



Legal Migration Fitness Check

Evidence base for practical
implementation

Member State summary

Poland

Annex 2 PL

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LEGAL NOTICE

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Introduction

Poland is a country with relatively low percentage of the Third Country Nationals, however, the situation in this regard has been changing over the last four years. The significant influx of foreigners in recent years can be explained, first and foremost, by the conflict in Eastern Ukraine. The political and economic instability is a push factor for Ukrainians to migrate to neighbouring Poland. At the same time, a relatively good economic situation in Poland is a pull factor for foreigners looking for better work opportunities. This concerns mainly Ukrainians, but also citizens of other third countries, namely Belarus, Vietnam, China, India, Nepal or Bangladesh. Over the years, Ukrainians have constituted the most numerous foreign population residing in Poland but currently the proportion is even higher. The statistics show the number of 222 013 Third Country Nationals holding Polish residency permit cards, out of which 11 984 are EU-long term residents and 165 829 are the persons granted temporary stay permit¹.

Over the last years the law concerning the TCN has been developing in order to meet the provisions of EU law. The principal legal act regulating the legal situation of foreigners in Poland is the Act of 12 December 2013 on Aliens (hereinafter: AA) It came into effect in May 2014, replacing the earlier Act of 2003, complicated and unclear due to subsequent changes introduced, including changes connected with the implementation of EU Directives into the Polish legal system. The new Act introduces general procedures and conditions for awarding temporary residence, and then regulates in detail the principles of awarding individual residence permits, including: work and stay permit, permit for work in a profession requiring high qualifications, family reunification permit, residence permits for students and scientists conducting scientific research. This act has been recently amended for the purpose of transposition the provisions of SWD and ICT.

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Poland**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant² for the following Directives:

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research ers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National	No	No	No	No	No	Permit for temporary

¹ Data generated from the official website on migration: <https://migracje.gov.pl/statystyki/zakres/polska/typ/dokumenty/widok/mapa/typDokumentu/2,4,8,11,15,16,18/rok/2018/?x=0.469&y=1.0338&level=1>

² . See ref document (EU summary) Under each phase, the following aspects are examined : : **Legal transposition of the EU legal migration acquis**: including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these non-compliance issues affect the practical application of the Directive; **Practical application of the EU legal migration acquis**: overview of the main application issues/problems arising in the MS per each of the migration phases; **Differences between national statuses and the EU legal migration acquis**: substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

parallel scheme	residence to conduct business Zezwolenie na pobyt czasowy w celu prowadzenia działalności gospodarczej Legal basis – the Act of 12 December 2013 on Foreigners – Article 142 of the Act – along with executive acts
Options implemented?	

Main differences between EU statuses and the respective national parallel schemes

There is no parallel scheme for FRD, LRD, SD, RD, BCD.

A temporary residence permit to conduct business activity might be perceived a parallel scheme of the SPD, because this permit is granted also to foreigners, the purpose of whose stay in Poland is performance of the function in the Management Board of a limited liability company (a joint stock company (S.A.)), whose stocks or shares are owned by the foreigner. This type of permit entitles them at the same time to perform work in this capacity. The residence card, issued in connection with temporary residence permit, includes a note "access to the labour market". Performing an alternative work requires obtaining a work permit. The procedure to obtain this residence permit is the same as in case of stay and work permit, while the requirements are different (concerns business activity)

1 Pre-application phase

1.1 Legal transposition of the EU legal migration acquis

The principal legal act regulating the legal situation of foreigners in Poland and transposing provisions of FRD, LTR, SD, RD, BCD, SPD directives is the Act of 12 December 2013 on Aliens (hereinafter: AA)³. Regulations concerning administrative

³ SWD, ICT, S&RD have not been transposed. Remark: SWD was transposed by the Act of 20 of July 2017 on amendment to the Act of 20 April 2004 on promotion of employment and labour market institutions and other acts (with minor exemption, the provisions have come into the

provisions in legislation connected with legalisation of a person's stay in Poland may be found both in the AA and in the Code of Administrative Proceedings (hereinafter: CAP), which in turn is the most important legal act regulating rules of administrative proceedings. Both these acts impose an obligation to inform a party to administrative proceedings about their rights and obligations, whereas the AA lists cases in which the authority in charge of the case has the obligation to provide information (i.a. in cases concerning the procedure of granting a temporary residence permit and an EU long-term residence permit), as well as emphasises that the information must be provided in the language which the foreigner can understand. At the legislative level, therefore, there is compliance of Polish law with obligations to provide information contained in EU directives.

1.2 Practical application of the EU legal migration acquis

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
Languages	Polish - National language- English French Russian Ukrainian Arabic Hindi Other					
The information is easy to find*	2	2	2	2	2	2

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Information can be found on the following aspects of the application procedure:

Application procedure	Conditions for admission	Entry requirements (e.g. visa etc.)	Cost of application	Applicable deadline	Rights upon admission	Any differences between the Directives
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fore on 1st of January 2014. ICT directive has been transposed by the Act of 24th of November 2017 on amendment to Act of Aliens and others acts.

