



The Organisation of Asylum and Migration Policies

Factsheet: Poland

1. Introduction

This factsheet provides an overview of how asylum and migration policies are organised in *Poland*, including the organisation of the institutional and regulatory context and framework for dealing with third-country nationals coming for the purpose of legal immigration or for international protection. It is based on information provided in the PL National Report of the EMN Study *The Organisation of Asylum and Migration Policies in EU Member States* (February 2009) based on desk research (key sources were the Ministry of Interior and Administration (since November 2011 Ministry of Interior) and the Border Guards Headquarters) and updated **September 2012**.

2. Overview of organisation of political, legislative and institutional framework

2.1 The political system and institutional context

The Minister of Interior (MI) is responsible for the coordination of migration and asylum policy, with competence for citizenship, repatriation, and policy to combat and prevent trafficking in human beings. Other major actors include the Head of the Office for Foreigners (OFF) and the Border Guard (BG) supervised by the MI, the Ministry of Labour and Social Policy (MLSP), the Ministry of Foreign Affairs (MFA), the Ministry of Science and Higher Education, the Bureau for Academic Recognition and International Exchange, the Ministry of Economy, the Inter-ministerial Committee for Migration (CM), the Prime Minister, the Refugee Board (RB), local authorities (voivods, units of social assistance, labour offices) and administrative courts. Migration policy is implemented both at the central as well as the regional level, under the competence of the Council of Minister and other relevant Ministries (e.g. labour, education).

2.2 The legal framework

The current Polish migratory/asylum legal framework has been in large part influenced by accession to the EU and Schengen. In addition, Poland has developed its individual approach to migration in areas not covered by Community law – these attempts have been recently intensified. The main legal acts regulating migration and asylum matters in Poland are: the Polish Constitution (adopted in 1997), the Act on foreigners (adopted in 2003) regulating entry, admission, residence, return and foreigners' registers; the Act on granting protection to foreigners within the territory of the Republic of Poland regulating grants of international and national protection status (adopted in 2003), the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members (adopted in 2006), the Act on Polish citizenship (adopted in 2009), the Act on promotion of employment and labour market institutions (adopted in 2004) regulating rules and requirements for work by foreigners; the Act on freedom of economic activity (adopted in 2004) regulating the business environment to foreigners to carry out business activity in Poland, the Act on the results of employing third-country nationals staying in the Republic of Poland illegally (adopted in 2012) regulating conduct / imposing penalties on entities employing illegally-staying foreigners, the Act on Card of the Pole (adopted in 2007) regulating grants of the Card plus the rights / benefits of Card-holders; the Act on system of education (adopted in 1991) regulating access of foreigners to education, the Act on Higher Education (adopted in 2005) providing for terms and conditions for study within HE; and the Act on repatriation (adopted in 2000) specifying conditions for Polish citizenship by foreigners of Polish origin.

3. Development of migration and international protection systems

From 1989, Poland's migration policy was to a large extent shaped by regulations adopted at the international level, and by international organisations (IOM, UNHCR, Council of Europe) and the EU, with policy developments typically restricted to responses to specific phenomena, e.g. illegal migration (transit and target).

In 1998 Poland opened EU negotiations in the sector of "Justice and Home Affairs" and took up a number of related actions, and the process of adjusting Polish law to the EU *acquis* was finalised by adopting, on 13 June 2003, two new Acts: the Act on foreigners and the Act on granting protection to foreigners in the territory of the Republic of Poland. A separate legal act regulated the rules for entry and stay in Poland for EU citizens and their family members (Act of 27 July 2002, replaced by the Act of 14 July 2006). The negotiation process highlighted from the EU perspective, the strategic role of Poland in protecting the EU's eastern borders and to fight illegal migration. Prioritisation of the EU

acquis has been to a degree, at the expense of the Polish administration to engage in analytical work to determine the direction of national migration policy. The establishment of the Inter-ministerial Team for Migration was, however, a watershed; which launched the *Migration policy of Poland – the current state of play and further actions* in 2009.

Accession to the EU in 2004 triggered a wave of economic emigration from Poland to countries with workforce shortages e.g. UK and the mobility and migration of young people, have created new challenges for Polish migration policy. Such movements have created a vacuum in the Polish labour market, resulting in action to support the process of return migration and discussions on widening labour market access for foreigners. Between 2006 and 2011, the Ministry of Labour and Social Policy introduced new provisions for legal / circular migration authorising foreigners to work as seasonal workers in Poland without the need to obtain a work permit. Target countries for such labour were Belarus, Russia and the Ukraine, now extended to citizens of Moldova and Georgia (under the mobility partnership).

