situation at the time nor was it prepared to give assistance and care to the asylum-seekers arriving in ever-greater numbers⁷. Accordingly, new structures and mechanisms were gradually built up within the state administration⁸.

⁴ The state's migration policy is understood here as the rules and activities adopted by the central and local authorities facing the inflow and residence of foreigners on its territory, primarily in three areas: the control of their entry (and exit), presence of foreigners on the labour market and facilitating the integration of immigrant communities with the host society, in: S. Łodziński, *Problemy prawne polityki migracyjnej Polski w latach 1989-1995 na tle rozwiązań obowiązujących w krajach Unii Europejskiej (Legal issues of the Polish migration policy between 1989 and 1995 in view of the policies in the countries of the European Union)*, J.E. Zamojski (ed.), *Migracje i Społeczeństwo*, Zbiór studiów 2, Instytut Historii Polskiej Akademii Nauk, Warsaw 1997, p.82.

⁵ Various groups of foreign nationals appeared in Poland: tourists, economic migrants, asylum-seekers and repatriates. Border Guard statistics recorded 19 million border crossings in 1985 compared to 215 million in 1994 (including Polish citizens).

⁶ *Okruchy ze stołu biedaka (Crumbs from the Poor Man's Table)*, interview with Z. Skoczylas, Plenipotentiary of the Minister of Interior for Refugees, *Przegląd Tygodniowy* 49, 9 December 1990.

⁷ M. Szonert, *Rok 1990 – początki opieki nad uchodźcami (Year 1990: the beginnings of the assistance to refugees)*, *Migracje i Społeczeństwo* 4, *Migracje polityczne XX wieku*, Instytut Historii Polskiej Akademii Nauk, Mazowiecka Wyższa Szkoła Humanistyczno-Pedagogiczna, Warsaw 2000, p. 34 nn.

⁸ The Interministerial Committee on Refugees, presided over by the Minister of Internal Affairs, was formed by the Council of Ministers on 22 November 1990. A post of the Plenipotentiary of the Minister of Internal Affairs for Refugees was also established in November 1990.

Migratory movements and their consequences raised concerns about state security in view of Poland's precarious geopolitical location, the absence of legal foundations for the policy on aliens as well as of effective state structures and procedures, aggravated by the shortage of funds and relative lack of experience in dealing with problems of this kind. It was not the rapid rise in the number of border entries by the citizens of the USSR and later of the former USSR alone which fuelled anxiety. Of greater concern was the onset of organised criminal activities, smuggling of illicit drugs and dangerous substances, car thefts, prostitution, illegal trade and related financial operations, document forgeries and arms trade on an unprecedented scale. The bazaar trade and the presence of foreigners on the Polish labour market also raised some controversy, reflected in the public opinion on migration⁹. The issue of limits on the arrival of the citizens of the former USSR was prominent in the debate¹⁰. Several experts concurrently pointed to various public security threats and called for a state response¹¹.

These opinions, prevalent both in the public and among the experts, were a clear message for the politicians. Clear expectations of law and order built up a definite background to the legislative process. Polish authorities took a two-track approach to migration policy. On the one hand, they aimed at settling the basic issues through international law¹² and bilateral intergovernmental agreements¹³. On the other hand, they set about adapting the national

⁹ According to a public opinion poll 80 % of the Polish respondents expected a large influx of asylum-seekers from abroad, mainly from Yugoslavia, the former USSR and Romania, based on the public opinion polls by CBOS on representative national samples: 1) Społeczne postawy wobec uchodźców i emigrantów zarobkowych (Social attitudes towards asylum-seekers and labour migrants), CBOS communique, Warsaw November 1992,

2) Społeczeństwo polskie wobec otwartych granic – problem azylantów i wiz (Polish society and the open borders), CBOS communique, Warsaw, March 1993, in: S. Łodziński, Migracje zagraniczne w Polsce – rozmiary, struktura, problemy prawne i społeczne (International migration in Poland – scope, structure, legal and social problems), Biuro Studiów i Ekspertyz, Kancelaria Sejmu, December 1994, R-66, p. 34.

¹⁰ According to the polls 41 per cent of respondents favoured restrictions to the current rules of entry control, that is a more thorough control of the invitation letters, and 42 per cent opted for the introduction of visa requirements for them. 71 per cent declared that the imposition of entry visas on the citizens of the former USSR would contribute to the improvement of the state of public security. The majority of the Polish respondents (73 per cent) viewed labour migration in Poland in a negative way and listed the following threats among the consequences of the presence of labour migrants: increased competition on the labour market (lower salaries or higher unemployment), currency outflow, non-payment of taxes and breaches of order and public security, Based on the polls of 4-6 November 1994 in Warsaw, Kiepsko ich tolerujemy (We treat them badly), Gazeta Wyborcza, 9.11.1994, in: S. Łodziński, Migracje zagraniczne w Polsce – rozmiary, struktura, problemy prawne i społeczne (International migration in Poland – scope, structure, legal and social problems), op. cit., p. 35.

¹¹ See W. Anioł, Migracje międzynarodowe a bezpieczeństwo europejskie (International migration and European security), Instytut Studiów Politycznych Polskiej Akademii Nauk, Warsaw 1992, p. 47 nn.

¹² The Polish President ratified the Geneva Convention on the Status of Refugees of 1951 with the New York Protocol of 1967 on 2 September 1991 so that it came into force in December 1991. In February 1992 the Liaison Office of the United Nations High Commissioner for Refugees was opened in Warsaw. On 19 January 1991 Poland ratified the European Convention of Protection of Human Rights and Fundamental Liberties of 1951.

¹³ On 29 March 1991 Poland signed an agreement on visa-free movement with the Schengen Group countries, which granted the right of free entry for tourist purposes to the citizens of both parties to the agreement. On 7 May 1993 Poland and Germany concluded an agreement on cooperation in combating the effects of migratory movements, which stated that Poland should receive those third-country asylum-seekers who had arrived in Germany illegally from the territory of Poland (Poland was declared to be a "safe third country"). Poland signed agreements of this kind with the Czech Republic, Slovakia, Romania, Bulgaria and Ukraine in the spring and summer of 1993. Similar agreements were concluded between Poland and all the neighbouring states except Belarus and the Russian Federation as well as some other states.

legal norms to the new political and social status quo and establishing an institution responsible for the state's migration policy. Building and amending the Polish body of law on aliens ushered in a debate on the model of the national migration policy.

Act on Aliens of 29 March 1963¹⁴

The first attempt at adjusting the old legal framework to the new realities was made in 1992 when the act of 1963 was amended. The concept of a “refugee” and the rules for granting refugee status and on detention of foreigners due to be deported were introduced in the Polish legal system from the Convention on the Status of Refugees of 1951 with its 1967 Protocol. The deportation procedure turned out to be controversial and gave rise to a complaint of the Ombudsman to the Constitutional Court¹⁵. It was soon realised that this amendment to the Act on Aliens was no longer adequate to deal with migratory pressure, and work was begun on a new law.

Act on Aliens of 25 June 1997¹⁶

The legislative work on amending the Act on Aliens took place between November 1995 and June 1997 in parliamentary subcommittees, plenary committee discussions, expert consultations, and three parliamentary readings, resulting in the adoption of the law by the Senate. Only the government proposal, prepared by the Ministry of Internal Affairs and Administration, was discussed, as no other proposals were tabled. The first reading¹⁷ showed no major points of contention among the party parliamentary clubs or between the Parliament and the government. Members of parliament of all political affiliations praised the proposal without suggesting alternative implementation solutions. The parliamentary debate focused on the following aspects:

- *Security and general state interests.* Poland should remain an open country, but should also introduce mechanisms enabling the state administration to work more effectively for national security and protection of state interests.
- *Awareness of assuming the new obligations of a EU border country.* The new regulation was positively justified with the growing prospects of Poland's membership in the EU and a future position as EU border country. The resultant obligation to effectively control the borders was found to be consistent not only with the Polish *raison d'état* but also with the security interests of the European Community.
- *Europeanism.* MPs as a whole positively evaluated the fact of re-regulation of the status of aliens in Poland because, they admitted, it opened up the way to new solutions, adaptation of the law to the new political, economic and social reality and to European standards.
- *Poland's rate of unemployment and illegal immigration.* The rate of indigenous unemployment was linked by the MPs to illegal immigration and illegal employment. At the same time, they positively assessed the proposed law, because it afforded the possibility of protecting Poland's labour market against “being flooded by illegal labour”. Although the bill set out to regulate the legitimacy of aliens' employment in Poland, the debaters hardly referred to this. On the other hand, the Freedom Union representatives came up with a postulate not to treat all employment categories equally. Preferential clauses for potential

¹⁴ The text of the Act of 29 March 1963 on Aliens, (Dz. U. 1992 no 7 item 30 and Dz.U., no 25 item 112).

¹⁵ The Court issued an opinion on 20 October 1992, which stated that issuing a detention decision by the voivod (an administrative organ) is in breach of Art. 87 par. 1 of the Constitution, which guarantees bodily integrity and introduces a principle that only a court or prosecutor's office may order detention. See. S. Łodziński, *Problemy prawne polityki migracyjnej Polski w latach 1989-1995 na tle rozwiązań obowiązujących w krajach Unii Europejskiej* (Legal issues in Polish migration policy between 1989 and 1995 and the solutions applied in the countries of the EU), op. cit., p. 86 i nn.

¹⁶ The text of the Act of 25 June 1997 on Aliens, (Dz. U. 1997 no 114 item. 739 z późn. zm.)

¹⁷ Act on Aliens, 1st reading, 65th session, 3rd day, 24 November 1995, Sejm of the 2nd term.

investors would be in line with the economic national interest, which requires attracting foreign capital. The Freedom Union MPs found the requirement to renew a work permit annually to be contrary to the country's economic interest.

During the work on the bill, non-governmental and international organisations - The Helsinki Foundation for Human Rights, the Office of the Representative of the United Nations High Commissioner for Refugees and the Wspólnota Polska Association (Polish Community, a body in charge of relations with the Polish diaspora) added the theme of human rights to the debate. They took part in the debate on the floor of the parliamentary committees and prepared opinions on the bill proposal. The experts of the Helsinki Foundation for Human Rights wrote an opinion on the draft law¹⁸, in which they criticised some legislative proposals in the realm of asylum. The authors attributed some of the deficiencies of the proposed administrative and judicial system to the drafters' will to protect state interests. While they did not question this supreme goal, the experts nevertheless raised the point that some of the proposals fall short of the standards adopted by Poland already (European Convention on Human Rights, Convention on the Status of Refugees of 1951) and called for necessary amendments¹⁹. The opinion of the UNHCR concurred in pointing to the incompatibility of some of the regulations with the international standards, while allowing for each state's right to control migration²⁰. The Wspólnota Polska association focussed on the issues of repatriation²¹. The active involvement of these organisations moved the centre of gravity of that discussion from a defensive and restrictive attitude towards a humanitarian approach that was certainly more acceptable to Polish society.

In sum, the second reading of the bill²² moved the debate toward social issues, largely as a result of the involvement of non-governmental and international organisations. In the course of the reading, the human rights theme was further developed and new clauses on repatriation were introduced, following the work after the first reading. The only clause on the settlement permit which aroused controversy was art. 82 of the bill, which made granting of the permit conditional upon consultation with the Office of State Protection, with the result that migration issues would be seen in the context of national security. Art. 82 was included in the final version of the law. The new currents in the debate did not concern labour immigration.

Amended Act on Aliens of 11 April 2001 r.²³

A new amendment to the Act on Aliens was due in the process of harmonising Polish legislation to the *acquis communautaire*. Annual reports of the European Commission for

¹⁸ A. Rutkiewicz, I. Rzeplińska, Opinia dotycząca ustawy o cudzoziemcach (Opinion on the Act on Aliens), ekspertyza wykonana na zlecenie Biura Studiów i Ekspertyz Kancelarii Sejmu, listopad 1995, E – 64.

¹⁹ A. Rutkiewicz, I. Rzeplińska, Opinia dotycząca ustawy o cudzoziemcach (Opinion on the Act on Aliens), op. cit., p. 1-2.

²⁰ The bill was found to be most seriously deficient in that: it made insufficient distinction between foreigners in general on the one hand, and refugees and asylum seekers as a group in need of particular protection, on the other; it lacked clauses on the full, fair and effective procedure for granting refugee status, including the appeal mechanism; it omitted to regulate the status of de facto refugees and stateless persons; and it did not stipulate the right to family reunification, in: Komentarz UNHCR do projektu ustawy o cudzoziemcach (Comments of the UNHCR on the Bill Proposal of the Act on Aliens), November 1995, UNHCR Liaison Office, Warsaw, p. 1.

²¹ Wspólnota Polska focussed on setting the rules for repatriation, procedure for acquisition of Polish citizenship and rights flowing from the Polish national origin, in: Biuletyn z posiedzenia Komisji Administracji i Spraw Wewnętrznych (Minutes of the Session of the Parliamentary Committee of Administration and Internal Affairs) of 6 May 1997, no. 152.

²² Act on Aliens, 2nd reading, 108th session, 1st day, 4 June 1997, Sejm of the 2nd term.

²³ Amendment to the Act on Aliens of 11 April 2001 (Dz.U. 2001 no. 42, item 475).

1999 and 2000 on the progress of Poland on the path toward EU membership reaffirmed the recommendation to seal the national borders and tighten the regulations for entry of third-country nationals. The "Rationale for the Amendment" by the Ministry of Internal Affairs and Administration (MSWiA) referred to the obligations which Poland had adopted in the course of accession negotiations, contained in the "National Programme for Membership in the European Union" and the "Polish Negotiating Position in the Field of Justice and Home Affairs". The MSWiA proposals were included in the wake of consultations with the Union, which resulted in the closer approximation of the Polish legislation to the *acquis communautaire*. The European Commission, the main actor in the accession negotiations, thus became an engine of change in the Polish law on aliens.

The legislative work on the amendments to the law on aliens, begun in 2000, was carried out in a different political environment. The perspective of Polish accession to the EU became clearer and the harmonisation of Polish law with the *acquis* became a guiding objective for most of the amendments. Since the EU allowed no derogations in the negotiation area of Justice and Home Affairs, and Poland concurred, questioning of some specific clauses of the *acquis* would mean a delay in the country's EU membership. The centre of gravity of the debate accordingly had to shift to other issues.

The debate on state policy in the field attracted the involvement of the Helsinki Foundation for Human Rights and the UNHCR. These organisations paid particular attention to human rights issues in relation to refugees and family reunification issues. Their amendments stemmed from the three years of the operation of the law in force, while suggesting some new solutions, such as the temporary protection option²⁴. The Institute of Public Affairs (ISP) also joined in by rallying its experts to prepare an analytical study for the sitting of the Senate Committee for Foreign Relations and European Integration on the subject "Poland and the other applicant countries vis-à-vis the Schengen *acquis* obligations"²⁵.