Yes	Yes	Yes	Yes	Yes	Yes
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Information upon request

Information is provided upon request, including through face-to-face consultation in the national administrations in third countries and in the country of destination. Specifically:

- Voivodeship Offices provides information upon request. The way of communication and the scope of the information are different in particular Voivodeship Office.⁴
- Mazowiecki Voivode Office operates 24-hour automatic helpline which provides information about work and stay permits, work permits, Card of the Pole and invitation of a foreigner to Poland. Consultations via phone and e-mail are also available – separate phone number and e-mails are dedicated to the particular topic of conversation (i.e. stay permit, citizenship).
- Wielkopolski Voivode Office – provides face-to-face consultations at information desk, as well as by e-mail and phone (helpline).
- Małopolski Voivode Office - information by e-mail and phone, as well as in person at the office.
- Podlaski Voivode Office – information may be obtained by phone and e-mail (personal e-mail of the one of the office's employees is indicated), as well as in person.
- Zachodniopomorski Voivode Office – provides information by phone.
- Łódzki Voivode Office – provides information about legalization of the stay via Skype
- Podkarpacki Voivode Office – 'customer information card' contains contact details to the administrative unit responsible for a particular case. There is a separate customer card for each status.
- Pomorski Voivode Office – information available during phone duty on fixed days and times
- Lubelski Voivode Office – information available face-to-face at the office and by phone
- Warmińsko-Mazurski Voivode Office – information available by phone
- Opolski Voivode Office – phone numbers dedicated to the issues of: temporary stay permit, stay and work permit and long-term EU resident permit
- Kujawsko-Pomorski Voivode Office – e-mail address dedicated to the issues of legalisation of the stay and obtaining residence permits.
- Śląski, Dolnośląski, Lubuski and Świętokrzyski Voivode Offices provide telephone numbers to the relevant departments (not dedicated to particular issues)

Proceedings to obtain a temporary residence permit (FRD, SD, RD BCD and SPD), as well as long-term residence permit (LTR) are conducted by the Voivode with jurisdiction over the foreigner's place of residence. The body to which appeals against the Voivode's decisions may be submitted is the Office For Foreigners (OFF) which is the main state administration body dealing with migration. Both OFF's website and websites of a majority of Voivodeship Offices contain information concerning the stay

⁴ Voivod is state administration body acting on the provincial level. There are 16 voivodships (provinces), and consequently 16 Voivodes in Poland

legalisation process and application forms. Information is usually organised by duration (temporary, long-term) and reason of stay (studies, work, staying with family). They are prepared in Polish and in foreign languages, although in this respect there are significant differences between individual Voivodeships – usually information is translated into English, Russian, and Ukrainian, whereas sometimes information in the foreign language is limited in comparison with the Polish version. Only individual Voivodeship Offices provide information in Chinese, Vietnamese or Armenian, even though migrants from China, Vietnam and Armenia are relatively numerous. Because the information is provided online, even if the Voivodeship office of relevant jurisdiction for the place of stay does not provide comprehensible information, the information may be found on another institution's page. Voivodeship Offices will also provide email addresses and telephone numbers dedicated to residence cases (including automatic lines). Telephone contact, however, is not easy because these lines are usually busy, which is most probably connected with much higher inflow of foreigners into Poland in the last three years.

This means that access to information is quite easy, however understanding and application of specific provisions may constitute a problem. Studies conducted at the request of the Association for Legal Intervention prove that both for employees and for employers the issue of being exempted from the obligation to conduct a labour market test is complicated and unclear, because exemptions in this respect relate to various factors: the foreigner's legal status, their profession, situation in the local labour market.⁵

1.3 Differences between national statuses and the EU legal migration acquis

Nothing to report - there no other national statuses.

2 Preparation phase

2.1 Legal transposition of the EU legal migration acquis

The Act on Aliens currently in force reflects the most important provisions contained in FRD, LTR, SD, RD, BCD and SPD.

FRD: The family reunification procedure in Poland does not include persons in extramarital relationships. The arriving family members do not have to meet any pre-integration conditions. The exception concerning the situation of refugees, provided for in Article 11(2) of the Directive has not been specifically transposed to the Polish law. One may argue, however, that generally provisions of the Code of Administrative Procedure stipulate that in some cases authorities might treat as evidence anything that could lead to the finalisation of the case, i.e. application shall apply there. Therefore, partial conformity should be concluded. Poland has not transposed Article 6(2), 2nd subparagraph, And Article 15 (1) of the Directive.

LTD: Poland has not transposed Article 6(1), 2nd subparagraph of the Directive – the national law does not provide for an obligation to consider the severity or type of offence against public policy or public security, or the danger that the third-country national constitutes while refusing to grant long-term resident status on grounds of public policy or public security. The corresponding Article 17(1) 2nd subparagraph not been transposed either. The same is true for Article 17 (2) – the national law does not provide for a prohibition to basing the decision refusing applications for residence

⁵ Czerniejwska I.(2014) Pracownicy bez granic. Raport krajowy. (Employees without borders. National report) Poland, Association for Legal Intervention.

submitted by long-term residents or their family members on economic considerations.

SD: Polish legislation reflects regulations contained in the SD only in relation to full time students. Provisions of the Directive referring to pupils and volunteers have not been transposed.

BCD: The terms Blue Card itself is used in the context of the residence document issued, and the residence status is described as temporary residence permit for the purpose of highly qualified employment. Article 15 (3) has not been transposed into the Polish legal system.