Local Border Traffic Agreements have been concluded with Ukraine and Russian Federation which introduced a new quality in the movement of persons between Poland and its neighbours which significantly dropped after Poland had introduced visas as a consequence of joining of the Schengen area in December 2007.

4. Organisation of policy

4.1 Overview of migration and international protection policy

A foreigner may be granted international protection in Poland through refugee status, subsidiary protection, tolerated stay, asylum and temporary protection. Applications are assessed by the Office for Foreigners.

A foreigner may cross the border and stay on the territory of Poland if he/she is a holder of a valid travel document and a valid visa. A foreigner may be issued a uniform (residence, up to three months, or transit) or national visa (three months to one year). A residence permit for a fixed period longer than three months may be granted, if justified. Permits are issued by local authorities but an application may be made to, and issued by, the competent *voivode*, via the Polish consul in the country of origin. Other types of residence permits include the permit to settle, issued to children of a foreigner holding a permit, spouses of Polish citizens, or persons having resided for at least 10 years on the territory. Long-term EC residence permits may be granted to foreigners residing legally / continuously for 5 years provided that they have sufficient means to support themselves and their family members

Holders of refugee, subsidiary protection and tolerated stay statuses are entitled to legal residence. Under the new Act on citizenship (August 2012), foreigner may apply for Polish citizenship, regardless of their length of stay in Poland (under such circumstances, the President of the Republic of Poland grants Polish citizenship to a foreigner). The new legal measure introduced also the possibility to acquire Polish citizenship by recognition which has made citizenship much easier to acquire for foreigners residing in Poland for at least three years on the basis of the permit to settle, the long-term resident's EC residence permit or the permanent residence, for those who have a regular income, accommodation and are well integrated with Polish society (i.e. a good command of the Polish language is required).

Migrants may carry out work in Poland if s/he has been issued a work permit (holders of a permit to settle, a long-term EC resident's residence permit and the Card of the Pole, and their family members, are exempted from this requirement). Citizens of neighbouring states (Ukraine, Belarus and Russia) as well as Georgia and Moldova may work in Poland without a permit for six months within a period of 12 months. Holders of refugee, subsidiary protection and tolerated stay statuses (and their family members) benefit from free access to the labour market. Asylum applicants may work if a decision has not been reached after six months. Foreigners granted refugee status or subsidiary protection are granted one-year long assistance in order to support the process of integration.

Voluntary return has been implemented in Poland since 2003, on the basis of the Act on granting protection to foreigners within the territory of the Republic of Poland [so called assistance in voluntary return] and since 2006, under a Cooperation Agreement between the MI and International Organization for Migration (IOM). Asylum applicants, foreigners obliged to return to their country of origin, and victims of human trafficking may access the assisted voluntary return programmes. For foreigners, voluntary departure may result from expiry of a valid residence document, the obligation to return may result from a range of circumstances, including stay without a valid visa, breach of employment regulations, insufficient financial means in relation to stay, illegal border crossings and following an expulsion order.

4.2 Links with other policies

The system in Poland is linked with other policies, in particular with labour market policies, integration and educational policies and demographic policies. Policies of internal security and public order are also relevant. A key role in coordinating migration policy with other sectoral policies is played by the inter-ministerial Committee for Migration chaired by MI. Migration issues are also addressed in specific policy documents: the Mid- and Long term National Development Strategies (2020 and 2030), the National Action Plan for Employment 2012-14, the Human Capital Development Strategy and Social Capital Development Strategy

5. Analysis of asylum and migration systems

In 2008-2009 discussions started at the inter-ministerial level, to elaborate the core fundamentals of state migration policy, including identification of all relevant entities impacting on Polish migration policy in the future, together with an analysis of their competences, scope of likely activities, and inter-linkages. On 31 July 2012 the Council of Ministers adopted the document *Migration policy of Poland – the current state of play and further actions* whose aim is to provide direction to the public administrations, allowing effective decision making, among others, in the fields of legislation, administration, monitoring, financial planning and coordination; an Action plan, a new Act on Foreigners and further changes in migration legislation will follow.

ANNEX: Institutional Chart for Poland