The discourse failed to cover the issues of labour migration. The political debate of the turn of 2000/2001 gave rise to the following conceptual categories:

- *Protection of national interest* – in the form of protecting borders, society and the country against the negative consequences of migration with a reservation that the proposals should not make entry into Poland more difficult.
- *Necessity of adjusting the Polish legislation to the Union acquis* was the element which, in view of the anticipated EU membership, practically eliminated any serious controversy. These circumstances made the government proposals easily defensible on the one hand, but on the other hand they forced a rethinking of security in terms of the security of the community beyond national security.
- *Human rights* – a category raised mainly in the context of refugees and the legitimisation of aliens' stay in Poland.
- *Repatriation* – framed by both government and MPs as a long-awaited return of compatriots to their mother country. The debaters characteristically did not treat the repatriates as aliens.
- *Unemployment – illegal migration* – as in the former debate, MSWiA representatives and MPs clearly acted on the assumption that the protection of the national labour market should involve limiting the access of foreigners to the market. Such postulates were raised mainly in the case of unqualified workers ("the influx of cheap labour").

24 I. Rzeplińska, H. Rubinstein, E. Zienkiewicz, Opinia o ustawie o zmianie ustawy o cudzoziemcach oraz o zmianie niektórych innych ustaw, odnosząca się do projektu ustawy z 23.03.2000 (Opinion on the Bill on the Amendment to the Act on Aliens and on the Amendments to Some Other Acts), Zespół Pomocy Prawnej Helsińskiej Fundacji Praw Człowieka, 24.05.2000 r.

25 K. Iglicka, Trendy w migracjach do Polski po 1989 roku w świetle rozszerzenia Unii Europejskiej (Trends in migrations into Poland since 1989 in view of the enlargement of the European Union), in: Polska droga do Schengen, Opinie ekspertów, ISP, Warszawa 2001.

- *Legitimate income-motivated immigration* – was seen as desirable, particularly for artists, entrepreneurs, corporate managers, a generally broad white-collar segment, and athletes. However, this desirability did not translate into practical measures. It remained wishful thinking.

The second reading of the draft amendment held in 2001 revealed first objections to the MSWiA approach to the immigration issue. The then opposition MPs – from the Democratic Left Alliance (SLD) and the Polish Peasant Party (PSL) were critical about what they called a missing concept and political will to design a comprehensive migration policy for Poland. In addition to the parliamentary debate on amendments to the aliens legislation only the visa policy attracted the attention of a broader segment of the Polish political scene. Sparking most controversy was the prospect of introducing the visa regime for the citizens of the neighbour countries east of Poland. The main line of contention was the manner of introducing that regime and the after-effects of such a measure. The debate was joined by non-governmental organisations, which came up with expert studies and reports to better explore the problem. Independent experts also offered a variety of approaches²⁶.

The timetable of the accession negotiations requires that the foundations of the Polish migration policy should be laid out prior to Poland's accession to the EU. The Office on Repatriation and Aliens started working on a relevant government paper in November 2002. Experts from other ministries and pertinent offices, research institutes, academia and the non-governmental sector were all invited to participate. The sessions held so far in this forum demonstrate that the expert debate on migration issues no longer revolves around security to the same extent as in the first half of the 1990s. Since then precedence has gone to questions of the labour market, considered not only in terms of the protection of the Polish labour market (see the clause on the priority accorded to Polish citizens in the access to job offers) but increasingly in view of the benefits which the foreigners could bring to the market (selection of foreigners with rare qualifications or about to invest in Poland)²⁷.

It follows from this analysis of the Polish political discourse about the policy to be pursued towards aliens that migration has not been a major issue so far. The work on amending the Act on Aliens did not reveal any other migration policy proposals that would compete against the government-sponsored bill. On the one hand, this was due to the lack of tradition and experience in the conduct of a comprehensive migration policy by the Polish State and hence

²⁶ The supporters of the visa regime mainly referred to the *state interest* category, security arguments and fiscal benefits. For those supporters, visas represented an instrument of control and selection of people allowed into a given territory. They admitted, however, that it was not always an ideal instrument. Their understanding was that an administrative decision to grant a visa did not stand for the restriction of the right to free movement, but was an indispensable tool of civilising the traffic of persons along Poland's eastern border. Their opponents rebuffed the latter argument, claiming that in view of the existing condition of border infrastructure, it would in practice be very difficult to freely cross the border into Poland. They believed and still believe that the Polish people have a *sui generis* moral duty to support the process of democracy in the East and that the opportunity of travel and observation of the transition effects as exemplified by Poland is an indispensable instrument of this support. Any rationing of that opportunity will, in their view, slow down the process of democratisation and restrict the rights of a substantial Polish minority in those countries. The debate also provided economic arguments (erosion of trade contacts), social arguments (trade slump depriving the poor border communities of their only source of income), fiscal arguments (combating the grey zone) and political arguments (implementation of the *acquis* as the *sine qua non* of the accession). in: Z. Najder, *Polsko-ukraińskie asymetrie (Polish-Ukrainian Asymmetries)*, Rzeczpospolita, 08.11.2001; M. Mazur-Rafał, *Głos za wprowadzeniem wiz (Voice in Favour of Visa Regime)*, Rzeczpospolita, 18.01.2002; B. Cichocki, *Czas pozbawić sąsiadów złudzeń. W kontaktach ze Wschodem najważniejszy jest interes Polski (Time to Be Blunt to Neighbours. Poland's Interest is Overriding in Contacts with the East)*, Rzeczpospolita, 14.02.2002, J. Boratyński, *Nie odgradzajmy się od sąsiadów ze Wschodu (Let Us Not Build Fences Against Neighbours to the East)* Rzeczpospolita, 07.02.2002.

²⁷ Based on the internal minutes from the sessions.

the lack of experience and tradition in the conduct of a public discourse on that subject. On the other hand, the need to implement the *acquis communautaire* faced the Polish policy stakeholders with a series of unprecedented practical problems that had to be regulated within the Polish law. The new problems had to be explored and remedied with specific solutions over a relatively short time. As time was running short for that debate, so did its substantive content. The successive Polish ruling teams prioritised consensus around the issue of Poland's membership in the EU, which signified an all-embracing approach to Poland's integration with EU structures rather than building consensus over piecemeal issues with the risk of delaying the Polish accession. That is why the Polish debate on migration has not been a subject in itself, but rather a function of the integration process.

1.4. Different categories of migrants in the debate

The following categories for foreigners have been applied in the Polish debate so far:

- 1) *refugees* – treated as a group of foreigners under particular protection, who enjoy the rights specified in the Geneva Convention and New York Protocol, ratified by Poland.
- 2) *repatriates* – considered not so much as foreigners (although they were such in formal terms), but as persons to whom the Polish state bears special responsibility, evident in the drive towards facilitating their return to the homeland and adaptation upon return. Those objectives could be met in part only, due to the dire condition of public finances.
- 3) *illegal immigrants* – The state administration is of the opinion that illegal immigration should be combated effectively not only on the border but also in the interior (hence the extended powers of the Border Guard to control the legality of residence). Some nongovernmental organisations and state institutions (the Ombudsman) have called for a regulatory action toward foreigners who have resided in Poland for a significant period of time and have established permanent links to the country.
- 4) *economic migrants* – The presence of highly qualified migrants and potential investors is favourably viewed in Poland, however this attitude is limited to statements. Economic migrants are required to possess a work permit (with some specified exceptions). The authorities proclaim to fight illegal employment, but the practice is quite widespread, and the performance of certain activities (care for children and the elderly, construction, agriculture) is basically tolerated by the public.

1.5. Immigration and debates on social and economic policies

Immigration has not been discussed in terms of social or economic policy, nor was it perceived as an option within these policies. This is understandable in light of high unemployment among the Poles, whose reduction formed the main objective of both policies. The presence of foreigners in Poland is, at the same time, a relatively new social phenomenon, and constituting just a fraction of the population, the foreigners are not perceived as a burning social issue. Nevertheless, arguments based on social and economic policies appeared in the course of the debate over the necessity and form of introducing a visa requirement for the nationals of Russia, Ukraine and Belarus. A controversy arose over the assessment of the economic effects of Poland's implementation of the Schengen *acquis*. The issues raised centred on the possible weakening of cross-border and bazaar trade, the collapse of the exports to the eastern markets and the drop in revenue from trade-related services, which could eliminate what is often a sole source of income for the residents of the Polish eastern borderlands. Nonetheless, the long-term advantages of this measure were stressed.²⁸

²⁸ W. M. Orłowski, *Konsekwencje ekonomiczne Schengen (Economic Effects of Schengen)*, in: *Polska droga do Schengen. Opinie ekspertów (Polish Road to Schengen)*, op. cit., p. 97 nn.

1.6. Demographic studies and immigration

The current demographic structure of the Polish population and changes in it have been well researched. A case in point is the First Demographic Congress in Poland, convened on the initiative of the Government Population Council, Polish Demographic Society and the Committee of Demographic Sciences of the Polish Academy of Science (PAN). The results of the research presented at the Congress show that the ageing process of Polish society has accelerated. In 1990 the retired made up 18,6% of the population, in 2000 it was 24,4%, and 44 retired persons corresponded to 100 workers in 1990 to reach 62 pensioners per 100 workers in 2000. The forecasts for the period until 2010 predict that the productive-age population will increase at the rate of 170,000 persons annually and will decrease only after 2010²⁹. The average life expectancy increased by 3 years for men (to 69,7 in 2000) and 2.5 years for women (78 years). The 1990s faced an unprecedented demographic regress – women's fertility declined from 2.04 in 1990 to 1.34 in 2000, while the birth rate dropped from 14.3 down to 9.8 per each 1,000 persons³⁰. Poland is also forecast to become a net immigration country by 2006³¹.

This set of data suggests a need to consider importing immigrants into Poland. However, the issue has so far only been discussed in small expert circles³², and due to the sensitive conditions on the labour market it has not become the subject of a political debate. The issue, however, does appear in debate, and the process is likely to be intensified as the results of the national census of 2002 become public.

²⁹ J. Kropiwnicki, *Spoleczno-ekonomiczne konsekwencje starzenia się społeczeństwa (Socio-economic consequences of population ageing)*, in: Z. Strzelecki, A. Ochocki (eds.) *Polska a Europa. Procesy demograficzne u progu XXI w. (Poland and Europe: Demographic Processes at the Turn of the 21st Century)*, vol. 1, Rządowa Rada Ludnościowa, Rządowe Centrum Studiów Strategicznych, Warsaw 2001, p. 19.

³⁰ T. Toczyński, *Statystyka demograficzna w Polsce (Demographic Statistics in Poland)*, in: Z. Strzelecki, A. Ochocki (eds.) *Polska a Europa. Procesy demograficzne u progu XXI w. (Poland and Europe: Demographic Processes at the Turn of the 21st Century)*, op. cit., p. 31.

³¹ *Podstawowe informacje o rozwoju demograficznym Polski (Basic information on the demographic development of Poland)*, Warszawa 1999.

³² Z. Strzelecki, *Polska a Europa. Procesy demograficzne u progu XXI w. (Poland and Europe: Demographic Process at the Turn of the 21st Century)*. Paper of the Congress Committee, in: *Polska a Europa. Procesy demograficzne u progu XXI w. (Poland and Europe: Demographic Processes at the Turn of the 21st Century)*, op. cit., p. 45.

Chapter 2: The stakeholders

2.1. Institutional stakeholders with direct impact on Poland's policy-making

In the perspective of EU membership and the need to harmonise Polish law with the *acquis communautaire*, the European Commission played a weighty role in the Polish immigration policy debate³³. Although the Commission can hardly be bundled into the policy stakeholders category, by monitoring the amendments to the Polish legislation on aliens it had a meaningful impact on how the Polish legislation developed within that scope.

2.1.1. Legislative authority

The Polish Sejm (Parliament) plays a decisive role in shaping Polish legislation on aliens and the parliamentary debates on this subject have made a relevant contribution. Although in Poland's legal system the power to make legislative proposals is vested in the government, a group of MPs, Sejm and Senate committees and a group of citizens, the aliens act – the government-sponsored bill – was the sole initiative to replace the earlier MP-sponsored amendment to the 1963 law. This is evidence of a negligible interest by MPs and political parties in this issue. Until that point in time, the issue had not been at all controversial and perhaps that was why it did not attract the interest of political parties. Amendments to the law on aliens came into being as a necessary precondition for Polish membership in the EU rather than as a product of electoral campaigning or of the will to resolve a pressing issue. It was not the outcome of an election game or the will to resolve a pressing issue, but the exigency of the national preparations for EU membership.

2.1.2. Executive authority

The following structural units of Poland's government administration are in charge of aliens and migration policy:

The Office of the Committee for European Integration (UKIE)

The Office of the Committee for European Integration informed the expert community of the results of negotiations in the area of Justice and Home Affairs. At the same time, it received interministerial (such as the "Integrated Strategy for Border Management") and non-governmental reports (see below in the section on policy centres). Experts of the Office spoke on their own at conferences on the impact of the *acquis* on matters of security and human rights.

Poland's European integration has expanded the field for communication between the governmental and non-governmental institutions. An example of this was the Phare programme of the "Increased Participation of Non-governmental Organizations in the Process of Accession Negotiations and Implementation of the Community Law in Poland". The programme, piloted by the Association for the Forum of Non-governmental Initiatives (FIP) and the Bank of Information on Non-governmental Organisations (KLON/JAWOR)³⁴, found little application in the work on integration or employment of aliens due to limited experience of co-operation between the Ministry of Internal Affairs and Administration and UKIE and the non-governmental organisations in this field. The expansion of the expert

³³ See for more information at: www.ukie.gov.pl

³⁴ The Batory Foundation organised an information meeting (a "triangular table") in October 2000 with the participants including the Negotiating Team for the Polish Membership in the EU, ministries and non-governmental organisations on the negotiation issues in migration and asylum policy and the Schengen Convention.

debate to matters beyond current legal instruments seems necessary for building the foundations for permanent co-operation.

Ministry of Internal Affairs and Administration (MSWiA)

Authoring a succession of bills on aliens, the Ministry has played the main role in setting in place the legal foundations for this policy. Because the speed of Polish legal harmonisation with the *acquis* was important, most bills were partial compilations of solutions adopted by other states that Poland regarded as more experienced in this matter. The tangible target of introducing the Union standards on the Polish eastern border in the accession period gave an impetus to work out a systemic approach to the issue of border management and a detailed division of competence among the executive authorities. The Minister of Internal Affairs and Administration has since October 1998 presided over the Interministerial Team for Managing the State Border, which gathered representatives from 17 state institutions in the rank of undersecretary of state. Regular sessions, at which other state organs were represented (e.g. provincial governors), produced a detailed plan of border management for the period until accession and guidelines of the strategy until 2010. The Department of European Integration and International Cooperation in June 2000 issued the national "Strategy of Integrated Border Management", which became a starting point for the discussion on the co-operation of the State with other institutions³⁵.

