

EMN



Annual Policy Report 2008 for Poland

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with a view to supporting policy-making in the EU.

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Introduction – summary

Pursuant to Article 9(1) Decision of the Council 2008/381/EC establishing the European Migration Network, every National Contact Point is obliged to prepare an Annual Policy Report describing the migration and asylum situation in the Member State, including information about the most important political events, institutional changes and available statistical data.

This report is the first annual policy report prepared for EMN by the Polish National Contact Point to the European Migration Network. It covers events which took place from 1 January 2008 – 31 December 2008.

The year 2008 brought very important changes in the law concerning foreigners. Under the amended Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, a new form of international protection was introduced – a subsidiary protection, which significantly changed the situation of people who did not fulfil the conditions to be granted a refugee status according to the Geneva Convention, but who unquestionably needed the protection. Due to new regulation those people became entitled to benefit from the integration aid. Regulations concerning foreigners coming from vulnerable groups were more precise – among other things, regulations concerning unaccompanied minors. Act on the amendments to the Act on foreigners of 13 June 2003 and other acts were introduced in order to, *inter alia*, implement regulations enabling foreigners to travel within the framework of the local border traffic.

On 30 March 2008, a new Act of 7 September 2007 on the Card of the Pole, entered into force. Under this regulation foreigners of Polish origin can apply for a document called the Card of the Pole (*Karta Polaka*) confirming their belonging to the Polish Nation and granting them certain rights.

January 2008 was the last month for foreigners stayed in Poland illegally and met special conditions to legalize their stay according to the “regularisation” provisions operational since 20th July 2007. Due to the fact that a relatively small number of immigrants (coming mostly from Viet Nam and Armenia) took advantage of this opportunity, the program did not have a significant impact on the scale of illegal immigration in Poland.

2008 was the first year when Poland fully applied the Schengen acquis – which on the one hand significantly influenced on the functioning of the Border Guard and on the other hand – brought about longer procedure for persons crossing the eastern Polish border (border between Poland and Belarus, Russia, Ukraine).

In 2008 the government focused among other things on changes in access to the job market. The phenomenon of mass emigration of Poles to the EU member states after 2004 caused temporary shortage of employees in some of the job market segments and increased the interest of the third country citizens in migration to Poland for economic reasons. Therefore, the Ministry of Labour and Social Policy prepared an amendment to regulations concerning the employment of foreigners, in order to facilitate them access to work. The government started information campaign aimed at providing Polish emigrants with information concerning formalities they should undertake before and after return to Poland as well as legal and practical arrangements relating to undertaking an economic activity (also in the form of FAQ). The aim of this activity was to encourage emigrants to return. Furthermore, a lot of attention was devoted to the social effects of the economic migration of Poles after 2004, especially including the problem of “Euro-orphans”, i.e. leaving the children behind in the country by Polish parents who decide to work abroad.

1. Political Developments in Poland

1.1 General structure of the political system in Poland and the institutional context related to the issues of migration and asylum

The most important Polish legal Act is the **Constitution of the Republic of Poland**¹ adopted on 2 April 1997 by the National Assembly – the Sejm and the Senate (lower and upper chambers of the Parliament) – and validated in a referendum which took place on 25 May 1997. It has been in force since 17 October 1997.

Pursuant to Article 2 of the constitution, the Republic of Poland is a democratic State subject to the rule of law and implementing the principles of social justice.

Pursuant to Article 10, the system of government of the Republic of Poland is based on the separation of and balance between the legislative, executive and judicial powers. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

Legislative power in the Republic of Poland is exercised by the Sejm and the Senate, which makes general acts, including acts concerning the migration issues. The Sejm is composed of 460 Deputies, and the Senate is composed of 100 Senators. The Sejm and the Senate are chosen each for a 4-year term of office. Elections to the Senate are universal, direct and are conducted by secret ballot. Elections to the Sejm are universal, equal, direct and proportional and are conducted by secret ballot.

Executive power is vested in the President of the Republic of Poland and the Council of Ministers.

The President of the Republic of Poland is elected in universal, equal and direct elections, conducted by secret ballot. The President of the Republic is elected for a 5-year term of office and may be re-elected only for one more term. In issues related to migration, the President of the Republic grants the Polish citizenship and expresses his consent to renounce thereof.