2.2 Practical application of the EU legal migration acquis

One application (with supporting documents) for a residence? permit is the only step for the submission of the application. In the case of FRD, after issuing permit – one application with supporting documents for visa per person.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
The information that applicants need to complete is not extensive	1	1	1	1	1	1
The application form is user-friendly	2	2	2	2	2	2

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C, R				
Continuous legal residence		Yes			
Sufficient resources	Yes, T, C, R	Yes, T, C, R	Yes, T, C, R	Yes, T, C, R	
Accommodation/Address in territory	Yes, T, C, R	Yes, C, R			Yes, T, C, R
Sickness insurance	Yes, C, R	Yes, C, R	Yes, C, R	Yes, C, R	Yes, C, R
Work contract (for RD host agreement)				Yes, T, C, R	Yes, T, C, R
Minimum salary threshold					Yes
Professional qualifications				No	
(Pre-) Integration measures	No		No		
Pre-departure					

conditions					
Proof no threat to public	Yes, R	Yes, R	Yes, R	Yes, R	
Medical examination certificate	No		No	No	No
Valid travel document			Yes, R	Yes, R	Yes, R
Entry visa					No, R
Other	Yes, T, C, R	Yes, R	Yes, C, R	Yes, C, R	Yes, T, C, R

Note: T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.

The same residence permit application form applies to all temporary residence permits. Part of the criteria and the way they are documented are also identical – this refers in particular to having insurance and the place of residence. All applicants must prove they have a specific material status, whereas students and scientists must prove having sufficient funds to stay in and leave Poland, whereas others – having stable and regular income. The exception here is the procedure of reunification of families in the case of persons who have been granted international protection and who want to bring their family over during the period of 6 months from the award of the protection. Compared to the Directive, the Polish provision is more favourable for the applicants.

The required stable and regular income must remain only at a level that is higher than the amount of income which entitles the person to cash benefits from social welfare. Also, such income must be shown by persons applying for a long-term residence permit, which raises some doubts in the light of the case law of the Court of Justice which specifically prohibits Member States from setting minimum economic thresholds for those who apply for the long-term EU resident's residence permit.

In information materials concerning residence procedures, examples of proof of sufficient means of support include usually such documents as the contract of employment, tax returns (PIT), or social insurance institution (ZUS) certificate, whereas, as has been stated in the commentary to the AA, the assets collected should also be taken into account.⁶ Practice shows, however, that officials deciding whether this requirement has been met look at the regularity of income received and not funds in the person's possession, which may potentially make it difficult to meet the financial requirements.

The application for a residence permit must be filled in in Polish, which constitutes a difficult for TCNs who do not have good command of written Polish.

As regards other criteria and documents required when applying for individual residence titles, their catalogue overlaps as a rule with regulations contained in individual directives.

FRD: In accordance with AA, a third country national must present proof of having a place of residence, however unlike in the provisions of directives, there are no requirements concerning living conditions, which is probably a factor making it easier to meet that condition, just like to processing of the application itself. In practice, problems with the translation of documents confirming family relationships sometimes occur due to the shortage of sworn translators of rare languages.

SD: The Act on Aliens does not require as such that student have a document confirming their command of the Polish language, however such document may be

⁶ Chleby J. (edit.) (2015) *Ustawa o cudzoziemcach. Komentarz (Act on Aliens. Commentary)*, Wydawnictwo C.H.Beck, Warsaw, p. 473

demanded by the university or the Voivode processing the application as a proof necessary to process the residence application. The permit is issued to persons who undertake Polish lessons to continue their university education.

Sociological research conducted among foreigners working in Poland show practical problems connected with the recognition of diplomas.

According to the research conducted by the Institute of Public Affairs among foreign doctors and nurses employed in Poland (with various residence titles), the diploma recognition procedure is deemed by TCNs as a costly and long-lasting process, that requires having significant savings. The diploma recognition matters are dealt with in Poland by medical universities which determine different rules under this procedure. In consequence, in the case of some universities it is easier to conduct the diploma recognition procedure, in the case of others – it is more difficult. Another problem indicated is the lack of remuneration during the post-graduate internship or specialisation training (the exception is where the person has a Pole's Card and a permanent residence permit) in Poland. In consequence, migrants are forced to undertake work below their qualifications or live on their savings and family members' income during the entire procedure.⁷

2.3 Differences between national statuses and the EU legal migration acquis

Nothing to report - there no other national statuses.

3 Application phase

3.1 Legal transposition of the EU legal migration acquis

Generally Polish legislation is compliant with the provisions concerning the applying for stay in Poland, contained in FRD, LTR, SD, RD, BCD and SPD. The Act on Aliens which has been in force since 1 May 2014, unlike its predecessor of 2003, does not offer a possibility of submitting an application for temporary stay from outside the territory of the Republic of Poland – a foreigner may submit an application for a temporary stay permit no later than on the last day of their lawful residence within the territory of the Republic of Poland. (FRL): The only exception here is the family reunification procedure in the case of which the application for the residence permit for their family members is made by the person already staying within the territory of Poland.

Polish regulations do not provide for the application of accelerated procedures, whereas in accordance with Article 35 paragraphs 1-2 of the Code of Administrative Proceedings, public administration bodies are obliged to handle cases without an undue delay.

3.2 Practical application of the EU legal migration acquis

The application (for every status) shall be submitted the competent voivode office by TCN in person due to the obligation to submit fingerprints. If the application for an every residence permit has not been submitted by the foreigner in person, e.g. was sent by mail, the voivode calls them to appear in person within 7 days under pain of leaving the application without consideration.

The application forms are available online and they may be completed online. However, the application form must be printed and signed by the applicant.

In the case of family reunification, it is TCN who wants to bring his family to Poland that submits and signs application(s) for their family member(s). The family

⁷ Łada A., Frelak Seges J., (2017) Wykwalifikowani migranci w zawodach medycznych w Polsce i w Niemczech – wnioski z badań i rekomendacje, p.11, available at: <http://www.isp.org.pl/uploads/analyses/2082342909.pdf>

member(s) granted stay permit are obliged to submit fingerprints upon arrival to Poland (while picking up the residence card).