President of the Office for Repatriation and Aliens (URiC)³⁶

The Office was established under the amended Act on Aliens on 11 April 2001 r.³⁷ The President of the Office is responsible for a comprehensive array of matters related to foreign nationals, taking over from the Department for Migration and Asylum³⁸ of the MSWiA the responsibility for issues of citizenship, repatriation, administrative proceedings in granting the refugee status and legitimising aliens' stay/residence on the Polish territory. The President's duties also include the co-ordination of the state administration's activities in the field of repatriation and aliens, and the conceptualisation of state policy in this field.³⁹ In November 2002, the Office launched work on a government document designed to specify the assumptions of Poland's migration policy. Contributions have been invited from experts of other ministries and offices, research institutes, academia and non-governmental organisations.

Ministry of Foreign Affairs (MSZ) and consular service

The Consular Department of the Ministry of Foreign Affairs⁴⁰ oversees the Polish consular and visa policy, which includes the protection of the rights and interests of Polish citizens abroad and the processing of foreigners' visa applications. The Department is taking on additional responsibilities as Poland adopts the Directive No. 574/99 of the Council of the European Communities, which requires introducing visas for the citizens of 15 post-communist countries. This involves the construction of new consular offices and the modernisation of the existing ones in those countries⁴¹.

³⁵ www.mswia.gov.pl

³⁶ www.uric.gov.pl

³⁷ Act of 11 April 2001 amending the Act on Aliens and some other laws, (Dz. U. – Official Journal no 127, item 1400).

³⁸ Early institutional developments in Polish asylum policy can be found in: M. Szonert, *Rok 1990: początki opieki nad uchodźcami*, (Year 1990: the beginnings of the assistance to refugees), op. cit., pp. 34-64.

³⁹ Art. 68c of the Act of 11 April 2001 amending the Act on Aliens and some other laws, op. cit. See also www.mswia.gov.pl/cudzo.html

⁴⁰ www.msz.gov.pl

⁴¹ The list of the new consular offices and other tasks of the Ministry in consular and visa policy can be found on pp. 29-30 and 60-63 of the *Strategy of Integrated Border Management*, Department of European Integration and International Cooperation of MSWiA, Warsaw 2000.

Ministry of Labour and Social Policy (MPiPS) and National Employment Office (KUP)

MPiPS⁴² is the main body of authority responsible for issues of employment, including the employment of aliens. However, the latter is not among its priorities. The Ministry participates in drafting the legal framework for aliens' employment in Poland and supervises its implementation. Important aspects of this monitoring work by the Ministry are the interpretation of legal provisions for the consistent application of, and the proposing of amendments for, the secondary legislation (regulations) issued by the Minister of Economy, Labour and Social Policy⁴³. The Ministry also assists aliens who for various reasons come to social assistance centres. They include refugees, who benefit from annual integration programmes, and other aliens who cannot cope with Polish reality⁴⁴.

The National Employment Office, which was in existence until 1 April 2002, used to execute the regulations on aliens' employment in Poland. Its position on income-motivated immigration consistently stressed the need to combat illegal employment⁴⁵. However, the studies found in its journal "Rynek Pracy" ("Labour Market")⁴⁶ indicate that the aliens legally employed in Poland do not have any fundamental impact on the Polish labour market⁴⁷. The articles argue against fears of labour dumping by foreign workers from the East or West, demonstrating that foreigners have found labour market niches in Poland, with various nationalities specialising in different job segments⁴⁸.

Provincial governors' offices and local governments

The Act on Aliens of 1997 centralised the decision-making on visa applications, transferring the process from the level of the governor's office to that of the minister. The administrative reform of the country in 1999 at the same time decentralised the residence registration (including that of aliens), welfare provision, programmes for combating unemployment as well as health care and education. Provincial governors are authorised, *inter alia*, to grant or deny the following documents: a fixed-time residence visa (art. 79 par. 1), a settlement visa for employment purposes to a foreign national who had been granted an extension on the permit for employment or taking up another employment (art. 79 par. 2), a fixed-time residence permit or settlement permit. Governors may also issue or replace residence cards (art. 82 par. 2)⁴⁹.

⁴² Since 1 January 2003 Ministry of Economy, Labour and Social Policy.

⁴³ *Podstawowe kierunki działania Ministra Pracy i Polityki Społecznej w 2003 r. (Basic action lines by the Minister of Labour and Social Policy)* www.mpips.gov.pl

⁴⁴ *Kwestia bezdomności w programie działania Ministerstwa Pracy i Polityki Społecznej w latach 1994 – 2001, (Homelessness in MPiPS action programme 1994-2001 – preliminary report)*, www.mpips.gov.pl

⁴⁵ M. Duszczyk, *Zatrudnienie obcokrajowców w Polsce (Aliens' employment in Poland)*, op. cit.

⁴⁶ R. Czyszkievicz, *Społeczno-ekonomiczne aspekty zatrudnienia obcokrajowców w Polsce (Socio-economic aspects of aliens' employment in Poland)*, Rynek Pracy 1996, no 10, pp. 55-68; M. Duszczyk, *Czy zatrudnienie obcokrajowców w Polsce będzie narastać? Wywiad z wiceprezesem KUP Robertem Chomą (Will the aliens' employment in Poland grow? Interview with KUP President Robert Choma)*, Rynek Pracy 1998, no 12, pp. 9-13; B. Sosińska, *Informacja prasowa nt. umowy ze Strażą Graniczną (Press release on the agreement with the Border Guard)*, Rynek Pracy 1998, no 9 p. 111; M. Duszczyk, *Zatrudnienie obcokrajowców w Polsce – dylematy, przed którymi stoimy (Aliens' employment in Poland – dilemmas we are facing)*, Rynek Pracy" 2001, no 10.

⁴⁷ „(...) that the aliens would pose any threat to and compete with local labour is not an issue. But neither is the claim that they would have a meaningful impact on the development of local labour markets (...)”, R. Czyszkievicz, *Społeczno-ekonomiczne aspekty zatrudnienia obcokrajowców w Polsce (Socio-economic aspects of aliens' employment in Poland)*, Rynek Pracy 1996, no 10, p. 67.

⁴⁸ „(...) Foreign workers (...) take up jobs that the Poles are not willing to take (...). We need to realise that short of seasonal employment of foreign labourers we could face problems in, for instance, harvesting some fruit crops at the right time...”, M. Duszczyk, *Czy zatrudnienie obcokrajowców w Polsce będzie narastać (Will the aliens' employment in Poland grow?)*, op. cit., p.11.

⁴⁹ Articles 79 and 82 of the Act of 11 April 2001 on the amendments to the act on aliens and to some other acts, *op.cit.*

Non-governmental organisations point out the obstacles to the effective integration of aliens in the course of work with the provincial administration and local governments. Insufficient budget outlays resulting in the indebtedness of the local governments combined with the unclear division of tasks and incoherent regional development plans place limits on the capacity for long-term integration. The degree to which barriers to comprehensive immigration policy are still in place is shown by the slow progress in the repatriation of the ethnic Poles from Central Asia, Siberia and the Caucasus, which requires coordination and co-financing from the central authorities and local governments.

Border Guard (SG)

Of key importance for the thematic scope of this project are the SG powers in combating illegal immigration and controlling the legality of employment. SG tasks include border security, organisation and exercise of the border traffic controls, and issue of permits for crossing the border (including visas)⁵⁰. The SG does not only implement in practice the State policy on international migration flows, but also participates in shaping that policy. The SG prepares annual reports, training materials, research publications and statistical tables, all of which reflect the situation at the State border⁵¹. Furthermore, it arranges for seminars and conferences at the Border Guard Training Centre. A turning point regarding SG openness was marked by the decision to allow monitoring of the border checkpoints by the representatives of the Helsinki Foundation of Human Rights⁵².

2.1.3. Appeal agencies

Supreme Administrative Court (NSA), Council on Refugees and Commissioner for Civil Rights (RPO, Ombudsman)

Since Poland's accession to the Geneva Convention on the Status of Refugees and subsequent accession to the European human rights regime, appeals in matters related to foreigners, and asylum-seekers in particular, have shaped the national legislation in the field. While the Council on Refugees has been in operation since January 1999 as an independent second-instance body issuing decisions on refugee status, two other institutions have worked throughout the decade on a vast array of matters related to aliens. The Supreme Administrative Council (NSA) has since 1992 issued a number of judgements in cases involving aliens, which made an essential contribution to the development of the Polish case law in this respect⁵³.

The Commissioner for Civil Rights (RPO, Ombudsman), on the other hand, is the institution that has had the strongest bearing on the amendments of the law applicable to labour-motivated migration, and its work will here serve as an illustration of the appeals procedure. Under the administrative procedure code, aliens can turn to the RPO with complaints against the State administration. The Ombudsman intervenes in response to such complaints or can appeal against administrative decisions to the NSA or the Constitutional Court. Interventions by the Ombudsman have mostly concerned aliens applying for jobs, regulation of their

⁵⁰ Art. 1 p. 2 of the Act on the Border Guard of 12 October 1990 (Dz. U. Official Journal no. 78, item. 642 with subsequent amendments).

⁵¹ J. Białocerkiewicz (ed.), *Wschodnia granica RP zewnętrzną granicą Unii Europejskiej, materiały z konferencji (Poland's eastern border as the external border of the EU)*, Border Guard Training Centre, Kętrzyn 2001.

⁵² H. Rubinstein et al., *Raport z monitoringu granicznych placówek kontrolnych Straży Granicznej w zakresie realizacji prawa do ubiegania się o status uchodźcy w Rzeczypospolitej Polskiej* (Report on the monitoring of the border control facilities of the Border Guards in view of the execution of the right to asylum in the Republic of Poland), Helsińska Fundacja Praw Człowieka 1998.

⁵³ The full list of rulings with the analysis can be found in: J. Jagielski (ed.), *Status obywatela i cudzoziemca w orzecznictwie (Status of Polish and Foreign Nationals in Court Rulings)*, Dom Wydawniczy ABC, Warszawa 2001.

status, long-term residence or residence permits, healthcare guarantees and access to education. An important set of problems were complaints by repatriates or refugees about the status conferral process, the economic situation and integration, problems encountered at the eastern border (corruption among SG officials, abuse of competences, arbitrariness) and deportation issues. The most publicised cases, reported by the media and now part of the public discourse, have concerned mainly long-term residence-motivated immigration. Frequent occurrences were refusals by MSWiA and the Voivod (provincial governor) of long-term residence permits for aliens whose stay in Poland became illegal because of protracted bureaucratic procedures. This is the most frequent problem encountered by foreigners who apply for a long-term residence permit and who cannot foresee that the procedures may drag on for a such a long time as to make their provisional documents expire in the intervening period and effectively prevent them from applying for new documents⁵⁴.

No doubt, questions related to the rights of families and children are the most sensitive. The Ombudsman frequently invokes provisions of the Polish Constitution and the Convention on the Rights of the Child in his appeals to the NSA against decisions to deny long-term residence permits to aliens who have set up families and have been staying in Poland for many years. The refusal of such a permit is tantamount to the order to exit the Polish territory, which directly injures the interests of an alien's nearest family. There have been a few dozen such cases so far. The problem of mixed marriages and their defence by the Ombudsman have surfaced many times in different contexts, making eager headlines in the press⁵⁵. Following such multiple remonstrations by the Ombudsman, the government eventually agreed to consider more closely an amendment of the Aliens Act from the angle of family rights. However, after the enactment of that amendment, the Ombudsman again appealed to the Constitutional Court against the provision on extending the foreign spouses' required statutory period of stay in Poland to up to 5 years before they can apply for a residence card. In this case, the Ombudsman cited another provision referring to family reunification, where the foreign spouse's statutory wait for the residence card is only three years. The Ombudsman took action to remove this inconsistency of Article 19 of the Aliens Act with Articles 2 and 32 of the Polish Constitution.

In March 2000, the Ombudsman for the first time appealed to the Supreme Medical Board in defence of the right to exercise the medical profession by a foreign physician whom the District Medical Board denied that right⁵⁶. Ever since, the Ombudsman has made many other similar appeals to the Supreme Medical Chamber. These interventions are mainly on behalf of aliens who have been staying in Poland for several years and who have earned their medical diplomas in Poland. The Ombudsman's interventions have resulted in the amendment of the Act on Medical Profession⁵⁷.

The Ombudsman has been the only stakeholder who has made a public plea for regulating the legal treatment of illegal immigrants. He has intervened in such cases with the MSWiA,

⁵⁴ Example: RPO intervention in the case of a Peruvian citizen married to a Polish woman, who was ordered to leave Poland for the time of the prolonged procedure of examining his application for long-term residence permit; 27 December 1999, *Report on Interventions by the Commissioner for Civil Rights in 1999*.

⁵⁵ Example: *Odmowa zezwolenia na stały pobyt (Refusal of the long-term residence permit)*, Rzeczpospolita 28.12.1999; *Rodziny drugiej kategorii (Second-rate Families)*, Rzeczpospolita, 11.02.2000.

⁵⁶ The case concerned a national of Tanzania, who graduated from the Medical Academy in Warsaw. The District medical board refused to register him, justifying that refusal by what it called a difficult situation on the medical labour market where there was not yet room for foreigners. The RPO appealed against that argumentation as a manifestation of discrimination and racism. The refusal was groundless, because under the Aliens Act, the Tanzanian national enjoyed the same rights as any Polish national would.

⁵⁷ Act on the medical profession of 5 December 1996 (Dz. U. no 28, item. 152).

the Sejm and the Sejm Committee for Internal Affairs and Administration⁵⁸. In his view, a fundamental gap in the Polish law is the absence of a possibility to legitimise the status of persons who have become unintentionally “illegal”. The most frequent causes of such “illegality” are the loss of a passport, lack of legitimacy of prolonged stays in Poland by persons who have set up families in Poland, and denial of refugee status when persons cannot be sent back to their countries of origin because of the temporary protection standard or for humanitarian reasons (for example persons fleeing war-engulfed areas who cannot prove that they have been victims of individual repressions). All of them work illegally in Poland and are not entitled to any social benefits. The Ombudsman argues that such situations are in breach of the constitutional respect for dignity of the individual. Unfortunately, regulatory measures vis-à-vis this category of “illegal” aliens have not been introduced in Poland so far.

In 2000, the Ombudsman also appealed against a regulation by the Minister of National Education on the procedure of enrolment in schools and public establishments of non-Polish nationals and the rules of payment by such persons for education and care in public schools and other establishments. The demand that non-Polish nationals pay for the education of their children in kindergartens, elementary and post-elementary schools (gymnasiums) was rejected by the Ombudsman as violating the Convention on the Rights of the Child (article 28. 1 a) and the Polish Constitution. Consequently, the Ministry revoked that provision through a regulation that issued in 2001⁵⁹.