The Council of Ministers is composed of the Prime Minister and ministers.

To the extent and in accordance with the principles specified by the Constitution and statutes, the Council of Ministers, in particular, shall:

- ensure the implementation of laws (also including those concerning migration issues);
- issue ordinances;
- coordinate and supervise the work of organs of government administration;
- protect the interests of the State Treasury;
- adopt a draft State Budget;
- supervise the implementation of the State Budget and pass a resolution on the closing of the State's accounts and report on the implementation of the Budget;
- ensure the internal security of the State and public order;
- ensure the external security of the State;
- exercise general control in the field of relations with other States and international organizations;

¹ Constitution of the Republic of Poland, Journal of Laws from 1997 No 78, item 483
<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

- conclude international agreements requiring ratification as well as accept and renounce other international agreements;
- exercise general control in the field of national defence and annually specify the number of citizens who are required to perform active military service;
- determine the organization and the manner of its own work².

The Prime Minister shall:

- represent the Council of Ministers;
- manage the work of the Council of Ministers;
- issue ordinances;
- ensure the implementation of the policies adopted by the Council of Ministers and specify the manner of their implementation;
- coordinate and control the work of members of the Council of Ministers;
- exercise, within the limits and by the means specified in the Constitution and statute, supervision of local government.
- be the official superior of employees of the government administration³. (Article 148)

In the context of executive power, migration policies are implemented both at the central and regional level, and belong to the competence of the Council of Ministers and appropriate Ministries (the Ministers issue i.a. the executive acts to legislation regulating the migration issues), specialized institutions and services; the policies are also within the scope of activities of the local authorities and self-governance⁴. The division of competences is multilevel and constitutes the basis for a coherent national migration system⁵.

1.2 General political developments during the reference period

(e.g. elections on regional or national levels, government changes/reshuffles, appointment of new Ministers responsible for asylum, migration and/or integration)

There were no significant political developments during reference period.

1.3 Institutional developments

(Describe, if applicable, any new Ministries, institutions, organisations, agencies or other actors established to deal with migration, asylum, refugee protection or integration issues in the Member States. If there have been none, then it is not necessary to complete this subsection)

There were no significant institutional developments during reference period.

² Article 146 of the Constitution of the Republic of Poland.

³ Article 148 of the Constitution of the Republic of Poland.

⁴ Including, among other things, regional policies development, creating conditions for repatriation and re-emigration, legalization of stay and employment of foreigners, and the integration of foreigners.

⁵ More information is available in the Polish Report on the organization of the migration and asylum policy, available at the EMN website.

2. Policy and Legislative Developments in the area of Migration and Asylum

2.1 General structure of the legal system in the area of migration and asylum.

(Which are the relevant laws? On which levels are decisions made? Who are the main actors involved? Etc).

The main legal acts regulating migration and asylum matters in Poland are:

- Constitution of the Republic of Poland of 2 April 1997⁶
- Act of 13 June 2003 on foreigners⁷ (entry, admission, residence, return and registers of foreigners);
- Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland⁸ (granting international and national protection statuses);

And also:

- Act of 9 November 2000 on Repatriation⁹;
- Act of 7 September 2007 on Card of the Pole¹⁰;
- Act of 15 February 1962 on Citizenship¹¹;
- Act of 20 April 2004 on promotion of employment and labour market institutions¹²;
- Acts on particular sectors (social assistance, education, etc.);
- Binding international instruments and *acquis communautaire*¹³

In general, the entry (border crossing) phase of migration to Poland is controlled by the Border Guards, both in asylum and migration contexts. In order to be admitted on Polish territory, third-country nationals need to be in possession of a valid visa, issued, as a general principle, by Polish consuls abroad. Asylum applications are examined by the Head of the Office for Foreigners – as the I instance and the Refugee Board as the II instance. Applications for legal residence of foreigners in Poland, as well as conditions for issuing a work permit (when necessary) to a foreigner, are examined by the voivods at local level. As for the returns, several institutions might be involved, depending on the type of return (voluntary – Border Guards, Head of the Office for Foreigners, IOM –International Organization for Migration – Warsaw Bureau; obligatory – Border Guards, Police; expulsion decisions– primarily voivod and the Head of the Office for Foreigners).