One Member State authority is involved in the processing of lodged applications and for issuing the permit(s), namely Voivode competent for the foreigner's place of residence.

The applicant is informed of a decision in writing by post (registered letter) or in person by a representative of relevant authorities (the applicant picks up the decision in person at the office).

For notifying the applicant of a decision, the Member State issues one administrative decision.

In case of a rejection of the application, the reasons for the rejection are provided in writing and in Polish.

If the applicant is the employer rather than the third-country national, the third-country national is involved in the application process and is notified of the decision (The TCN is always the main applicant. He/she may act by the proxy who may be employer (or employer`s worker).

The concept of administrative silence has been introduced to the Administrative Procedure Code on June 1st, 2017 but it concerns the situation when the lack of the decision or lack of objection means acceptance of a request. This possibility must be, however, stipulated by the specific article of the relevant law. Such possibility is not stipulated in the Act on Aliens which is the main act regulating stay permit issues.

Directive	General	FRD	LTR	SD	RD	BCD	SPD
Application from third country (Q3a)	Yes / No	Add if different					
Permit received in third country	No	Yes for FRD					
Number of authorities involved in the application	1						
Number of authorities involved in the issuance of the residence permit	1						
Application modalities	In person						
Existence of a standard application form for all statuses (Q2 (c)(i))	No						
Language of the application form	National language(

	s) - Polish	English	French	Russian			
Fees charged	340 PLN	640 PLN	340 PLN	340 PLN	340 PLN	440 PLN	340 PLN in the case of foreigner who performs work in the management of the limited liability company or a joint-stock company, shares or stocks of which he/she does not have.
Other fees charged?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Fees charged for permit issuance	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Fees charged for renewal / replacement of the permit	340 PLN	640 PLN	340 PLN	340 PLN	340 PLN	440 PLN	340 PLN in the case of foreigner who performs work in the management of the limited liability company or a joint-stock company, shares or stocks of which he/she does not

have.

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law) ⁸	183 days	91.5 days	61 days	61 days	61 days	61 days
Processing time (in practice)	183 – 244 days	61 – 182 days	61 – 182 days	61 – 182 days	61 – 182 days	61 – 182 days

The application for the legalisation of stay in Poland are processed by the Voivode with jurisdiction of the place of stay of the TCN in Poland. Current law does not provide for the possibility of a temporary stay permit for a foreigner being applied for by the employer, although the employer is involved in the temporary stay permit application procedure. Prior to taking the decision, the Voivode is obliged to ask the commander of the Border Guard, the commander of Regional Police, the Chief of the Internal Security Agency, and if necessary also other bodies, to share information on whether the entry and stay of the foreigner in the territory of the Republic of Poland may pose a threat to national defence or national security or public safety and order. These institutions have 30 days to reply to the Voivode, and so the information materials state that proceedings take over 30 days. Currently in practice, however, due to the substantial number of applications, one must wait several months for the decision – in July 2016 the average time of waiting for the decision in Mazowieckie Voivodeship was 182 days.⁹ The long wait for the decision puts people who cannot legally work and those who want to leave Poland during that time in a difficult situation. After the application for temporary residence that does not have any formal deficiencies has been submitted, a stamp is placed in the foreigner's passport, confirming that the person is staying legally, however it does not enable the person to cross the border.

Among positive developments, it is worth mentioning the practice of booking appointments (by phone or online) in the Voivodeship Office to submit the application or provide missing documents. In the previous years to submit an application/provide missing documents, foreigners had to wait in long queues, sometimes even at night. There were even "queue place" trading stations. At the moment, one can also use the website to track the application processing status.

3.3 Differences between national statuses and the EU legal migration acquis

Nothing to report - there no other national statuses.

⁸ According to Art. 35 Art. 1-2 of the Administrative Procedure Code administrative authorities are obliged to make decisions without undue delay. Decision in a case which requires explanatory proceedings (i.e. where decision cannot be taken immediately) shall be taken no later than within one month, and in a particularly complicated case – no later than within 2 months.

Office for Foreigners states in the Information for the foreigner on the rules and the procedure and of his rights and obligations, the issuing decision regarding temporary stay permit requires more than 1 month. Settlement of the case concerning the award of a long-term EU resident residence permit - should be completed no later than within three months.

⁹ Observations of NGOs providing free legal aid to the foreigner, discussions on this topic may be also found on the social media (discussion groups whose members are migrants residing in Poland).

4 Entry and travel phase

4.1 Legal transposition of the EU legal migration acquis

As has already been mentioned earlier, the temporary residence permit (SD, RD, BCH and SPD) and the long-term residence permit (LTR) may be applied for during legal stay within the territory of the Republic of Poland, whereas the foreigner must do so in person, as it is necessary to leave a set of fingerprints. (FRD): The only exception from this rule is the family reunification procedure. Article 13 (1) of FRP has been accepted by an assessor as transposed into Polish law because visa regulations provide for visas issued to exercise a temporary residence permit granted for family reunification. The visa instructions, however, are not public, which the assessor deemed an obstacle in the assessment of the transposition of Article 14 (4) of RD.

4.2 Practical application of the EU legal migration acquis

As the third-country national is not yet in the possession of a residence permit, the Member State issues a visa and has put a specific timeframe for issuing the latter.