2.2. International, non-governmental and other organisations as stakeholders with direct impact on Poland’s immigration policy-making⁶⁰

Due to the crucial role of the United Nations High Commissioner for Refugees Office as a focal point for non-governmental efforts in the field of assistance to foreigners, human rights and in particular the procedure of granting refugee status and refugee integration represented a major axis of the debate conducted by Polish non-governmental organisations. Some of these organisations have played a relevant role in the making of the Polish legislation on the aliens, by enriching the process with the essential human rights dimension. But most of them are not primarily concerned with labour migration, which makes an assessment of their participation in the political debate very difficult. Agencies such as the Institute of Public Affairs (ISP), the Center for International Relations (CSM) and the Stefan Batory Foundation, with the help of the Institute of Labour and Welfare (IPISS), made a bid to create a framework for a new view on immigration. They did this by organising conferences, seminars, and discussion meetings, through research and media contributions and by having a direct hand in the work on some draft laws. In this way they have all indirectly influenced the present shape of the Polish State policy in this respect. Now Poland has begun work on its own, comprehensive migration policy. On this occasion, URiC has appointed an informal body of experts. In appreciation of the contributions by non-governmental organisations so far, URiC has invited some of them to contribute to the common work on the future shape of Poland’s migration policy⁶¹

⁵⁸ “Report on Interventions by the Commissioner for Civil Rights in 2000”, p. 1.

⁵⁹ Regulation by the Minister of National Education of 4 October 2001 on enrolment of non-Polish nationals in the public kindergartens, schools, teacher training centres and other public establishments (Dz. U. No 68 item. 138 and No 138 item 1562).

⁶⁰ It should be noted that the methodological assumptions do not allow for a broader discussion of the role of international and nongovernmental organisations in human rights protection, and in asylum rights questions in particular.

⁶¹ Experts from the Institute of Public Affairs and the Center for International Relations are among those invited to contribute to the assumptions of the future Polish migration policy.

2.2.1. International organisations

Representative of the United Nations High Commissioner for Refugees (UNHCR)⁶²

The Office of the United Nations High Commissioner for Refugees operates on the basis of an agreement with the Polish government, concluded upon Poland's ratification of the Geneva Convention on the Status of Refugees of 1951 on September 27, 1991. UNHCR was the main consultant in the work on the Aliens Act within the chapter relating to refugees and asylum and submitted legal comments which were discussed during parliamentary committee work. Like the Helsinki Foundation, UNHCR does not deal with labour migration, but brings an essential human rights focus into the debate. The Representative's Office supports a number of non-governmental initiatives (e.g. Refugee Day, legal clinics) and monitors the implementation of the Geneva Convention by receiving an annual report from the President of the Office for Repatriation and Foreigners (URiC). Thanks to its special status, UNHCR holds regular meetings of non-governmental organisations, which allow the discussion of both operational and logistical matters as well as of a broader vision of national immigration policy.

International Organisation for Migration (IOM)

The regional IOM office⁶³ entered into co-operation with the Polish government in the mid-1990s within its mandate, and in particular assisted the voluntary return of illegal migrants. IOM periodically undertakes a review of candidate countries' progress in harmonisation of their legislation with the *acquis* in the field of Justice and Home Affairs and drafts migration-flow analyses in the region of Central Europe.⁶⁴ A local IOM office was opened in Warsaw in 2002. Its research section contributed to the latest comparative study of asylum and migration legislation in the candidate countries⁶⁵.

2.2.2. Non-governmental organisations providing assistance to foreigners

a. Legal advice and integration assistance

Helsinki Foundation for Human Rights⁶⁶ ***and University Legal Clinics***

Although the Foundation's main focus is human rights and above all refugee rights, its activity has had a significant impact on the present state of Poland's legislation concerning aliens' rights. The Foundation was invited to contribute to the drafting of the Aliens Act and the work by the Sejm subcommittees. The Sejm also asked it to prepare two lengthy commentaries to the Aliens Act. The Foundation experts draft appeals to NSA and to the Council on Refugees as part of its programme of legal assistance to foreigners. It holds not only the mandate of the chief legal partner of UNHCR, but also issues expert opinions and reports on legal issues indirectly related to aliens' residence, such as family reunification, migrant workers' rights or personal data protection. Thus, the Foundation has had a very tangible bearing on the final shape of the law. Secondly, it has added the human rights dimension to the Polish debate thus sensitising the remaining stakeholders of the policy on aliens to this aspect.

Two legal clinics under the auspices of the Helsinki Foundation for Human Rights and UNHCR have been in operation at the Departments of Law of Warsaw and Jagiellonian

⁶² www.unhcr.pl

⁶³ www.iomvienna.at

⁶⁴ Ed. Frank Laczko, *Migration in Central and Eastern Europe: 1999 Review*, Vienna 1999 (updated 2002).

⁶⁵ *Migration Acquis Update 2002*, IOM Vienna 2003.

⁶⁶ www.hfhrpol.waw.pl

Universities since 1997⁶⁷. There, students of law and Caritas staff members provide legal advice to foreigners, among other groups. The clinic volunteers not only provide information on legal and administrative procedures, but also help formulate appeals to NSA and the Council for Refugees. Young lawyers can also represent foreigners in state institutions and social assistance centres.

Caritas Poland⁶⁸

Information Bureaux for Migrants and Refugees at regional branches of Caritas Poland provide limited material and financial assistance to aliens regardless of their status, and in particular to recognized refugees, asylum-seekers or repatriates. The Bureaux assist foreigners while crossing the border (by monitoring the crossing points with UNHCR), then by directing them to university legal clinics, and finally through psychological and social care in the process of refugee integration. Caritas works closely with the Helsinki Foundation for Human Rights, social assistance centres and provincial governors' offices. The Caritas Bureau of National Coordinator for Migrants and Refugees in Lublin raises in its publications legal issues of access to the asylum procedure as well as legal and practical questions regarding the integration of various groups of foreigners. As a key institution which offers a comprehensive integration of refugees, the Bureau points out the barriers to the recognised refugees' access to the labour market and self-employment. The organisation also runs seminars with Caritas Germany, whose agenda often encompasses wider aspects of the foreigners' position on the Polish labour market⁶⁹.

b. Material assistance

Polish Humanitarian Action (PAH) and Polish Red Cross (PCK)

Polish Humanitarian Action⁷⁰ concentrates its efforts on material assistance to refugees and other persons in need. It has staged several successful media events, which sensitise the public opinion to the existence of sources of forced migration (e.g. convoys to Chechnya) or inspire tolerance for the refugees residing in Poland (Refugee Day organised with UNHCR). PAH issues periodical information materials for refugees, which clarify the legal procedures and provide basic integration advice, useful for other foreigners as well. The Polish Red Cross⁷¹ has provided day-to-day aid to foreigners as part of its statutory tasks since 1984. Aside from giving the material assistance, PCK represents foreigners in contacts with state organs, for instance throughout the procedure for asylum.

2.2.3. Non-governmental research institutions

Center for International Relations (CSM)

CSM⁷² is an independent research entity, whose main interest areas are: Polish foreign policy, European integration and security policy. CSM also explores international issues that have a relevant impact on Polish foreign policy. Migratory flows are among them. The focus of the CSM Migration Programme and Eastern Programme is as follows:

⁶⁷ The exact titles run as follows: Poradnia Prawna Uniwersytetu Jagiellońskiego Sekcja Praw Człowieka (Legal Advisory Office of the Jagiellonian University, Human Rights Section) and Klinika Prawa przy Wydziale Prawa i Administracji Uniwersytetu Warszawskiego (Legal Clinic at the Department of Law and Administration of Warsaw University). Information on activities of the clinics in: the UNHCR monthly *Z Obcej Ziemi*, December 1999, pp. 12-13, May 2000, p. 19, www.unhcr.pl

⁶⁸ www.caritas.org.pl

⁶⁹ Here are some topics of the conferences organised in association with Caritas Germany: *Assistance to foreigners and refugees in the context of European Union expansion* (Görlitz, May 2001, Berlin, December 2001); *Analysis of the political, social and economic implications of the Schengen border for the present and future EU border regions with a view to a common approach to migration policy*.

⁷⁰ www.pah.ngo.pl

⁷¹ www.pck.org.pl

⁷² www.csm.org.pl

- Poland's migration policy,⁷³
- the role of nongovernmental organisations in Poland's migration policy-making process,
- the EU's common migration policy as developed at the Community level and the related issue of delimitation of competences between the nation states and the Community,⁷⁴
 - Poland's future role as an EU frontier country – Poland's preparations for this role and the consequences of implementing the Schengen *acquis*.⁷⁵
 - Poland's eastern policy and Poland's role in the process of creation of the EU's Eastern Dimension.⁷⁶

CSM participates in the political debate by organising conferences, seminars and discussion meetings, bringing out reports and publications and contributing to the Polish press and other mass media. A conference organised in June 2002, for instance, brought together the leading researchers and policy-makers from Germany, Austria, Italy, Poland and Hungary, while another meeting in November 2002 allowed the Polish Ministry of Interior to present its views on the broader security implications of the new border regime.⁷⁷

Institute of Public Affairs (ISP)

The Migration and Eastern Policy Programme within the ISP⁷⁸ framework is focused on issues of Poland's relations with its neighbours and the eastern policy of the European Union. Part of the programme are research projects and analyses concerning the free movement of labour and the globalisation of labour markets, consequences of the Schengen *acquis* for the countries of Central-Eastern Europe (CEE), and return migration and repatriations in CEE. The ISP has published a report in association with the Stefan Batory Foundation and the Social Studies Institute of the University of Warsaw, which reflects the positions that these stakeholders have presented in the debate on the management of economic-motivated immigration. The report is entitled "Common challenges – the members and the candidates facing the EU's future migration policy"⁷⁹ and presents the latest challenges facing Polish migration policy in view of a changing demographic situation (rapid decline in fertility and the ageing of Polish society). It has widely echoed in the mass media. It seems that the main theses of the report will have a bearing on the shape of Poland's future immigration policy, at least considering the fact that some of the experts involved in writing it have been invited to contribute to the government document "Assumptions for Poland's Immigration Policy", which is to be ready by March 2004. The Institute's publications related to the matter have concentrated on several themes:

-- current trends in immigration and return migration into Poland⁸⁰,

⁷³ See M. Mazur-Rafał, *Głos za wprowadzeniem wiz (Voice in Favour of the Visa Regime)*, Rzeczpospolita, 18.01.2002, *Koniunktura dla imigracji (An Immigration Boom)*, Unia & Polska, 1-15.08.2002, *Granice pod kontrolą (Borders under Control)*, Rzeczpospolita, 09.08.2002, *Kłopoty z gośćmi (Trouble with Visitors)*, Unia & Polska, 12.09.2002, *Goście pilnie potrzebni (Visitors Urgently Wanted)*, Unia & Polska, 05.12.2002.

⁷⁴ See: T. Paszewski (ed.), *Podział kompetencji w rozszerzonej Unii Europejskiej (Division of Competences in the Enlarged EU)*, CSM 2002 and the presentation on "Internal security as a case study for the division of competences" – as part of the conference entitled "Division of competences in the European Union. Who wields power in the EU", 27.09.2002, Warsaw.

⁷⁵ See: T. Paszewski (ed.), *Polska granica wschodnia granicą Unii Europejskiej (Poland's Eastern Border as the EU's External Border)*, CSM report 7/2000.

⁷⁶ See: P. Kowal, M. Cichocki (eds), *Wymiar wschodni UE – szansa czy idée fixe polskiej polityki (The EU's Eastern Dimension – an Opportunity or Idée Fixe of Polish Policy)*, CSM 2002.

⁷⁷ "The European Union's common immigration policy? Experience of the EU's present and future border countries: Austria, Germany, Italy, Hungary and Poland" in association with the Friedrich Ebert Foundation in Poland, 24 and 25.05.2002, Jachranka; "Poland as a future frontier country of the EU. New opportunities and new challenges", meeting with the MSWiA's undersecretary of state, Zenon Kosiniak-Kamysz, 12.11.2002, Warsaw.

⁷⁸ www.isp.org.pl

⁷⁹ www.batory.org.pl/ftp/program/europejski

⁸⁰ See the following works by K. Iglicka: *Trendy w migracjach do Polski po 1989 roku w świetle rozszerzenia Unii Europejskiej*, w: *Polska droga do Schengen. Opinie ekspertów (Post-1989 Trends in*

- changes on the national labour market at the time of accession⁸¹,
- policy implications of the introduction of the Schengen acquis on the new borderlands and national policies of both Poland and other Central and East European states⁸².

The Stefan Batory Foundation

One of the aims of the Europe Programme implemented by the Stefan Batory Foundation⁸³ was to animate the public debate on the future of the European Union, Poland's membership and the relations of the enlarged Union towards its eastern neighbours. Proceeding from the assumption that nongovernmental organisations can play an essential role in that debate, the Foundation prepared within its programme a series of reports *On Europe's Future*. Two reports in the series dealt with the issues posed by the EU's eastern borders, EU visa and migration policies.⁸⁴

2.2.4. Governmental research institutions

The Government Strategic Studies Centre (RCSS)

RCSS is a state entity accountable to the Prime Minister and pursues projects associated with the policy business of the Council of Ministers. The projects are about strategic programming and forecasts of economic and social development⁸⁵. The important fact from the point of view of this study is that RCSS deals with population issues as well. For example, it organised Poland's 1st Population Congress in 2001 and 2002⁸⁶. The publications brought out in connection with the numerous conferences and seminars held as part of the Congress depict Poland's current population problems. They include some studies on migration issues and the findings of a survey into the economic and social consequences of the aging of Poland's population. The survey and related interpretation suggest that a

Migrations into Poland in the Light of Enlargement of the European Union, in: *The Polish Road to Schengen. Opinions by experts*, ISP, 2001, Warszawa; *Migracje zagraniczne Polaków w drugiej połowie XX wieku*, w: *Swobodny przepływ pracowników w kontekście wejścia Polski do Unii Europejskiej* (Poles' Foreign Migrations in the Latter Half of the 20th Century, in: *Free Movement of Labour in the Context of Poland's Accession to the European Union*), Prime Minister's Chancellery, UKIE, 2001, www.negocjacje.gov.pl (in Polish and German); *Migracje powrotne Polaków. Powroty sukcesu czy rozczarowania* (Return Migrations by Polish People. Returns of Success or Disappointment), ISP, 2002.

⁸¹ K. Iglicka (in print – expert study commissioned by UKIE), *Wpływ Stowarzyszenia i Integracji z Unią Europejską na polski rynek pracy* (Impact of the Association and Integration with the European Union on the Polish Labour Market), IPISS, 2003. K. Iglicka (ed.), *Do we Really Need Immigrants. Consequences of Migratory Flows for Polish and Ukrainian Labour Markets* (in preparation).