The system adopted in Poland is interrelated, both in the legislative and institutional spheres, with other policies, above all those related to: labour market policy, integration policy,

⁶ Journal of Laws 1997, No 78, item 483, with further amendments (OJ dated 2006.200.1471) [<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>];

⁷ Journal of Laws 2006, No 234, item 1694, with further amendments (Dz.U.2007.120.818, Dz.U.2007.165.1170, Dz.U.2008.70.416, Dz.U.2008.180.1112, Dz.U.2008.216.1367, Dz. U. 2008.227.1505, Dz. U. 2008.234.1570, Dz. U. 2009.6.33, Dz.U.2009.31.206, Dz.U.2009.95.790);

⁸ Journal of Laws 2006, No 234, item. 1695, with further amendments (Dz.U.2007.120.818, Dz.U.2008.70.416, Dz.U.2008.216.1367; Dz.U.2009.95.790);

⁹ Journal of Laws 2004, No 53, item 532, with further amendments (Dz.U.2005.94.788, Dz.U.2006.249.1828, Dz.U.2007.120.818, Dz.U.2008.70.416, Dz.U.2008.216.1367);

¹⁰ Journal of Laws 2007, No 180, item 1280, with further amendment (Dz.U.2008.216.1367);

The Card of the Pole is a document stating adherence to the Polish Nation. The granting of the Card of the Pole does not entitle to automatic acquisition of the Polish citizenship, obtaining legal right to settle-down on the territory of the Republic of Poland or crossing the Polish border without a valid visa.

¹¹ Journal of Laws 2000, No 28 item 353, with further amendment (Dz.U.2007.120.818);

¹² Journal of Laws 2008, No 69, item 415, with further amendments;

¹³ See: N-Lex portal – a common gateway to national law – <http://eur-lex.europa.eu/n-lex/pays.html?lang=en> ;

education policy, demographic policy as well as internal security and public order. The inter-ministerial Committee for Migration plays an important role in coordination of activities undertaken by ministers in the field of migration policy.

The main actors, involved in the area of migration and asylum are:

Ministry of Interior and Administration (www.mswia.gov.pl): Minister of Interior and Administration managing the ‘interior’ section is the minister competent i.a. with respect to¹⁴:

- protection of state borders,
- supervision of the border traffic and foreigners,
- coordination of all activities related to the state migration policy,
- issues of citizenship and issues of repatriation¹⁵.

As a consequence the Minister of Interior and Administration supervises the activities of:

- Border Guards (described below);
- Head of the Office for Foreigners (described below);
- Police and the National Centre for Criminal Information¹⁶.

The issues related to the coordination of activities within the state migration policy belonging to the competence of the Minister of Interior and Administration (including development and presentation of the guidelines of the state migration policy to the Council of Ministers; gathering information and analysing the migration situation in the country; initiating, analysing and issuing opinions on the normative acts as well as other documents related to the migration policy of the state; coordination of the domestic and international cooperation in the area of migration policy etc.) are carried out by the MIA’s Migration Policy Department.

Moreover, the Ministry of Interior and Administration is responsible for implementing the policy for counteracting trafficking in human beings. The Undersecretary of State in the Ministry of Interior and Administration is the Chair of the inter-ministerial Committee for Combating and Preventing Trafficking in Human Beings (an advisory and consultative body to the Prime Minister) composed of the representatives of the state administration institutions as well as the invited non-governmental organizations. The Committee assesses the implementation of the documents constituting the schedules of actions undertaken by the designated institutions. Monitoring of the works related to the implementation of tasks defined in these documents and their development for the years to come is within the competence of the Unit for Trafficking in Human Beings of the MIA’s Migration Policy Department. The issues related to Polish naturalisation policy (excluding those reserved for other authorities e.g. the President of the Republic of Poland) as well as policy towards repatriation of foreigners of Polish origin belong to the MIA’s Department for Citizenship and Repatriation.

The organs supervised by the Minister of Interior and Administration:

¹⁴ According to art. Art. 29. para 1. point 2 and para 4 of the act of 4 September 1997 on the governmental administration division (Journal of Laws 1999, No 82, item 928, with amendments);

¹⁵ According to Polish legal framework the term “repatriation” means return on special conditions of the persons of Polish origin who, or whose ascendants, due to historical reasons after the second World War remained in the Eastern part of the former Soviet Union and who were never allowed to settle down in Poland.