The Member State allows third country nationals who hold a valid permit and valid travel document to enter and re-enter their national territory only on the basis of the permit.

The third-country national is allowed to travel to other Schengen Member States only on the basis of the permit and valid travel document.

The Member State does not impose specific entry requirements to third-country nationals of a visa free country.

Upon arrival, third-country nationals are required to register with the local authority, with social security institutions, with the tax authority and obtain a tax identification number (NIP) (this applies only to the employees).

TCN who have a residence permit and a valid travel document may freely leave and enter the territory of Poland. Persons who receive a residence permit when they are abroad (FRP), receive the residence permit only when they are within the territory of Poland and leave their fingerprints in the Voivodeship Office which has issued the decision. If foreigners come from a country that is not visa-free, they must obtain a visa before arriving in Poland. In visa proceedings, they must prove that they have a place of residence, insurance and means to cover living expenses in Poland. This requirement refers also to family members of persons who have received international protection, despite the fact that this category of foreigners is exempted from these requirements at the stage of applying for a residence permit for members of their family (if the application is submitted within 6 months of being awarded the protection). It is worth noting that the fact that the person holds a temporary residence permit does not guarantee that they will be granted a visa. Which is more, the consul's negative decision concerning the visa is not subject to an appeal.¹⁰

4.3 Differences between national statuses and the EU legal migration acquis

Nothing to report - there no other national statuses.

¹⁰ Mikulska-Jolles, A., (ed.), (2016) Family Reunification of Foreigners in Poland. Law and practice, Helsinki Foundation for Human Rights, Warsaw, p.34, available at: http://programy.hfhr.pl/uchodzcy/files/2016/08/EN_laczenie-rodzin.final_.pdf

5 Post-application phase

5.1 Legal transposition of the EU legal migration acquis

Polish legislation is compliant with regulations of Directives in relation to requirements concerning the time for which the residence permit is awarded. The right to stay is awarded to an LTR for an indefinite period, and the foreigner is only obliged to replace the residence card every five years. In relation to scientists, Polish legislation is more favourable than provisions stipulated in the RD - according to the AA, the temporary stay permit for conducting scientific research is granted for a period of time necessary to finalise research, but not longer than 3 years.¹¹ Polish law does not specifically refer to the renewal of a temporary stay permit; nevertheless, the general rules regarding the granting of a temporary stay shall apply – the foreigner must apply for a new permit before the previous permit expires.

5.2 Practical application of the EU legal migration acquis

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	3 months	Unlimited time	15 months	3 months	3 months	3 months
Maximum validity of first permit	36 months	Unlimited time	36 months	36 months	36 months	36 months
Minimum validity of permit renewal	3 months		Subsequent temporary stay permit in order to receive education at a university is granted for a period necessary for achieving the goal of the stay.		3 months	
Maximum validity of permit renewal (Q6b(i))	36 months	36 months		36 months	36 months	36 months

¹¹ Chlebny J.,(2015) Ustawa o cudzoziemcach. Komentarz (Act on Aliens. Commentary) , C.H. Beck, Warsaw: p. 455.

The Member State does not have a set timeframe to deliver the permit following the notification of the decision.

Decisions to issue a stay permit in Poland are issued in writing. Practice shows that negative decisions are sent by post, whereas in the case of positive decisions the TCN is notified by telephone about the possibility of collecting the decision in person; this is also used as an opportunity to collect the residence document. Because in accordance with Polish law the entire proceedings are conducted in Polish, the decision is also issued in Polish. This means that reading it may be difficult for persons who do not have a good command of the written Polish. The correct and quick reading of the decision is important also since it contains instructions concerning the method and deadline for the submission of an appeal.

5.3 Differences between national statuses and the EU legal migration acquis

Nothing to report - there no other national statuses.

6 Residency phase

6.1 Legal transposition of the EU legal migration acquis

As a rule, Polish legislation is compliant with guidelines contained in Directives with regard to the refusal and withdrawal of a residence permit, and minor exceptions are listed below. The law concerning foreigners does not provide for the possibility of extending the stay permit but requires the application for further permits. The equal treatment rule is not contained explicitly in the Act on Aliens, the main document transposing migration acquis, nevertheless antidiscrimination clauses may be found in several other documents, first in foremost in ACT of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment, Acts concerning employment – the Labour Code and the Act on Promotion of Employment and Labour Market Institutions. As regards other areas, the equal treatment rule may be derived from the existing subject matter legislation which in principle does not exclude aliens from its scope. Polish Constitution allows for a possibility of setting differentiation in access to goods and services based on nationality with respect to foreigners. Currently, however, no Act in force has introduced such restrictions.

(LT): Because Polish legislation does not provide for awarding the long-term resident status, but granting a stay permit, then in consequence it is not the status that may be withdrawn but the stay permit. Only after the stay permit has been withdrawn is it possible to expel the foreigner from the territory of the Republic of Poland (Article 9 (1)). Polish Act on Aliens (Article 211(1)(d)) sets out additional grounds by denying the procedure of granting long-term residence permits to aliens who reside in Poland in order to start or to continue education in general, not only in order to pursue their studies or a vocational training (Article 7 (3) of the Directive). Article 12(3b) of LTR has been partially transposed. The obligation to readmit the third-country national and his family members in the case of expulsion from another Member State has not been transposed (12 (3b)). Polish law provides for additional reasons for withdrawing the long-term residence permit (Article 9 (1)). In reference to Article 18 (3), partial compliance has been found.