⁸² J. Kurczewska, H. Bojar, *Konsekwencje wprowadzenia układu z Schengen – wyniki badań społeczności pogranicza wschodniego* (*Consequences of Implementation of the Schengen Agreement – Findings of an Opinion Survey in the Eastern Borderland*), ISP, 2002 (in Polish and English); K. Biernat, K. Gmaj, M. Wokacz, *Nie tylko wizy. Obwód kalininradzki a rozszerzenie UE* (*Not only the Visas. The Kaliningrad District and the EU Enlargement*), ISP (in print); P. Kaźmierkiewicz, *Impact of the Expansion of Schengen Acquis on the National Policies and Local Communities of Nine Central and East European Countries*, ISP (in preparation).

⁸³ www.batory.org.pl

⁸⁴ *Uchylone drzwi: wschodnia granica rozszerzonej Unii Europejskiej* (*The Half-Open Door: the Eastern Border of the Enlarged European Union*), report no 2 of the *On Europe's Future* series, 2001. *Wspólne wyzwania – członkowie i kandydaci wobec przyszłej polityki migracyjnej UE* (*Common Challenges – the Members and the Candidates vis-à-vis the EU's Future Migration Policy*), report no 5 of the *On Europe's Future* series, 2001. To be found at: www.batory.org.pl/ftp/program/europejski. See also the section on the Institute of Public Affairs (ISP).

⁸⁵ www.rcss.gov.pl

⁸⁶ The Congress was held from September 2001 to October 2002, www.rcss.gov.pl/KONGRES/harmon.htm

planned migration could provide a solution for the demographic problems ahead in Poland⁸⁷. Information on this subject was communicated to the media, but failed to elicit a wider response and appears to have had no major impact on the official migration policy course so far.

2.3 Major academic centres involved in the debate⁸⁸

Academic analyses have not met with a meaningful response by state institutions so far, which may result from the different emphasis that the papers and analyses of academia place with regard to international migration issues. Research approaches are not focused on the aspect of “protection against” aliens (which has occupied the state authorities until the present time), but rather on the causes and consequences of the inflow of aliens into Poland after 1989 as well as on various aspects of integration. This is evidenced by numerous analytical studies made by scholars from the Warsaw University on the issues of legal migration into Poland in light of the changing situation on labour markets and the so-called demographic transition⁸⁹. The studies make a clear distinction between terms such as shuttle and illegal migration or migration with unregulated legal status when they refer to migrants from the post-Soviet countries, or high-skilled labour migrating from the EU and North America in connection with foreign direct investments in Poland.

Institute of Labour and Welfare (IPiSS)

IPiSS⁹⁰ investigates the labour market in Poland. Its participation in the political debate mostly takes the form of scientific research contributions. The Institute publishes journal “Polityka Społeczna” (Social Policy), of which one issue was a monograph on migration⁹¹. In it, aliens’ employment in Poland was reviewed in the context of surveys focused on quantitative aspects (stratification of the Polish labour market)⁹², legal considerations (mainly the job situation of physicians) and illegal migrations⁹³. IPiSS experts are invited to consult various ministries and contribute to the scientific life of the academia. Their research-based expertise is an important source of knowledge for the Polish migration policy makers⁹⁴. IPiSS holds a distinct position on the future policy of aliens’ employment in Poland. It favours a greater flexibility and is opposed to the walling in of the labour market. The greater flexibility should consist in the pursuit of a selective and quota-based policy towards labour migrants, while simultaneously fighting against illegal immigration.

⁸⁷ L. Frąckiewicz (red.), *Polska a Europa. Procesy demograficzne u progu XXI wieku. Proces starzenia się ludności Polski i jego społeczne konsekwencje Poland and Europe. Demographic processes at the dawning of the 21st century. The ageing of the Polish population and its social consequences*, PTPS, Katowice 2002.

⁸⁸ It must be noted that only those institutions which have covered (to a larger or smaller extent) the field of managing legal migration, are included here. The section does not include all the research institutes studying migration flows.

⁸⁹ K. Iglicka, *Ethnic Division on Emerging Foreign Labour Markets in Poland*, *Europe-Asia Studies*, vol. 52, nr 7, 2000 or also cf. K. Iglicka, *Labour Markets and Migration: A Polish Perspective*, w: N. Fabry i S. Zeghni (eds.), *Transition in Asia and Eastern and Central Europe. A Closed Door – Two Open Windows?*, Nova Science Publishers, N.Y. 2001.

⁹⁰ www.ipiss.com.pl

⁹¹ vide: “Polityka Społeczna” 2000, no. 5/6.

⁹² *Migracje zarobkowe we współczesnej Polsce (Labour Migrations in Present-day Poland)*, “Polityka Społeczna” 2000, no 5-6.

⁹³ See also: *Zajęcia zarobkowe cudzoziemców w Polsce z uwzględnieniem zatrudnienia w szarej strefie (Income-earning Occupations by Aliens in Poland, including Jobs within the Grey Zone)*, 1998, unpublished.

⁹⁴ E.g. *O potrzebie określenia polityki państwa w obszarze migracji (On the Need to Define the State Policy on Migration)*, 2002, Memorandum by the Forecasts Committee 2002 Plus (PAN).

ISS UW Centre of Migration Studies (OBM)

The Centre of Migration Studies is a unit of the Institute of Social Studies at Warsaw University. Established in 1993, it comprises an interdisciplinary team of over 20 researchers working on various aspects of migration flows. The publishing series of OBM ISS UW Migration Papers on the legal migrations into Poland has so far covered the broadest scope of issues, including:

- statistics and analyses of migration flows in Poland⁹⁵,
- public opinion attitudes towards immigrants and return migrants⁹⁶,
- emerging foreign labour market in Poland⁹⁷,
- national migration policy⁹⁸.

Institutes of Geography and History, Polish Academy of Sciences

Established in 1953, the Section of Urban Geography and Population is located at the Institute of Geography and Spatial Economy, carrying out research on spatial structure of cities and its transformation, migration (including modelling and forecasting)⁹⁹. The Institute of History, in turn, organises conferences on foreign migration in a historical perspective and publishes yearbooks in the series "Migracje i Społeczeństwo" (Migrations and Society)¹⁰⁰.

Jagiellonian University of Kraków

The Institute of Sociology conducts research projects on emigration from Poland and the sociological aspects of decisions to migrate as well as on the integration of Polish immigrants worldwide¹⁰¹. The Institute of Research on Polish Diaspora and Ethnic Relations, headed by

⁹⁵ K. Głębicka, E. Kępińska, P. Koryś, B. Sakson, *Imigracja do Polski w świetle urzędowych statystyk* (Immigration into Poland in the Light of Official Statistics), Working Papers, Serie Migracyjne, no 5, ISS, Warszawa 1997; K. Iglicka, *Migration Movements from and into Poland in the Light of the East-West European Migration*, Working Papers, Serie Migracyjne, no 33, ISS, Warszawa 2000; M. Okólski, *Statystyka imigracji w Polsce. Warunki poprawności, ocena stanu obecnego, propozycje nowych rozwiązań* (Statistics on Immigration in Poland. Prerequisites of Normalcy, Evaluation of the Present Situation, Proposals for New Solutions), Working Papers, Serie Migracyjne, no 2, ISS, Warszawa 1997; M. Okólski, *Recent Trends in International Migration – Poland 1997-2001*, Working Papers, Serie Migracyjne, no 16, 19, 28, 32, 39, 43, ISS, Warszawa 1997-2001; M. Okólski, *Poland's Migration: Growing Diversity of Flows and People*, Working Papers, Serie Migracyjne, no 29, ISS, Warszawa 1999.

⁹⁶ K. Heffner, T. Sołdra-Gwiżdż, *Migracje powrotne na Górną Śląsk z socjologicznej perspektywy* (Return Migrations to Upper Silesia from a Sociological Perspective), Working Papers, Serie Migracyjne, no 9, ISS, Warszawa 1997. K. Iglicka, E. Jaźwińska, E. Kępińska, P. Koryś, *Imigranci w Polsce w świetle badania sondażowego* (Immigrants in Poland in the Light of an Opinion Survey), Working Papers, Serie Migracyjne, no 10, ISS, Warszawa 1997. K. Iglicka, *Are They Fellow-Countrymen or Not? The Migration of Kazakhs of Polish Origin from Kazakhstan to Poland*, Working Papers, Serie Migracyjne, no 11, ISS, Warszawa 1997; M. Mrozowski, *Obraz imigranta na łamach prasy polskiej* (The Image of the Immigrant as Created by the Polish Press), Working Papers, Serie Migracyjne (Migration Series), no 1, ISS, Warszawa 1997; A. Pawelec-Górny, *Postawy Polaków wobec cudzoziemców* (Poles' Attitudes to Aliens), Working Papers, Serie Migracyjne, no 8, ISS, Warszawa 1997.

⁹⁷ K. Iglicka, *Ethnic Division on Emerging Foreign Labour Markets in Poland during the Transition Period*, Working Papers, Serie Migracyjne, no 35, ISS, Warszawa 2000.

⁹⁸ K. Głębicka, M. Okólski, D. Stola, *Polityka migracyjna Polski* (Poland's Migration Policy), Working Papers, Serie Migracyjne, no 18, ISS, Warszawa 1998.

⁹⁹ P. Korcelli (ed.), *Przemiany w zakresie migracji ludności jako konsekwencja przystąpienia Polski do Unii Europejskiej* (Changes in Population Migration as a Consequence of Poland's Accession to the European Union), PAN, KPZK, paper no. 184, Warszawa 1998; M. Kupiszewski, *Modelowanie dynamiki przemian ludności w warunkach wzrostu znaczenia migracji międzynarodowych* (Modelling the Dynamics of Population Change Under the Conditions of Increased Significance of International Migrations), *Prace Geograficzne*, vol. no. 181, IGiPZ PAN, Warszawa 2002.

¹⁰⁰ Seven volumes have been published so far in the series, edited by prof. Jan Zamojski.

¹⁰¹ See the work on the above aspects by Professors Kubiak, Słany and Romaniszyn.

prof. G. Babiński, concerns itself with broad-range research on *Polonia* (the Polish diaspora), ethnic groups and minorities on the Polish territory.

Some other academic centres

The Institute of Sociology and Department of Geography at the Nicholas Copernicus University in Toruń undertake studies on the legal status of aliens in Poland, the presence of foreigners in Poland in view of the alienation and “alien” social groups, and the spatial distribution of immigrants in Poland. Three centres in western Poland conduct work on the issues of the Polish-German borderlands and on the German minority in Poland: the Institute of Sociology at University of Wrocław; the Western Institute in Poznań at Adam Mickiewicz University of Poznań and the Silesian Institute in Opole.

Chapter 3: European legislative proposals

3.1. Aliens' employment and self-employment

3.1.1. Subjects entitled to permit, permit validity period, self-employment

The Polish law in this respect is subject to essential change. For instance, the law of 14 December 1994 on employment and measures against unemployment has already been amended three times: in 1996, 1997 and 2001. The amendments also related to the employment of aliens. The gradually growing scope and detail of these regulations have been necessitated by the new reality and the harmonisation of Polish law with EU law. The relevant provisions enacted in 2001, which came into force on 1 January 2002, remain valid today. The amendment of the legal act of 22 June 2001¹⁰² introduces only some provisions referring to the nationals of the member states or members of their families who are third-country nationals. They will come into force upon Poland's accession to the EU¹⁰³. The term "performance of work" by a foreign national is defined as employment, performance of other income-earning work or the exercise of functions on the management boards of legal (corporate) persons pursuing business for profit (art.2 par.1 p. 22 b of the law¹⁰⁴). It is a closed list, which means that the employment authorities take no interest in, for instance, foreign nationals who perform functions in entities that are not juridical persons (example: companies under the commercial law that do not have legal personality) or that do not pursue business for profit (such as foundations), foreign nationals who sit on supervisory boards, are commercial representatives or pursue business for profit in the form of self-employment.

Subjects entitled to an employment permit

The directive states that a foreign national himself/herself applies for the permit, but the employer also has the right to apply in his/her name. The application is submitted to the delegation of a member state or the competent office on the territory of that state. In this case, it is assumed that the applicant has already acquired a residence permit. In line with art. 50 par. 1 of the Act of 14 December 1994 on employment and measures against unemployment¹⁰⁵ a foreign national may perform work on Polish territory as long as he/she has obtained a work permit, issued by the voivod (provincial governor) who is responsible given the employer's headquarters. This requirement does not apply to foreigners who had received a settlement permit or refugee status. The work permit will be issued to the foreign national only upon his or her receipt of the employer's promissory note and of a relevant type of visa or pre-determined term settlement permit in Poland (art. 50 par. 2 of the law).

The wording of the law indicates a diversified procedure, depending on the alien's status. Two interested parties have been addressed: the foreign national, who ought to acquire a work permit, a proper kind of visa or fixed-time residence permit and the employer, who has applied for the permit. The law stipulates, however, that the work permit alone is not the only sufficient condition to be fulfilled for the foreigner to be authorized to take up employment in Poland. Apart from securing a work permit, the foreigner is required to have his or her stay in Poland legalised, which should be confirmed with a proper type of visa or fixed-time residence permit. It follows from the above that in case the foreigner fails to obtain a

¹⁰² Act of 14 December 1994, on employment and measures against unemployment with subsequent amendments (Dz. U. of 2001 r., no 89, section 973).

¹⁰³ The "European" regulations were introduced through the amended act of 26 April 2002 (Dz.U. no. 74, item 675).

¹⁰⁴ *Ibidem*.

¹⁰⁵ Act of 14 December 1994 on employment and measures against unemployment (Dz. U. of 2001, no. 6, item 56 with subsequent amendments).

legalized residence in Poland, the voivod will issue a “promissory note”, which amounts to “a promise of issuing a work permit to the foreigner provided that he or she acquires a proper visa or fixed-time residence permit” (Art. 2 par. 1, item 20b of the Act on Employment). The promissory note then entitles the foreigner to apply to the right to reside in Poland and is a form of a “promise” of issuing a work permit as long as the legalisation requirements are met. Under the Polish law (art. 50 par. 2) it is the employer who institutes the procedure of applying for employment permit. A foreign national may receive a visa authorising him/her to take up work as the basis of his/her stay on Poland’s territory on the condition that his/her employer acquires the relevant permit or promise of the permit. The acquisition by the employer of the permit or its promise is also the condition of issuing a work permit to a foreign national who already has a fixed-time residence. If a foreign-based employer (with registered office or domicile abroad) delegates foreign nationals to work with a Polish-based employer for the period exceeding one month in any given year, it is either the foreign or the domestic employer that applies for the work permit¹⁰⁶. In cases of foreign nationals sitting on the management boards of corporate persons pursuing business for profit, it is an authorised entity that applies for the permit or its promise¹⁰⁷.

The decision on the issue of the work permit or its promise is made by the competent Voivod (provincial governor) in respect of the registered office of the employer, where the work responsibilities commissioned by the delegating party will be performed (art. 50 par. 1). The applications are submitted on the territory of Poland¹⁰⁸. The Labour Minister has been empowered to define by way of regulation all those cases in which work permits or their promise should be issued irrespective of the labour market situations, particularly on the basis of reciprocity. (art. 51 par. 5)¹⁰⁹.