¹⁶ The Police controls e.g. the legality of the foreigner’s residence on the territory of the Republic of Poland, submit the motions to issue the decision on expulsion, on withdrawal of the decision on settlement, on long-term residence of the EC resident, issue decisions imposing on the foreigner the obligation to leave the territory of the Republic of Poland.

a) **Office for Foreigners – UdSC** (www.udsc.gov.pl): The Head of the Office for Foreigners (hereinafter referred to as the Head of the Office) is the central governmental authority competent with regard to, *inter alia*:

- Admission, transit, residence and departure of foreigners from the territory of Poland. The Head of the Office coordinates, as a higher instance organ, the activities related to residence of foreigners carried out by the **voivods** (governors of 16 provinces, the I instance in residence and expulsion proceedings). In case of the appeals against the decisions of voivods issued in these fields, the Head of the Office acts as the II instance authority (key unit within the Office: Department for Legalization of Stay and Foreigner's Register);
- Granting and withdrawing refugee and subsidiary protection status, tolerated stay status (national protection measure) and national asylum status. All determination procedures are carried out in the Office [I instance]), including cooperation under Dublin II Regulation¹⁷ (key unit: Department for Refugee and Asylum Proceedings);
- Organization and management of reception centres for asylum seekers (key unit: Bureau for Organization of Centres for Foreigners Applying for the Refugee Status);
- Management of the central information system on foreigners 'POBYT' ['Residence'], which contains data on procedures undertaken in relation to foreigners, with regard to: refugee proceedings; residence proceedings (including the register of foreigners whose residence on the territory of the Republic of Poland is undesirable – further called the 'Register', and return / expulsions proceedings in Poland. On this basis, the Head of the Office serves also as a Central Visa Authority in the framework of the Schengen cooperation (key unit: IT and Foreigners Registers Bureau and Department for Legalization of Stay and Foreigners' Register in relation CVA activity).

b) **Border Guards** (www.strazgraniczna.pl) has very broad competences in the area of migration and asylum procedures in Poland. In particular with regard to migration phases in question, these competences refer to:

Entry / Admission: Control of the legality of entry at the borders and issuing appropriate decisions (refusal of entry, defining the stay period, issuing visas in specific cases, annulment of visa, etc.), in the international protection procedures - receiving and initial checking of the refugee status applications;

Residence: Carrying out control over legality of the foreigners' stay in the whole territory of the Republic of Poland and counteracting illegal migration – in cooperation with the Police, Customs Offices, the Office for Foreigners, voivods and non-governmental organizations as well as the control over legality of the foreigners' employment within the territory of Poland – in cooperation with the National Labour Inspectorate (www.pip.gov.pl);

Return: Initiating proceedings and/or enforcing decisions related to the foreigner's return, expulsion of foreigners (including conveying tasks), issuing decisions imposing on the foreigner the obligation to leave the territory of Poland¹⁸.

Ministry of Labour and Social Policy – MPiPS (www.mpips.gov.pl) has its statutory competency in the field of labour, family and social security. Respectively, MPiPS covers the

¹⁷Council Regulation 343/2003/EC of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national (Official Journal L 50 of 25 February 2003);

¹⁸ The issues in the competence of the Commander – in – Chief of the Border Guards, resulting from international agreements and community law of the UE in the area of migration/asylum policy are implemented by the Board for Foreigners of the Border Guards Headquarters; migration and asylum analysis are carried out by the Border Guards Headquarters;

field of labour migration to Poland and access of foreign workers to Polish labour market, including co-creation of strategies and policies to attract foreign labour force. Moreover, the Minister of Labour and Social Policy acts as the second instance authority in procedures related to issuing work permits for foreigners (with voivods as the first instance). In addition, the Ministry is responsible for the integration of foreigners in Poland, including coordination of assistance provided within the framework of annual integration programmes (implemented as a social security task) targeting recognised refugees and persons granted subsidiary protection. In 2008 the aforementioned tasks were carried out by 4 departments of the MPiPS: Department for Migration, Department for International Cooperation, Department for Social Assistance and Integration and Department for Labour Market.