RD: Polish law permits a refusal of extension or withdrawal of the approval of the research institute accepting foreigners in the case where the research organisation fails to notify the Voivode of any events which could hinder the performance of the agreement on accepting the foreigner in order to implement a research project. This sanction has not been provided for in the Directive.

SPD: Poland has excluded equal treatment for those third-country nationals who hold a single permit only with regard to the provision of Article 12(1), point (c) of the Directive. The Polish legislator decided to restrict some aspects of the right to

education and training. The right to the family benefit has been limited too. Article 12(3) does not seem to be transposed.

6.2 Practical application of the EU legal migration acquis

a. Use of the permit:

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a constitutive value. It gives third-country nationals to right to move freely on the Member State's territory.

Member State allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

The permit is required as a legal document for the following other administrative procedures:

Access to education	Access to healthcare	Registration with PES	Fixed telephone subscription	Utility subscription	Open a bank account	Social security registration ¹²
		X	X			X

b. Renewals of the permit:

National or EU law imposes a direct or indirect requirement to renew a valid residence document.

The renewal process follows a single procedure, involving one authority. The same authority is involved as in the first application procedure.

c. Change of status and naturalisation

Status changes are possible for most, with the exception of change from status of researcher into Blue Card. The procedure for requesting a status change is the same as the first application procedure.

In order to obtain citizenship (naturalisation, recognition as a Polish citizen), the third-country nationals needs to comply with the following conditions:

- knowledge of the Polish language and length and basis of a stay in Poland. Knowledge of the Polish language does not concern children. When it comes to the length and basis of stay, the following persons may be recognized as Polish citizens:
- a foreigner residing continuously in Poland for at least 3 years on the basis of a permanent residence permit or a long-term EU resident permit, having a stable and regular source of income in Poland and a legal title to the occupied dwelling;
- a foreigner residing continuously in Poland for at least 2 years on the basis of a permanent residence permit or a long-term EU resident permit, married to a Polish citizen for at least three years or holding no citizenship;

¹² Residence card is not required in the case of registering a person in the Social Security Institution. It is needed in order to apply for social aid as only some categories of aliens are entitled to social aid

- a foreigner residing continuously in Poland for at least 2 years based on a permanent residence permit which was obtained in connection with refugee status granted in Poland;
- a foreigner residing continuously and legally in Poland for at least 10 years who holds a permanent residence permit/long-term EU resident permit, and has a stable and regular source of income in Poland along with legal title to the occupied dwelling;
- a foreigner residing continuously in Poland for at least 1 year based on a permanent residence permit which was obtained in connection with the foreigner's Polish ancestry or holding Card of Pole.
- a minor foreigner with one parent being a Polish citizen who resides in Poland based on a permanent residence permit or a long-term EU resident permit and the other parent who does not hold Polish citizenship has agreed to this recognition;
- a minor foreigner with at least one parent whose Polish citizenship has been restored, if the minor resides in Poland based on a permanent residence permit or a long-term EU resident permit and the other parent who does not have Polish citizenship has agreed to this recognition;

(B) Polish citizenship may be granted by the President of the Republic of Poland. The President is not restricted by any conditions that must be met by a foreigner and can grant Polish citizenship to any foreigner, regardless of how long he has stayed in Poland.

What are the procedures for third-country nationals to apply for naturalisation:

(A)

The TCN submits an application with supporting documents to the Voivode competent for the place of residence of the applicant in person or by post.

An appeal against a decision of the Voivode can be submitted to the Minister of the Interior and Administration, via the Voivode, within 14 days of the date on which the negative decision was served. An appeal against a decision of the Minister, however, may be filed at the Voivodeship Administrative Court in Warsaw.

Apart for the procedure described above, the third-country nationals may also be granted Polish Citizenship by the President of the Republic of Poland.

The application (with supporting documents) for granting Polish citizenship to a person residing legally in Poland must be submitted to the President via the Voivode competent for the place of residence of the applicant. If the foreigner lives abroad, the application must be filed via the competent consul. There is not particular requirement to be met and a decision depends on President`s will. Refusal to grant Polish citizenship does not require justification and is not contestable.

d. Employment rights on the basis of the permit

In general, a work-related permit is linked to a certain employer. When changing employer, the third-country national needs to request a change to the permit.

e. Equal treatment

With regard to identifying labour exploitation, the Member State does not have a mechanism in place to monitor the exploitation of third-country nationals. However,

the information in this regards is collected in the course work of two bodies the **National Labour Inspectorate (NLI)**¹³ and Border Guards. NLI has mandate to control compliance of working conditions with labour law and is also authorised to check legality of employment and stay in Poland of the foreigners and in this scope it cooperates closely with the Border Guard (BG). This cooperation is formalised due to the agreement of 2008 (amended in 2015) between the Chief Labour Inspector and the Border Guard Commander in Chief and it consists of exchange of information and common trainings and joint controls. Nevertheless, cooperation of these two institutions enforces possibility of detecting labour exploitation. In the instance of infringement of the provisions stipulated in the labour code the NLI may, among other things, give an instruction for the employer, impose a fine as well as refer the case to the Labour Court. In addition, the government bodies that have learned about a crime prosecuted *ex-officio* (what includes crime of human trafficking and other work-related crimes) in connection with their official activities are obliged to immediately notify the prosecutor or the Police. Moreover, they are also obliged to take actions until the authority appointed to prosecute the crime arrives or until the competent authority issues the relevant order to prevent evidences of the crime from contamination.

f. Integration:

Specific integration procedures and conditions do not apply to third-country nationals once established on the territory of the Member State.