Permit validity period

The directive proposes a period of validity of three years, with the option of renewal. The Polish regulations leave room for discretion in this respect. In Poland, the work permit is valid for the period specified by the employer as the term of employment, but not longer than the validity periods of the visa or residence permit held by the foreign national¹¹⁰. The work permit is subject to prolongation at the employer’s request. The period for which the decision should be valid is determined primarily by the labour market circumstances.¹¹¹ Statute law authorises the governor to issue the “criteria for issuing promissory notes and work permits to aliens”.¹¹² Some governors specify the validity date of the aliens’ work permits in the criteria themselves, justifying this practice with the labour market conditions.

Exemptions from the obligation to apply for work permit

Foreign nationals who stay in Poland under the settlement permit and the refugee status are treated as Polish citizens and do not need work permits¹¹³. Upon Poland’s accession to the EU, this article of the law will be amended and instead of two categories of persons

¹⁰⁶ Art. 50 par. 4 of the Act of 22 June 2001 on the Amendment to the Act on Employment and Measures Against Unemployment and the Act on Social Assistance (Dz. U. no. 89, item 973 of 2001)

¹⁰⁷ *Ibidem*, art. 50 par. 6.

¹⁰⁸ *Ibidem*, art. 50 par 3 and 4.

¹⁰⁹ See the regulation by the Minister of Labour and Social Policy of 19 December 2001, concerning the definition of the cases in which the work permits or their promise for foreign nationals are issued by Voivodes irrespective of the local labour market situation, and the criteria for the issue of work permits and their promise to foreign nationals (Dz. U. no 153, item. 1767).

¹¹⁰ Act of 14 December 1994 on employment and measures against unemployment, with subsequent amendments, op. cit., art. 51 par. 1 pts. 1-2.

¹¹¹ *Ibidem*, art. 50 par. 8.

¹¹² *Ibidem*, art. 6c, par. 1, item 3.

¹¹³ *Ibidem*, art. 50, par. 1.

exempted from the need to apply for work permits, it will contain 8 such categories. Some of them correspond with the provisions of the directive, which distinguishes five groups of such persons. European regulations have been implemented through listing a EU-passport holder as a separate category of foreigners¹¹⁴, and specifying EU citizens' family members, who study¹¹⁵ or are retired¹¹⁶. The Polish regulations have not accounted for the following categories of persons: persons under temporary protection and asylum seekers; persons who have arrived under the family reunification visas; persons covered by the deportation procedure and the workers employed for export activities¹¹⁷. It should be noted that the above categories are not mentioned in the directive, either.

The proposed act on providing protection to aliens on the territory of the Republic of Poland, currently being drafted by the Ministry of Interior (MSWiA), carries with it an amendment to the Act on Employment and Prevention of Unemployment. The amendment will waive the duty of possession of a work permit also for foreign nationals enjoying tolerated stay or temporary protection in Poland¹¹⁸. A separate regulation lists other groups of aliens who do not need to apply for work permits. Fifteen professional categories have been exempted from the requirement to acquire a work permit by foreign nationals, including *inter alia*: a) foreigners taking part in professional internships, trainings, consulting and assistance projects; b) foreign-language teachers who hold instruction in foreign languages and who execute their activities as part of the international agreements and accords, which are implemented by the minister in charge of education; c) members of armed forces and civilian personnel, discharging their duties in the Corps of the North Atlantic Treaty; d) permanent correspondents of foreign mass media; e) foreigners who perform artistic activities either individually or collectively for up to 30 days; e) day-time students on summer courses in Poland of up to three months in duration¹¹⁹.

The basic criterion for issuing a work permit to a foreigner is the labour-market situation. In practice, the voivod is obliged to determine whether the position offered to the foreigner could not be offered to a Polish citizen or a foreigner with settlement permit or refugee status. Therefore, based on the regulation of the Ministry of Labour and Social Policy (MPiPS) on the specific rules and procedures of issuing promissory notes and work permits to foreigners (Art. 3, par. 2, items 1-3), the voivod will take the following reports under consideration in the course of the procedure:

- 1) from the mayor of the county where the employer is headquartered on the possibilities for meeting the employer's staffing needs;
- 2) from the mayor of the county where the employer is headquartered on the conditions on the local labour market;
- 3) from the employer on the actions taken towards placing the job offer, as stated in the application, to a Polish citizen or a foreigner who holds a settlement permit or refugee status.

¹¹⁴ *Ibidem*, art. 50 par. 1, item 3.

¹¹⁵ *Ibidem*, art. 50 par. 1, item 6.

¹¹⁶ *Ibidem*, art. 50 ust. 1 pkt. 7.

¹¹⁷ Under Polish law, this issue is regulated by a separate regulation issued on the basis of art. 51 par. 2 of the Aliens Act: regulation by the Minister of Labour and Social Policy of 19 December 2001 on the specific rules and conditions of issuing work permits and promises of such permits to aliens employed at the implementation of export services provided by foreign employers in the Republic of Poland (Dz. U. no 153, item 1768).

¹¹⁸ Draft bill on www.uric.gov.pl

¹¹⁹ Regulation by the Minister of Labour and Social Policy of 19 December 2001 on the performance of work by aliens not subject to employment permits. (Dz. U no 153, item 1765).

Self-employment

Polish law does not explicitly regulate the issue of aliens' self-employment¹²⁰. The legal basis for establishment and registration of foreign enterprises is provided by the Act of 19 November 1999 – the Law on Economic Activity¹²¹. Under this law, foreign entrepreneurs are foreign persons pursuing economic activity abroad¹²². Foreign persons are natural persons permanently domiciled abroad, corporate persons having registered offices abroad and non-corporate personality companies established by the aforesaid persons¹²³. Foreign nationals who have acquired settlement permits on the territory of Poland enjoy the same rights as Polish nationals in the area of taking up and pursuing economic activities in Poland. On the basis of reciprocity, unless international agreements provide otherwise, foreign persons may take up and pursue economic activities on the same principles as the entrepreneurs with permanent residence or registered office in Poland. In the absence of reciprocity, foreign persons may for that purpose only establish limited partnerships, limited liability or joint-stock companies, and also joint such companies or take up or acquire their shares and stocks¹²⁴.

Permits and rules

The Polish regulations are in principle convergent on the directive, as far as the list of the documents required to submit with the application is concerned, but they are not univocal. The directive provides for 9 such documents to be submitted: a personal data form, business plan, certificate of possession of the financial resources required for an investment, document ascertaining a positive impact of a foreign national's initiative on the labour market in a given country, certificate of no criminal record, passport, certificate of education adequate to the intended undertaking, certificate of the applicant's financial status giving assurance of sustainable livelihood, including health insurance for the applicant and his family, as well as the receipt of the fee for the application. The application for issuing a work permit to a foreigner should confirm the information, stated in items 1-3 of the "waiver for the duty of permit acquisition" of the document cited, and include, in accordance with Attachment no. 1 to the Regulation, the following documents:

- 1) a copy of the entry in the National Court Register, which states the record in the list of registered companies.
- 2) a money order to the Labour Fund.
- 3) a copy of the foreigner's travel document.
- 4) an official translation of the document, which testifies to the foreigner's professional qualifications.

The voivod can also specify other required attachment upon circumstances.

Based on Art. 50 par. 15 of the Act on Employment and Prevention of Unemployment, the voivod will issue the promissory note or work permit (discussed in par. 2 and 3) following the money transfer of an equivalent of the minimum wage per applicant to the Labour Fund. This law turns the transfer into a condition for processing the application. It is also worthwhile to note here that the payment is a form of administrative fee and is non-refundable in case of the voivod's negative decision.

¹²⁰ Art. 17 pt. 2 of the Aliens Act of 25 June 1997 is listing the pursuit of economic activity as one of the prerequisites of issuing a foreign national with a short-term residence permit. NSA confirmed that iunctim in its ruling of 8 March 2000, V S.A. 1679/99.

¹²¹ Act of 19 November 1999 – The law on economic activity, legal state of play as at 17 November 2002, (Dz. U. no 130, item 1112).

¹²² *Ibidem*, art. 4 p. 4.

¹²³ *Ibidem*, art. 4 p. 3.

¹²⁴ *Ibidem*, art. 6.

3.1.2. Economic needs test and beneficial effects test

Foreign nationals intending to take up employment in Poland have to reckon with legal restrictions. The legal regulations in effect since the early 1990s restrict aliens' access to the Polish labour market. Access is based on a policy of rationing and the labour market criterion. Aliens can take up employment only if they have received the required permit and if the situation on the Polish labour market allows it. The practical meaning of this is that priority in job allocation is given to Polish nationals and that a foreign national may be employed only if none of the Polish workers meets the requirements of an employer. The only fact-finding exercise related to the employment of a foreign national is an analysis of a local labour market to determine if there is indeed no Polish worker with the required skills available¹²⁵.

A number of clauses aiming at the prevention of labour dumping have been introduced into the Polish legislation in 2001-2002. Firstly, minimum wage has been set both for Polish and for foreign workers at 800 PLN (roughly equivalent to 200 Euro). Thus, no employers' applications for work permits for foreigners will be accepted unless they offer at least this minimum remuneration¹²⁶. Secondly, the provincial governor is authorised to reject an application for the work permit of a foreigner whose "proposed remuneration is inadequate to the work, which the alien would undertake"¹²⁷. Finally, the wage offered to the foreign worker must not be lower than that extended to a Polish national in exchange for the same kind of service¹²⁸. In the two latter cases, the administrative organ may exercise discretion, which is a further anti-dumping instrument.

The law makes no mention of the beneficial effects requirement, but the accepted principle is that foreign nationals' employment should bring beneficial effects to the economy, labour market, etc., and must not be prejudicial to the Polish employees. The legislator has left much discretion to the relevant authority (Voivod in this case) and has not defined any detailed criteria or priorities that this authority should follow in making a decision. In Poland, no beneficial effect tests of aliens' employment are carried out.

3.1.3. Quotas

No quotas on employment permits are applicable in Poland. Neither have any official discussions been held on the issue of quotas. Nevertheless, as already mentioned, the situation on the local labour market is taken into account by the competent authority. In practice, the authorities check if there is no available Polish worker with the required qualifications that should be given priority in a given job opportunity.

3.1.4. Regularisation

A full-scale regularisation campaign has not been implemented in Poland so far. URiC has recently elaborated a draft law on granting aliens protection on Poland's territory¹²⁹. It provides for a new category of stay in Poland, a so-called tolerated stay. The draft envisages that the permits for this type of stay would be issued to the persons who have failed to obtain

¹²⁵ *Ibidem*, art. 50 item 8.

¹²⁶ Art. 4 par. 1 of the Act of 10 October 2002 on the Minimum Work Remuneration (Dz. U. No. 200 item 1679)

¹²⁷ Art. 3 par. 2 item 2 of the regulation by the Ministry of Labor and Social Policy of 19 December 2001 on detailed rules and procedures for issuing promissory notes and employment permits to aliens (Dz. U. No. 153 item 1506 of 28 December 2001)

¹²⁸ Art. 4 par. 6 item 2, *op.cit.*

¹²⁹ The draft is scheduled to go to the Council of Ministers at the turn of January and February 2003. So far, it is not known when and how it will be enacted by the Sejm, www.uric.gov.pl

the refugee status but cannot be deported for various reasons (humanitarian, no direct air transport service with a given country, etc.). Tolerated stay may be awarded to the foreign national even if he or she has not applied for refugee status. The persons issued with tolerated stay permits will have in Poland the right to education and work, and eventually social care. Although this campaign would apply to a narrow category of persons, not to the aliens staying illegally in Poland for many years, if this draft is enacted in this form it will mark a breakthrough in the Polish legislation on the aliens.

3.2. Family reunification

Poland has ratified the European Convention on the legal status of migrant workers, datelined 24 November 1977 (art.12) and the European Social Charter of 16 October 1961. Both documents reaffirm the migrant workers' right to reunite with their families. The issue of family reunification has not been broadly tackled in Poland. Court rulings have mainly applied to mixed marriages when a foreign spouse is threatened with deportation¹³⁰. The family reunification issue is regulated in chapter 3a of the 1997 Act on Aliens, following its amendment of 11 April 2001. Originally, this law did not provide for any novel legal solutions. The right to reunite with the family was granted as the right of an alien in connection with his/her acquired refugee status¹³¹. Then the necessary amendments were enacted as part of harmonisation with the *acquis communautaire*. Pursuant to the Repatriation Act, the right to reunite with the family is also vested in a repatriate's family members who are not entitled to receive Polish citizenship. By introducing an additional category of aliens who have the right to reunite with their families, the law defines the conditions of entry of such persons¹³².

3.2.1. Rules associated with the right to family reunification: definition of family members entitled to the right to family reunification, age limits for children, required financial resources, waiting periods, permit validity periods and conditions of stay.

Persons eligible to benefit from the right to family reunification

The Aliens Act defines the persons eligible to benefit from the procedure of family reunification (art. 24 a par. 1 and 2¹³³). According to the relevant resolution of the European Convention of 1 June 1993, they are:

- the applicant's spouse¹³⁴,
- the applicant's underage, unmarried child¹³⁵ over whom the applicant exercises parental or legal care,
- unmarried minor, adopted by the applicant before his/her entry into Poland,
- the applicant's spouse's underage, unmarried child, biological or adopted, over which both or one of them exercise parental or legal care¹³⁶.

¹³⁰ Example: the case of Movses G., decision by the Constitutional Court, published in Dz. U. 2000, no 1000, item 1085, quoted after: J. Białocerkiewicz, *Cudzoziemcy w Rzeczypospolitej Polskiej (Aliens in the Republic of Poland)*, Toruń 2001, p. 215.

¹³¹ The Aliens Act of 25 June 1997 prior to its update; art. 44 applies to the family members that accompany the applicant on entry into Poland (Dz. U. no 114, item 739).

¹³² The Repatriation Act of 9 November 2000 art. 15 par. 1-3 (Dz. U. no 106, item 1118).

¹³³ Amendment to the Act on Aliens of 11 April 2001 (Dz.U. 2001 no. 42, item 475).

¹³⁴ The Polish law defines marriage as the formal union of a man and a woman (Polish Constitution art. 18.); marriage definitions are provided within the private international law where it is possible to apply the provisions of 6 (public order clause). The directive is more liberal in this respect, because it lists also a "partner" among the persons eligible for family reunification. It also allows for the issue of polygamous marriages.(art. 5 of the directive).

¹³⁵ This wording "unmarried minor" is consistent with the directive.

¹³⁶ If the directive at this point refers to the condition of issuing permit to one of the parties, the Polish law does not allow for that option.