National Labour Inspectorate – PIP (www.pip.gov.pl) - is an authority established to execute supervision and inspection of the labour law observance. It is subordinate to Sejm (chamber of the Parliament). National Labour Inspectorate's supervision and inspection covers all employers and entrepreneurs, who are not employers, but who have natural persons performing work for their benefit, irrespective of the grounds of performing such work. From 1st July 2007 National Labour Inspectorate's supervision also covers persons conducting economic activity on their own account (the so-called self-employed). By virtue of the Act of 13 April 2007, the scope of National Labour Inspectorate's activity was extended by issues related to inspection of employment legality and performance of work by foreigners.

Ministry of Foreign Affairs - MFA (www.msz.gov.pl): the Minister of Foreign Affairs supervises the work of Polish diplomatic and consular posts, i.a. in the area of issuing visa and implementing visa policy¹⁹. Consuls are also competent with respect to accepting applications for granting the residence permit for a fixed period submitted by foreigners residing outside the territory of the Republic of Poland and transmitting them to proper voivods for examination. While processing the visa application the consul is obliged to verify the foreigner's data in the national and international information systems (SIS), and in cases when it is obligatory or necessary in the consul's opinion, conducts so called visa consultations (in the country and abroad)²⁰. MFA runs a database of the visa applications submitted to the Polish consular offices, decisions issued on them as well as visas granted – which constitutes the Central Consular Visa Registry in Poland. The Minister of Foreign Affairs also carries out, through consuls, activities for strengthening the ties between Polonia abroad and Poland, including tasks originating from the Act of 7 September 2007 on the Card of the Pole²¹.

¹⁹ Including: preparation (in coordination with other Ministries) of bilateral agreements on the exemption from the visa obligation for holders of the diplomatic and service passports as well as establishing the amount of consular fees, including visa fees. When Poland acceded to the Schengen zone and started to apply all provisions of the Schengen acquis these competences in relation to uniform visa were limited by the EU decisions which specify uniform fee for issuing uniform visa ('Schengen visa'), that all EU Member States should apply.

²⁰ In Poland the tasks of the Central Visa Authority carrying out international and national visa consultations are fulfilled by the Head of the Office for Foreigners.

²¹Journal of Laws 2007, No 180, item 1280, with amendments (Dz.U.08.216.1367). Holding the Card of the Pole – the document confirming belonging to the Polish Nation – authorises to:

- granting long-term residence visa free of charge, authorising to crossing the borders of the Republic of Poland;
- undertaking employment on the territory of Republic of Poland without work permit obligations;
- benefiting from the education system free of charge;
- carrying out economic activity in Poland on the same conditions as Polish citizens;
- benefiting from free medical services in emergencies;
- exemption from payments for visiting state museums;
- priority treatment in applying for financial means from the state budget or from the local government budgets allocated for supporting the Poles abroad.

Refugee Board (<http://www.rada-ds-uchodzcow.gov.pl>) functions as the second instance authority in the refugee status proceedings. The Board examines the appeals from decisions and complaints against the rulings rendered by the Head of the Office and is a competent organ for reopening the proceedings, reversal, change or declaring invalidity of the decisions or rulings issued by the head of the Office. The Board is composed of 12 members appointed by the Prime Minister for a five-year term of office from amongst people with outstanding knowledge and/or practical experience in the refugee-related issues²². The administrative and office service of the Board is provided by the Chancellery of the Prime Minister. The Councils' decisions may be complaint against to the appropriate Voivodship Administrative Court and the revocation complaint against the judgement of the Voivodship Administrative Court may be lodged to the Supreme Administrative Court (www.nsa.gov.pl);

The Voivods are the first instance authority in the administrative proceedings related to foreigners as far as legalisation of their stay and work permits are concerned. Additionally, the voivods carry out the tasks related to the procedures related to the Polish citizenship, if they were not reserved for other organs – first of all for the President of the Republic of Poland. The voivod competent with respect to the place of residence of the foreigner or the place of disclosure of the appropriate fact or event²³ also issues the decision on the expulsion of the foreigner from the territory of the Republic of Poland. The voivod also issues decisions on imposing penalty on the carrier who brought into the territory of the Republic of Poland the foreigners who do not comply with the entry conditions.