Polish legislation does not provide for the possibility of extending the stay permit, as a result of which the TCN, before the previous permit expires, must apply for a new one. The new permit should also be applied for if the residence status changes, and in the event of changing the employer. In all those cases, the residence permit application procedure and costs are the same as in the case of applying for the first time. The exception is related to permit for work purposes – information from the poviastarost (head of the district) is not required if the TCN worked for the same employer in the same position immediately before making the application. In such a case, the TCN is not obliged to stop working during the application processing period. Also Blue Card holders who have worked in Poland for two years are not required to presents information from the poviastarost.

Foreigners arriving in Poland to perform work are generally tied to their employer, which sometimes is the reason for employee abuse in relation to them. It should also be emphasised that the change of the employer involves further costs of residence proceedings to be incurred by the foreigner. Both these factors create favourable conditions for illegal employment. Illegal employment of foreigners is quite a widespread phenomenon.

The Act on Aliens does not specify what type of contract should be concluded between a foreigner and their employer. The employer is not obliged to conclude a contract of employment which guarantees all employee rights and covering the employee with all mandatory types of insurance. The practice of employing foreigners based on contracts other than the contract of employment is quite widespread – according to the Ministry of Family, Labour and Social Policy, 32 percent of statements on intended employment of a foreigner registered in 2016 concerned contracts of specific work, i.e. a contract under which no social or health insurance contributions are deducted. It is possible that less advantageous contracts (contracts of mandate, contracts of specific work) are also concluded with foreigners in other residence situations.

6.3 Differences between national statuses and the EU legal migration acquis

¹³ **National Labour Inspectorate is the** monitoring institution subordinate to the Polish Parliament whose mandate covers supervision and inspection of labour law observance by enterprises.

Nothing to report - there no other national statuses.

7 Intra-EU mobility phase

7.1 Legal transposition of the EU legal migration acquis

As a rule, Polish legislation is compliant with the EU migration acquis, and the cases in which there has been no transposition are listed below:

SD: Article 8(1) (c) has not been transposed, in accordance with Article 4(2) of the Directive. Article 8(2) has not been transposed as it is not applicable, because of Article 8(1) (c) not having been applied.

7.2 Practical application of the EU legal migration acquis

For short-term mobility, the Member State:

- Does not require the third-country national to notify
- Does not require the third-country national to ask for authorisation.

Foreigners with residence permits in another Schengen zone country may enter the territory of Poland without any additional formalities and apply for temporary stay permits, which will enable them to stay in Poland for a period longer than three months. From this point of view, they are in a better situation than persons who remain in third countries and are covered by the visa requirements. Nevertheless, just the requirements which TCNs must meet to obtain a stay permit are the same for all foreigners and depend on the type of permit they are applying for, and not their previous mobility.

Poland is a country which is not very popular among mobile TCNs, whereas this lack of interest is not due to legal and administrative difficulties. In comparison with other EU countries, Poland is less attractive from the professional point of view – in particular as regards salaries and wages, or the opportunities for finding a job. The strong ties between the foreign employee and the employer constitute a factor which negatively affects mobility.¹⁴ The language is probably also a barrier, particularly when combined with the fact that Polish integration offer is very poor. There are only eight states whose citizens may transfer social insurance.

7.3 Differences between national statuses and the EU legal migration acquis

Nothing to report - there no other national statuses.

8 End of legal stay / leaving the EU phase

8.1 Legal transposition of the EU legal migration acquis

There is no incompliance with regard to the end of legal stay/leaving the EU, as there are no specific requirements for TCNs who are leaving Poland when their stay permit ends. (RD) Financial liability of a scientific institute for an illegal stay of a scientist who arrived in the territory of Poland in connection with conducting scientific research in this institute (RD).

8.2 Practical application of the EU legal migration acquis

There are specific procedures in place for third-country nationals who choose to leave the Member State. These include:

¹⁴ Polish National Focal Point of the European Migration Network, (2013) Intra-EU mobility of Third Country Nationals, available at: <https://emn.gov.pl/esm/publikacje/nasze-publikacje/wewnatrzunijna-mobilnos/13136,Raport-krajowy.html>

- Not specified

The Member State allows third-country nationals to export certain social security benefits. The transfer of benefits is possible only in the case of foreigners – citizens of countries with which international agreements on transfer of social benefits have been concluded. Poland has concluded eight such agreements with following countries: USA, Canada, Australia, Ukraine, Moldavia, South Korea and former Republic of Yugoslavia which currently applies to Serbia, Montenegro and Bosnia and Hercegovina.

However, the TCN who was insured in Poland has the right, having attained the statutory retirement age, to apply for the payment of a pension from the Polish Social Insurance Institution.

Information on the portability of social security benefits is not easy to find and not clear.

The permit is revoked, if the foreigner left Polish territory for a period exceeding six years or left the territory of the EU for a period of consecutive 12 months. In the case of a person who held a permit for temporary residence for the purpose of work in a profession requiring high qualifications or is a family member of a foreigner who held such a permit the absence in territory of EU may not exceed 24 months. A third-country national residing in the Member State is allowed to be absent from the territory for a maximum of 365 days in case of LTR (no rules for other categories) before s/he loses the residence permit and/or right to stay. The absence of third-country nationals is not monitored by the Member State.

The Member State has measures or a scheme in place to allow circular migration.