The circle of eligible persons excludes relatives and ascendants in direct line, and the applicant's or spouse's adult children. However, both these categories reappear in the definition of eligibility proposed by the European Convention if they are not autonomous or suffer from an illness.

Persons eligible to apply for the right to reunite with their families

The persons who may file applications for reunification with their families are (art. 24a par. 1 of the Act¹³⁷):

- a foreign national living in Poland based on a settlement permit,
- a foreign national living in Poland for at least 3 years based on a fixed-time residence permit,
- a foreign national living in Poland under a fixed-time residence permit issued to him/her in connection with the status of refugee.

The directive specifies the eligible applicants as follows (art. 3 p. 1):

- a third country national staying legally in one of the member states under the residence permit issued for the period of at least 12 months,
- a refugee with the prospect of the enduring right to permanent residence,
- a citizen of the European Union who does not benefit from the right of free movement, if his/her family are third country nationals.

On the other hand, this right does not apply to foreign nationals waiting for a refugee status decision, third country nationals under temporary protection and citizens of the European Union who enjoy the right of free movement¹³⁸.

Conditions and rules attendant on the right to family reunification

The main requirement that applicants need to meet for their application to be considered is their satisfactory financial standing (art. 24 a, par. 2 of the Act¹³⁹). A satisfactory financial standing is seen here as the ability to assure the family members of a place to live (apartment) and livelihood. An applicant's income should be big enough to guarantee that he/she and family would not become a liability for the State budget. This requirement is consistent with the directive. Another requirement is the ability to assure the family members of healthcare insurance services. The legislator in this case wished to avoid an additional liability to the State budget. One other requirement is the guarantee of good health of family members so that the entry in Poland of a spouse or a minor would pose no threat to public health. A family's entry into Poland under the family reunification law has to take place within 12 months of the reunification visa's issue (art. 24 c par. 3 of the Act¹⁴⁰). Fixed-time residence permits for the purpose of reuniting with the family are issued for a period of 12 months (art. 24 b par. 1¹⁴¹). If a family's entry into Poland takes place within the 12-month visa period, the family members benefit from an extension of their residence permit period throughout the validity term of the fixed-time residence permit that has been issued to an applicant. On the other hand, if an applicant is domiciled on Poland's territory under a settlement permit, his

¹³⁷ Amendment to the Act on Aliens of 11 April 2001, op.cit.

¹³⁸ EU citizens' family members enjoy in principle the same rights as the EU citizens themselves, even if they are third-country citizens. Hence in this case, no special family reunification is needed, since the family members, enjoying the right of free movement across the entire EU territory, may arrive to take up residence with the husband, wife, father, mother or other persons specified in the EU directives on the application of free-movement rules. These regulations have already been included in the Polish legislation through the Act of 27 July 2002 on the Rules and Conditions of Entry and Residence of Citizens of EU Member States and Their Family Members on the Territory of the Republic of Poland (Dz. U. No. 141, pos. 1180).

¹³⁹ Amendment to the Act on Aliens of 11 April 2001, op.cit.

¹⁴⁰ *Ibidem*.

¹⁴¹ *Ibidem*.

family's fixed-time residence permit in the same case is prolonged by 2 years (art. 24 b par. 3¹⁴²).

The decision to issue or refuse a family reunification visa is in the hands of the responsible consular officer in respect of an alien's domicile, having received confirmation that the applicant has been granted a fixed-time residence permit for the purpose of reuniting with his/her family (art. 79 par. 4¹⁴³). The latter permit can be refused or withdrawn for the following reasons: false or untrue personal data and/or other information in the application form, marriage of convenience, or danger to State security or public order that would arise from the entry into Poland of an applicant's spouse or underage unmarried child (art. 24 d of the law¹⁴⁴).

Status of persons who have used the right to reunite with family

An applicant's family rights are part of separate provisions referring to foreign nationals with regulated status. According to the Ministry of Education's regulation on enrolment in public kindergartens, elementary schools, teacher training centres, etc. of 4 October 2001¹⁴⁵, underage children up to 16 years of age are subject to the compulsory education clause and thus such educational services are free of charge. On the other hand, aliens who are not Polish citizens have to pay for education in post-elementary schools such as junior high schools (gymnasium), high schools, vocational schools or universities. A foreign national staying in Poland under a family reunification visa for at least three years may apply for a settlement permit (art. 19 par. 2 of the Act¹⁴⁶).

Non-Polish family members of a foreigner or Polish citizen do not enjoy a special right of access to employment outside of the procedure which covers all foreigners. The national employment law therefore requires that every foreigner apply for an employment permit individually¹⁴⁷. Family members receive short-term residence permits solely upon the applicant's guarantee of financial provision throughout the period of their stay. In fact, a foreign spouse who has entered the country on a limited-period visa with family reunification stated as the purpose of the visit will have to leave the country to re-enter it with a new visa allowing for employment. Only settlement permit holders may apply for an employment permit without leaving the Polish territory. Upon accession to the EU, an amendment to the employment law¹⁴⁸ will take effect, adapting the Union standard of freedom of employment for the family members of EU migrant workers.

3.2.2. Standstill clause and deadline clauses

According to the directive, the abrogation of the provision relating to minors is possible (as an option) in the case of children over 12 years of age. A minor may not be granted the right to reunite with the family if his/her entry would pose integration problems. There is no such option in the Polish law.

¹⁴² *Ibidem.*

¹⁴³ *Ibidem.*

¹⁴⁴ Amendment to the Act on Aliens of 11 April 2001, op.cit.

¹⁴⁵ Regulation of the Ministry of Education on enrolment in public kindergartens, elementary schools, teacher training centres, etc. of 4 October 2001, (Dz. U. no 131, item 1458).

¹⁴⁶ Amendment to the Act on Aliens of 11 April 2001, op.cit.

¹⁴⁷ Art. 51 par. 1 of the Act on Employment and Measures Against Unemployment of 14 December 1994 (Dz. U. No. 25, pos. 128 of 1997) and the regulation by the Ministry of Labour and Social Policy of 19 December 2001 on detailed rules and procedures for issuing promissory notes and employment permits to aliens (Dz. U. No. 153 of 28 December 2001).

¹⁴⁸ Act of 26 April 2002 on the Amendment to the Act on Employment and Measures Against Unemployment (Dz. U. No. 75 item 675).

3.3. Status of foreign nationals who are long-term residents ¹⁴⁹

3.3.1. Waiting period for the long-term resident status

A foreign national may receive the settlement permit in Poland if he/she meets all of the following conditions: proof of enduring family or economic ties with Poland¹⁵⁰; legal title to an apartment, adequate means of living¹⁵¹; and having lived in Poland for at least 5 years (under a fixed-time residence permit) prior to submitting his/her application. The 5-year period excludes the time of study, which is consistent with the directive¹⁵², but includes the time of post-graduate studies (for PhD or equivalent degree) and research work (art. 19 of the Aliens Act).

The term “long-term resident” in the Union legislation covers two privileged groups, as indicated in the Resolution of 4 March 1996 on the status of third country nationals residing on a long term basis in the territory of the Member States, which are entitled to a settlement permit irrespective of whether they meet all of the conditions of article 19 (family and economic links, financial standing, etc.). One of them are minor aliens born on Poland’s territory, subject to the written consent of their parents or legal guardians, or if at least one of the parents or guardians has received the settlement permit¹⁵³. The other group are foreign nationals who have lived in Poland continuously for 10 years on the basis of definite-term visas and fixed-time residence permit¹⁵⁴.

3.3.2. Withdrawal of status

The long-term resident status in Poland can be withdrawn from a foreign national who has been convicted and sentenced to at least 3 years in prison or if such withdrawal is necessitated by considerations of the State defence capability and security or protection of public order (art. 24. 1 of the Act on Aliens¹⁵⁵). Withdrawal can also take place if a foreign national has left Poland’s territory for good. Thus, the reasons for the withdrawal are extraordinary and related to public order. The lack of a precise enumeration may open up room for abuses.

Expulsion of foreigners

Foreigners may be lawfully expelled from Poland for several reasons, specified in the Act on Aliens¹⁵⁶. First, they must leave the country if they have entered it illegally or overstayed the term of allowed stay. Second, they will be expelled if they are proven to have lied during the procedure for acquiring a permit to stay or refugee status or to have used a false document for entry. Third, they will be expelled if they take up employment without having obtained a permit to do so. Finally, they will be made to leave if they lack the funds necessary for further

¹⁴⁹ Upon Poland’s accession to the EU, the conditions of this chapter will not apply to EU citizens (art. 90 par. 3 of the Polish Constitution).

¹⁵⁰ NSA judgement of 12 January 2000, V S. A. 1112/99 confirms importance of this right, stating at the same time, that “...fulfilment of all prerequisites listed in art. 19 par. 1 of the law does not oblige an administrative body to grant the claimant a long-term residence permit and to issue him/her with such residence card, because a decision to this effect is of discretionary nature”, quoted after J. Jagielski *op.cit.*, p. 181.

¹⁵¹ Under the EU standard, a foreign national is not entitled to social assistance financed from public funds, from: “Justification for the Government Proposal”, p. 10.

¹⁵² Cf. detailed discussion in: J. Białocerkiewicz, *op. cit.*, p. 194 *passim*.

¹⁵³ art. 19a, Amendment to the Act on Aliens of 11 April 2001, *op.cit.*

¹⁵⁴ *Ibidem.*, art. 19b par.1.

¹⁵⁵ *Ibidem.*

¹⁵⁶ Art. 52 of the Act on Aliens.

stay in Poland. Foreigners to whom the decision on expulsion has been issued or who have crossed the border illegally or without proper documentation are restricted in their freedom of movement (by being placed in a guarded facility), and in cases of national security or refusal to leave the country voluntarily by the deadline, may be deported promptly. Foreigners who leave the guarded facility are placed under arrest. Decision on expulsion may be executed immediately with the exception of expulsion of recognised refugees¹⁵⁷.

However, no foreigners may be expelled to territories where their fundamental liberties, defined in the Rome Convention, would be threatened¹⁵⁸. Also, no minors may be sent away without guarantees of adult protection, as specified in the Convention on the Rights of the Child¹⁵⁹. Foreigners holding a settlement permit, refugee status or enjoying asylum rights must not be expelled unless their status is revoked first. Also, foreigners are to be released should the authorities fail to deliver the proper documents to the alien or the court in due time or should the expulsion procedure exceed 90 days or at the request of the court¹⁶⁰.

3.3.3. Status of long-term residents in Poland

The Polish law treats long-term residents similarly with Polish nationals. The long-term residence permit is issued for an indefinite period of time. Only the residence card (settlement permit), a document certifying the granted permit, needs to be renewed every 10 years, but in practice the issue of the card leads up to Polish citizenship. Thus, the settlement permit does not encroach on the human rights domain, which is in line with the spirit of the directive. The rights of foreign nationals living in Poland have not been specified across all the areas of emancipation listed in the directive.

Foreign nationals with residence cards enjoy the right to:

- freely take up employment or other gainful occupation¹⁶¹,
- free education like Polish citizens¹⁶²,
- social security like Polish citizens¹⁶³,
- health insurance like Polish citizens¹⁶⁴.

Right to health insurance

Under the regulations in force until 1 April 2003, only settlement permit holders and recognised refugees had the right to health insurance on par with that of the Polish nationals¹⁶⁵. Accordingly, Polish citizenship, a settlement permit or refugee status are prerequisites for the inclusion into the state-managed health coverage plan¹⁶⁶. These foreigners were members of territorially based Sickness Fund Offices. The monthly payment covered the foreigner and his immediate family, including a spouse, minor children (under 18 or, if they are full-time students, up to 26 years of age, and indefinitely if the children are disabled) and parents as long as they are household members. National social security

¹⁵⁷ *Ibid.*, Art. 57.

¹⁵⁸ *Ibid.*, Art. 53.

¹⁵⁹ *Ibid.*, Art. 52a.

¹⁶⁰ *Ibid.*, Art. 58, 59.

¹⁶¹ The Act of 14 December 1994 on employment and measures against unemployment, *op. cit.*

¹⁶² The regulation by the Minister of National Education and Sports of 4 October 2001 on the enrolment of non-Polish nationals in public kindergartens, schools, teacher training centres and other establishments, *op. cit.*, art. 1 par. 4.

¹⁶³ Art. 5 par. 2 of the Act of 13 October 1998 on the social security system (Dz. U. no 137, item 887).

¹⁶⁴ Art. 2 of the Act on the Universal Health Insurance of 6 February 1997 (Dz.U. No. 90, item 416 of 1997 with subsequent amendments).

¹⁶⁵ *Ibidem.*

¹⁶⁶ Act on the Social Assistance of 29 November 1990 (Dz. U. No. 64, pos. 414 of 1998).

coverage did not extend to other categories of aliens (e.g. limited-period permit holders)¹⁶⁷. Under this regime, marriage to a Polish citizen, legal employment, studies at a Polish university, and the procedure of application for a settlement permit or refugee status in progress did not give grounds for health coverage.¹⁶⁸ In fact, these foreigners were not allowed to join the state-run health coverage system on their own, either. The only exception was made for university teachers employed at Polish schools of higher learning, who were treated like Polish nationals in this respect¹⁶⁹.

While not covered by health insurance, foreigners legally hired on contract in Poland have been entitled to a compulsory social insurance package, including retirement, accident and sickness plans throughout their employment, which are paid for by the employer¹⁷⁰. This requirement is waived for the nationals of several countries, with which Poland has signed bilateral agreements on access of temporary workers to the national labour market, for a limited period of 6 (in case of France) to 24 months (Germany and Austria)¹⁷¹. Access to the state-run health system has been widened with the entry into force of a reform on 1 April 2003. A new bill, centralising the Sickness Fund Offices into one National Health Fund¹⁷², gives the right to insurance coverage to the holders of both settlement permits as well as permits for a limited period, including those with the right to employment. The coverage fee is either paid by their employer or university, or foreigners may join the fund on their own. Family members of both Polish citizens and of foreigners holding either limited-period or settlement permits are covered as well. The extension fulfils the constitutional guarantee of universal access to health protection (Art. 68).

Recognition of qualifications

The employment legislation¹⁷³ requires that a foreigner should obtain a permit necessary for taking up a position, entering a profession or rendering a professional service in all cases where other pertinent legislation makes it necessary. Professional qualifications must then be confirmed by professional bodies, e.g. a foreigner may receive the right to practice as a doctor upon the verification of his or her qualifications by a regional Medical Guild. New regulations, adapting the Polish legislation to the *acquis*, will enter into force on the date of accession¹⁷⁴. The act of 26 April 2001, followed by the executive regulations of December 2002-January 2003¹⁷⁵, harmonises the list of regulated occupations with that of the EU and specifies the required documentation and procedure for the recognition of qualifications.

¹⁶⁷ Art. 5 par. 2 of the Act on the System of Social Insurance of 13 October 1998 (Dz. U. No. 137, pos. 887 of 1998).