The **Inter-ministerial Committee for Migration** acts as a subsidiary organ (consultative and advisory) to the Prime Minister²⁴. The Committee is chaired by the Minister of Interior and Administration. The results of the works of the Committee are notified to the Prime Minister who may decide on presenting them to the Council of Ministers. The tasks of the Committee for Migration Policy include:

- initiating the directions of the legislative and institutional changes in migration-related issues and recommending them to the Council of Ministers in order to adopt the Council's position;
- development of proposals related to modification of the competences in the area of migration;
- issuing opinions on multiannual and annual national programmes of the European Fund for the Integration of Third Countries Nationals;
- proposing the directions of activities in the area of the foreigners integration in Poland;
- exchange of information as well as monitoring of works conducted in the EU in the area of migration;
- cooperation with state and self-government administration organs as well as non-governmental organisations in the field of migration.

²² The Prime Minister appoints to the Board 4 persons from among candidates presented by the minister competent with respect to foreign affairs and the Minister of Justice – each of ministers presents 8 candidates (in justified cases the composition of the Board may be broadened). The Board takes decisions in 3-member composition, apart from the manifestly unfounded applications (1-member composition);

²³ *Ex officio* or on the motion from the Minister of National Defense, Head of the Internal Security Agency, Head of the Foreign Intelligence Agency, Commander-in-Chief of the Border Guards, Commander-in-Chief of the Police, Commander of the Border Guards division, Voivodship Commander of the Police, Commander of the Border Guards division or the Customs Service organ;

²⁴ Another advisory organ to the Prime Minister - Governmental Population Council – is also important in migration context due to its tasks related to demography and population policy, including forecasting the demographic development of the country;

The Committee is composed of the Secretaries or Undersecretaries of State representing the Ministry of Interior and Administration, Ministry of Labour and Social Policy, Ministry of Foreign Affairs, Ministry of Economy, Ministry of Finance, Ministry of Culture and National Heritage, Ministry of National Education, Ministry of Regional Development, Ministry of Health as well as the President of the Central Statistical Office²⁵, Head of the Office for Foreigners, Chief of the Internal Security Agency, Chief Commanders of: the Police and Border Guards as well as the representatives of the Chancellery of the Prime Minister on the level of Secretary of Undersecretary of State and the Secretary of the European Integration Committee. Additionally, the representatives of the non-governmental organizations or academic circles may be invited to the sessions of the Committee. The substantive and technical service to the Committee is provided by the Migration Policy Department of the Ministry of Interior and Administration²⁶.

It is important to add that both non-governmental organizations as well as research centres working on the subject of migrations and asylum are numerous represented in Poland²⁷.

2.2 General context of the specific developments detailed in the next section

(with an overview of the main policy and/or legislative debates that have occurred on migration and asylum issues during 2008).

On 21st December 2007 Poland acceded to the Schengen zone and 2008 was for Poland the first year of full application of the Schengen acquis. As of 21 December 2007, the border control was abolished on the land borders between Poland and other EU Member States and on the sea borders for interior connections, and at the end of March 2008 the same was done concerning airport borders for flights within Schengen zone. To ensure highly effective protection of the borders of the Republic of Poland, according to the Schengen acquis, in 2008 the Border Guard was executing its statutory tasks, putting particular emphasis on actions which were a result of Poland's admission to the Schengen zone. Actions of the Border Guard concerning the internal EU/Schengen border and actions on the territory of the country were supposed to counteract any potential dangers related to the enlarged Schengen zone (the so called compensatory measures). Another priority was also an effective protection of the external borders and the adjustment of the structure and operation of the Border Guard in the sections of the external border and inland.

²⁵ Central Statistical Office (Department of Demographic Studies, Migration Studies Division) gathers and analyses statistics in the area of migration both internal mobility within the country and international migration, i.e. the departures of the Polish citizens from Poland as well as entries of the foreigners into Poland – acts as one of the official national data provider to EUROSTAT (www.stat.gov.pl);

²⁶ The following working groups operate within the Committee:

- Working group on economic immigration
- Working group on economic migration from Poland
- Working group on combating illegal immigration
- Working group on integration of foreigners
- Working group on gathering and exchange of statistical data
- Working group on re-emigration
- Working group on resettlement
- Working group on elaboration of Migration Strategy of Poland.

²⁷ Set of institutions and non-governmental organizations is presented in « The organisation of asylum and migration policies in Poland », an EMN Study prepared by PL EMN NCP (available at EMN website).