There are consequences of deliberate overstay of the duration of the residence permit. A foreign national's illegal stay in Poland is considered a petty offence, punishable by a fine. Administrative proceedings are initiated against a foreign national staying in Poland against the law, aimed at issuing a decision on imposing the return obligation on a foreigner. When such a decision is issued, it also stipulates (gives) a period for which the person in question is banned from re-entering the territory of Poland, varying in length from 6 months to 3 years.

There are no specific requirements for TCNs who leave Poland when their stay permit expires. However, as a rule the TCN is required to inform the Voivode who granted them the stay permit about cessation of the cause for granting the permit (i.e. termination of work, studies) which includes also the situation when the person decides to leave Poland. The failure to meet this obligation may lead to the authority refusing to issue another temporary stay permit if the TCN applies for it within a year.

The social security system in Poland is based first and foremost on the insurance system – employed persons pay contributions and therefore are covered by insurance. All legally employed people have the right to benefits as a result of illness, occupational disease, accidents at work, maternity, disability, pension and family disability pension. Foreigners acquire the right to such benefits on the same principles as Polish citizens. However, the transfer of benefits is possible only in the case of foreigners – citizens of countries with which international agreements have been concluded. Poland has concluded eight such agreements,¹⁵ however these do not include countries whose citizens constitute a relatively large percentage of migrants staying in Poland (Russia, Vietnam, China, Belarus). Persons who came to Poland relatively recently and are of an advanced age may be in a particularly difficult situation – they are subject to the previous insurance system (covering individuals

¹⁵ Ministry of Family, Labour and Social Policy, Umowy międzynarodowe o zabezpieczeniu społecznym, <https://www.mpips.gov.pl/koordynacja-systemow-zabezpieczenia-spoiecznego/umowy-miedzynarodowe-o-zabezpieczeniu-spoiecznym/>

born till 31.12.1948), based mainly on the number of years of employment and age, and may have problems with acquiring the right to benefits¹⁶.

8.3 Differences between national statuses and the EU legal migration acquis

Nothing to report - there no other national statuses.

9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State

Overall, the transposition of the FRD, LTR, SD, RD, BCD, SPD into the Polish legislation seems to be satisfactory. However, it should be noted that some issues have been detected. The provisions of the SD referring to pupils and volunteers have not been transposed. S&RD has not been transposed. SWD was transposed by the Act of 20 of July 2017 on amendment to the Act of 20 April 2004 on promotion of employment and labour market institutions and other acts (with minor exemption), the provisions have come into the fore on 1st of January 2018. ICT directive has been transposed by the Act of 24th of November 2017 on amendment to Act of Aliens and others acts.

In May 2014, the Act of 12 December 2013 on Aliens came into effect, replacing the earlier Act of 2003, complicated and unclear due to subsequent changes introduced, including changes connected with the implementation of EU Directives into the Polish legal system. The new Act introduces general procedures and conditions for awarding temporary residence, and then regulates in detail the principles of awarding individual residence titles, including: work and stay permit, permit for work in a profession requiring high qualifications, family reunification permit, residence permits for students and scientists conducting scientific research. In relation to these residence permits, if there are no negative premises, the permit is issued mandatorily. This is to avoid (minimalized) arbitrary decisions. There is a list of the negative premises stipulated in the Act of Aliens – these are the circumstances when the permit cannot be granted. If a third-country national meets all the requirements prescribed by the law to obtain a permit, and at the same time there are no negative premises, the permit is issued obligatory.

It seems that one of the main problems encountered by TCNs in Poland is the long wait before the decisions on the residence permit is issued, which for some people makes it impossible to work and leave Poland. The problem of the long wait is partly caused by the significant number of foreigners coming to Poland, particularly from Ukraine which is politically and economically unstable. Surveys conducted among foreigners show that diploma recognition procedures are costly and protracted from their point of view, as a result of which the number of foreigners working in medical professions, despite the existing demand, is small. Rules concerning the exemption from the requirement to have a work permit and the obligation to present information from the poviastarost (head of the district) are also complicated.

The document entitled "Polish migration policy – current situation and proposed measures", adopted in 2012, assumed preferential treatment of some groups of foreigners, including students, scientists, people with professional qualifications that are in demand, as well as persons already settled in Poland. Based on the available data it must be also stated that scientists from third countries rarely use the opportunity of coming to Poland. According to the data from the Ministry of Science

¹⁶ Polish National Focal Point of the European Migration Network, (2014), Świadczenia społeczne. Dostęp migrantów do świadczeń zabezpieczenia społecznego w Polsce, p. 78-81, available at: <https://emn.gov.pl/esm/publikacje/nasze-publikacje/dostep-migrantow-do-swi>

and Higher Education, in 2014 only 4 scientific institutes were approved as institutions accepting a foreigner.¹⁷ At the same time, however, the number of foreigners studying in Poland is growing systematically. In accordance with the assumptions of the migration policy, persons with high integration potential (including persons with Polish roots) have also been deemed desirable migrants, which is interesting in the context of Polish legislation which basically does not impose integration requirements on foreigners.

Poland consistently attaches a lot of importance to ensuring that the arriving foreigners are financially independent – thus the requirements concerning funds are determined at the level exceeding the threshold from which social welfare benefits are awarded. Despite the extension of the catalogue of foreigners entitled to certain social benefits in 2014 (including persons staying on the basis of temporary stay permits) in Poland, the number of people actually using state assistance is small.

The document entitled “Polish migration policy – current situation and proposed measures” was withdrawn by the current government in 2016 as out-of-date in the current situation, and the current government has announced a change in the direction of the migration policy.

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