¹⁶⁸ See the article, "Financing the medical services to foreigners residing in Poland in 1999" at: www.kasa-chorych.gov.pl/komunikaty/cudzoziemcy.htm

¹⁶⁹ Art. 84 par. 3 of the Act on Higher Learning of 12 September 1990 (Dz. U. No. 65 item 385 with subsequent amendments), and Act on the Amendments to Some Acts on the Competence of the Public Administration Organs Following the State Organization Reform of 24 July 1998 (Dz. U. No. 106, item 668 of 1998).

¹⁷⁰ Art. 8 par. 2a of the Act Amending the Act of the System of Social Insurance of 23 December 1999 (Dz. U. No. 110, item 1256).

¹⁷¹ Bilateral agreements are in force with several members of the former socialist bloc (the Czech Republic, Slovakia, Hungary, Bulgaria, ex-Yugoslav states,) and with France, Belgium, Luxembourg, Germany, Austria, Greece and Libya. Talks are being held with the Czech Republic, Macedonia, Italy and Spain. See also: www.zus.pl/niusy/k001110.htm.

¹⁷² Act on the Universal Insurance in the National Health Fund of 23 January 2003 (Dz. U. No. 45, item 391)

¹⁷³ Art. 50 par. 10 of the Act on Unemployment and Measures Against Unemployment.

¹⁷⁴ Act of 26 April 2001 on the Principles of Recognition of the Qualifications to Perform Regulated Occupations, Acquired in the EU Member States (Dz. U. No. 87 item 954 of 2001).

¹⁷⁵ Regulation of the Prime Minister of 16 January 2003 on the Scope of Information for the Change in the Requirements on Regulated Occupations and on the Decisions on the Recognition of Qualifications for Performing a Regulated Occupation, and on the Deadlines for Submission (Dz. U.

3.3.4. Long-term residents' right to settle down in EU member states

This issue has not come up for discussion in Poland so far and is not likely to be discussed. The issue concerns the entire EU territory and to resolve it, adequate legal solutions must be found in the Union legislation. In accordance with the Copenhagen Summit resolutions, Poland has been engaged since 16 April 2002 in the proceedings of all the working groups as an "active observer". This opens the opportunity for presenting the Polish position on this project even if it were to be passed before the accession date.

No. 11 item 113 of 2003) and three regulations of the Ministry of National Education and Sports of 20 December 2002, 7 January 2003 and 16 January 2003 (Dz. U. No. 8 item 94, No. 5 item 47, No. 17 item 157).

Chapter 4: Recommendations and open method of co-ordination

4.1. The open method of co-ordination

The open method of co-ordination in the field of immigration policy has not been a matter of a broader national debate so far¹⁷⁶. As a candidate country for accession to the EU, Poland is working out the foundations of an acquis-compatible national migration policy. This process poses a challenge in itself to the Polish state and its administrative organs, as it involves a major change in the approach to border and migration flows management. Hence, Poland is engaged in the debate on reforming public governance in the EU only to a limited extent. In these circumstances, Poland finds it difficult to opt for novel solutions, as it has not applied the existing mechanisms yet. The evident difficulties in the course of the formation of the European migration policy testify, however, to the deficiencies in the system, encouraging a search for new instruments. As a result, it is difficult to conclude precisely at the present stage of Poland's accession process whether the open method of co-ordination would prove to be a useful tool for making progress in a common migration policy for the European Union.

It appears however that a greater coherence between the national migration policies could be achieved through setting long-term EU-wide guidelines and specific timetables and targets by adjusting the guidelines to the migration policy and situation of a country with its regional diversity. We should also praise the initiatives of working out national action plans and of ongoing monitoring of progress towards the common migration policy, being part of these plans. These initiatives might not only result in a common methodology for gathering the statistical data and their interpretation, but also facilitate collection of EU-wide statistics relevant for migration policy. Collections and multi-year data sets would help identify better the migratory phenomena and trends and as a result manage the flows more effectively.

Setting up a monitoring system would radically improve current migration research in Poland, since the data collected at present is fragmentary, and the research institutions have not come up with a common methodology or basic definitions, which makes for variation in results. Various institutions provide estimates of migration flows in Poland, which results in overestimation or overlap of the data. The issue is more general, and the Union institutions would be advised to arrive at a set of common definitions according to which migration flows could be categorised, thus allowing for better management.

Guidelines

The guidelines suggested by the European Commission are generally in agreement with the objectives set by the Polish decision-makers in the course of the creation of a national migration policy. Particular solutions include: developing a comprehensive and coordinated approach to migration management at national level (Guideline 1), reinforcing the fight against illegal immigration, smuggling and trafficking in persons (Guideline 3) and integration the migration issues into relations with third countries, and in particular countries of origin (Guideline 5). Regarding Guideline 1, Poland is in the process of working out a conceptual framework for the system of migration management. The work done so far suggests that there will be complex solutions, however it is difficult to predict the shape of the final outcome.¹⁷⁷ Responsibility for progress towards Guideline 3 rests largely on the Border Guard and the measures taken so far have been found by the European Commission to go in the right direction. The Polish government has both declared and taken upon itself several obligations to continue the work in this realm. Migration issues have also been consistently a

¹⁷⁶ In light of the above, the authors venture to present only their own views in this part of the report.

¹⁷⁷ Based on the internal minutes of the meetings held at the Office for Repatriates and Aliens.

part of Poland's bilateral relations and agreements with neighbouring states¹⁷⁸. Progress in this field depends on the development of the relations and the political will of the interested parties. In the long term it appears that it would be advisable to tighten co-operation with Russia on these matters.

The circumstances presented above make it highly probable that Poland should adopt an open method of co-ordination, despite its non-binding character. The other guidelines are also generally in line with the priorities of Polish migration policy, however they are unlikely to be realised in the short term. Guideline 2 on the improved access to information of legal entry into the territory of EU member states and consequences of recourse to illegal migration channels is indisputably a necessary step to take. Nevertheless, in order to be implemented it requires reorganising the operations of consular services and significant expenditure. Guideline 4, postulating a coherent and transparent policy and procedures for opening the national labour market to third-country nationals within the framework of the European employment strategy, is also unlikely to be implemented in short- to middle-term. The high level of unemployment, which has continued for several years on the Polish labour market, makes more likely the option of limiting the legal access of the third-country citizens to the labour market (in accordance with the principle of giving preference to the EU member states' nationals). Guideline 6, calling for a policy of integrating the third-country nationals legally resident on the territory of EU member states, is equally needed for Poland. The Polish practice must be taken into account, however. There is no comprehensive integration policy for immigrants in Poland, unless we include the measures adopted for legally recognised refugees.

National Action Plans

Poland's experience in the implementation of action plans in the course of harmonisation with the *acquis communautaire* demonstrates a "disciplining" effect on the national government. This effect has stemmed largely, however, from the compulsory character of drafting and implementation of these plans since a delay to the accession date served as a sanction. It is difficult to assess the extent to which national action plans will be implemented when they lose their binding character. The Commission proposal makes an annual review and assessment of the work done in the field into an integral part of a national action plan. Conducting such a monitoring of Poland's progress in the implementation of the principles of a common EU migration policy is especially desirable, as it would make possible a closer identification of the national migratory phenomena. For a monitoring of this kind to be thorough, several institutional changes are necessary, such as setting up a separate unit in charge of the compilation of the report and engaging a team of experts. This initiative involves additional budget costs, which could make implementation unlikely.

Participation of candidate countries

Polish national interest requires that the country be involved in the process of the creation of a EU common migration policy to the greatest possible extent. All candidate countries would profit from securing ongoing access to migratory information and to the experience of the current EU member states. Therefore Poland fully supports the Commission proposal on this matter.

¹⁷⁸ For instance, Poland signed readmission agreements with Germany and Ukraine and an agreement on seasonal work for Polish nationals in Germany. Polish Ministry of Foreign Affairs' Non-paper presented suggestions for the future EU eastern policy, citing the country's experience in the field.

4.2. Poland's migration policy in the future

As mentioned earlier in this study, Poland began to draft the assumptions for its migration policy in November 2002. Among the contributions by experts, who favour the design of a comprehensive migration policy package, special attention should be given to the Memorandum developed by the Forecast Committee "Polska 2000 Plus" at the Presidium of the Polish Academy of Sciences. It is thus far the most comprehensive document defining the directions of a forthcoming migration policy of Poland. Its major recommendations are as follows:¹⁷⁹.

In the emigration domain, the State policy should take account of the following issues:

- a) Long-term protection of Poland's human and intellectual potential and the need to counteract permanent emigration if it clashes with the State interests, as in the case of specialists with qualifications of vital significance to economy and science,
- b) Short-term use of this option for temporary alleviation of unemployment,
- c) protection of the Polish emigrants' interests and measures to keep alive their bond with the country of origin,
- d) leveraging in Poland's and Polish society's interest the international demand for some professions, while preserving the requirements of pts a) and c) above.

In the immigration domain, the State policy should be looking ahead to the following objectives:

- a) use of immigration in the interest of the labour market, notably in regard to rare skills and qualifications and to jobs which are not taken up by the local workforce despite the current high level of unemployment.
- b) protection of the interests of already employed indigenous population through more effective control of illegal employment,
- c) assurance of immigrants' integration in a manner not conflicting with the requirements of national cohesion.

To implement the objectives in the scope of temporary emigration and migration, it is necessary to assure:

- development of bilateral inter-State agreements on Poles' employment abroad and immigrants' employment in Poland,
- legal regulation of the issue of double citizenship,
- increased participation of Polish students in foreign universities and a broader opening of Polish schools for foreign students,
- a system providing for the recovery of the costs arising in State-funded education in the cases of emigration from Poland for good,
- regulation of the status of recruitment offices operating on the Polish market and at universities,
- development of active contacts with Poles permanently residing abroad in business as well as science, including the publication of directories to facilitate such contacts,
- listing professions and qualifications of special significance to economy and science to be monitored in migration cases,
- development, based on other countries' success stories, of a system of support for the repatriation in Poland of specialists with rare qualifications,

¹⁷⁹ Memorandum by the Forecasts Committee "Polska 2000 Plus" at the PAN Presidium on the need to define the State policy in the area of foreign migrations", 16.10.2002, a document addressed to the Polish Government.

- provision of particularly favourable terms for the deposition of emigrants' savings in Polish banks, and, in particular, new solutions to facilitate investments in Poland by Polish emigrants,
- development of special banking facilities with a State capital share for the servicing of Polish emigrants abroad, building on the experience of other countries, such as the opening of specialised bank branch offices abroad for this purpose,
- improvement of the emigration process statistics and the system of studies on emigration.

To implement policy objectives in the area of immigration, it is necessary to:

- furnish conditions for the growth of broad-based cross-border relations and contacts with Russia, Ukraine and Belarus,
- step up the fight against illegal immigration, particularly illegal employment, while gradually liberalising, notably from 2005 on, the inflow of migrants based on forms similar to the US "green card" facility, proceeding from the assumption that a pro-active control is more effective than merely reactive restrictions of spontaneous processes,
- follow the experience of a number of countries, which have practically linked an accelerated citizenship status procedure to transfers of deposits to their national banks, which could inject more capital into the Polish economy and offer a certain privileged treatment of the immigrants with a higher standard of education or rare expertise,
- publish lists of professions and specialties that will be given priority in accepting the applications for immigrant entry,
- announce abroad competitions for the staffing of particularly qualified positions in the public sector,
- develop a system for an accelerated preparation of migrants for participation in the national community, i.e. the absorption of Polish cultural patterns with the concurrent possibility of continuation by migrants of their indigenous national life customs,
- take measures to dissuade immigrants from secluding themselves in closed groups isolated from the broader social environment and to promote greater regional diversification of such residence,
- develop incentives for retirement-age emigrants to return and settle down in Poland.

CSM, the Center for International Relations, studies Polish foreign policy as well as those international political issues that are important to Poland. It seeks to monitor the government's foreign policy and offer political counselling based on its assessment of Poland's international situation. CSM prepares reports and analyses, holds conferences and seminars, publishes books and articles, carries out research projects and supports working groups. It aims to support public discussions on international issues in Poland and promotes debate between politicians, civil servants, journalists, academics, students and NGO representatives. CSM was established in 1996 and has a staff of ten.

www.csm.org.pl

IPA, The Institute of Public Affairs, is an independent, non-partisan public policy think tank. It aims to support modernisation reforms, to provide a forum for informed debate on social and political issues, and to act as a bridge between academia, politics, the media and NGOs. IPA's migration programme concentrates on the consequences of the implementation of the Schengen acquis for the CEE countries, on return migration and repatriations in Central Europe, and on Poland's role in EU Eastern policy. The IPA has prepared various reform proposals, publishes the results of its research in books and policy papers, and also organises seminars, conferences and lectures. The Institute for Public Affairs was established in 1995. It has nine full-time and five part-time staff as well as a network of associates, which consists of academics as well as social and political actors.

www.isp.org.pl

Krystyna Iglicka is Deputy director and Assistant Professor at the Institute for Social Studies, Warsaw University. Since January 2002 Director of a Migration and Eastern Policy Programme at the Institute of Public Affairs. Previously visiting Professor at several European and American Universities (University of Glasgow, Universita Autonoma di Barcelona, Univeristy of Minnesota). As a social demographer, Iglicka's research interests include contemporary East-West European migration, the role of Poland as a buffer zone between the East and the West, and potential and strategies of return migration to Central Europe (Senior Fulbright Fellowship at the University of Pennsylvania). Co-editor of two books: *The Challenge of East-West Migration for Poland*, London, Macmillan, 1999 (with Keith Sword), *From Homogeneity to Multiculturalism. Minorities Old and New in Poland*, London, SSEES, 2000 (with F.E.I. Hamilton), author of a monography *Poland's Post-War Dynamics of Migration*, Ashgate, 2001.

Monika Mazur-Rafal is a Political scientist, MA in international relations from Warsaw University. Graduate of the European Studies Programme of the Warsaw School of Economics and Sciences Politiques Paris, speciality: the European Union. Scholarships from the Free University of Berlin and the Bundestag. Since April 2000 PhD candidate at the Journalism and Political Science Department, Warsaw University. Since August 2001 co-ordinator of the Migration Programme at the Center for International Relations in Warsaw. Author of articles on European integration, internal security and migration in the daily *Rzeczpospolita*, fortnightly *Unia & Polska*

Piotr Kazmierkiewicz is a Warsaw-based independent researcher of migration policy making, currently working on a Ph.D. in Political Science at Central European University, Budapest. He has cooperated with Open Society Institute (Budapest), Office of United Nations High Commissioner for Refugees (Geneva), and Institute of Public Affairs (Warsaw).

The authors acknowledge the invaluable help of Ms. Agnieszka Weinar in the preparation of this study.

Migration Policy Group
Rue Belliard 205, box 1
B-1040 Brussels
Tel. +32 2 230 5930
Fax. +32 2 280 0925
email: info@migpolgroup.com
www.migpolgroup.com