On 16 February 2009 the Minister of the Interior and Administration approved for further development “Assumptions for the long-term conception of the functioning of the Border Guard (2009 – 2015)” which were prepared in 2008. The document anticipates that the Border Guard will evolve into a modern border-immigration service of a police nature²⁸.

The fact that the Polish Eastern border has also become an external border of the European Union caused some difficulties in the border traffic between Poland and its Eastern neighbours, the citizens of which complained about difficulties in getting to the territory of the Republic of Poland. On the one hand, they complained about the high prices of visas, and on the other hand – about queues in the consular posts and protracted procedures of the issuance of the documents. The fact that the Card of the Pole entered into force, also influenced the difficult situation in the consular posts, since foreigners of Polish origin living abroad were interested in obtaining the document. Trying to minimize the existing inconveniences, Polish authorities ensured more staffing of the posts and made a decision to open new consulates.

Tightening the borders in the East of Poland also caused a crash in the frontier trade which was an important element of the economy of the border regions. Some solution of this problem was concluding an agreement with Ukraine on the local border traffic, which was put into practice in 2009. In 2008 no similar agreements with other countries were concluded.

In legislation, apart from the abovementioned Act on the Card of the Pole which entered into force, two the most important acts concerning foreigners were amended: the Act of 13 June 2003 on foreigners and the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland; there were also works conducted on a new Act on Polish citizenship to replace the Act of 1962 currently being in force.

Implementing the postulates from the 2007 elections campaign, the Government focused among other things on actions targeted at Poles who left Poland after 2004 to work in the European Union member states, and who consider returning to Poland. Apart from a broad information campaign, one of the incentives to return was introduction of the so called tax abolition.

2008 was also a time of the intensive works of the Inter-ministerial Committee for Migration – a consultative-advisory body to the Prime Minister, and six working groups which were a part of it (working group on economic immigration, WG on economic migration from Poland, WG on combating illegal immigration, WG on integration of foreigners, WG on gathering and exchange of statistical data, WG on re-emigration). The main aim of the Group for Migration is to ensure the coordination of tasks and the agreements on tasks implemented by the government administration bodies concerning the issues of migration and the exchange of

²⁸It has been established that the Border Guard shall be responsible for the implementation of the following tasks of the state:

- control of the border traffic and the protection of the section of the Polish national border which is the external border of the EU/Schengen;
- counteracting and fighting illegal migration (with powers to act on the whole territory of Poland), and in particular: management of the control functions legality of stay, performing work and running business activity by foreigners; managing and performing technical activities to ensure exercising of the expulsion decision – made also on the basis on the cooperation with other countries’ organs (readmission, Dublin II); identification, prevention and combating chosen forms of crime involving foreigners or having cross-border character : administration of the national border of the Republic of Poland; performing border checks and the protection of the external EU/Schengen border ; implementation of the tasks regarding counteracting and combating illegal migration; combating cross-border crime and crime involving the participation of foreigners.

information, and monitoring of actions undertaken at Community level. In 2008, during the sessions, the Committee discussed, among other things, actions undertaken by the Government concerning economic immigration – the issues of employing third countries nationals in the investments related to EURO 2012, issues concerning partnership cooperation with third countries in the context of the Global Approach to Migration in relation to the regions, which are neighbours of the EU from the East and the South-East²⁹. Furthermore, other issues which were discussed concerned the agreement on the local border traffic between Poland and Ukraine and the application of the Act on the Card of the Pole, appointing National Contact Point to the European Migration Network, access to the Polish labour market by the citizens of the People’s Republic of China in the light of the regulations concerning foreigners employment, European Pact on Immigration and Asylum, and information on amendments to the Act on foreigners and to the Act on granting protection to foreigners within the territory of the Republic of Poland.

Generally, migration issues in Poland are not a subject of any particular political or media debates. The only issue which caused broader social interest was the phenomenon of the economic migration of Poles.

In this context, the interest of the economists, sociologists, and representatives of the academic environment in other fields, concentrated on the attempt to provide first evaluations concerning positive and negative effects of the post-accession economic migration of Poles to the EU member states after 2004³⁰. It was discussed whether the migration of the young generation, often well-educated people, who worked abroad below their qualifications, is really an opportunity for development, or rather if it is a case of “*waste brain*” which in the longer perspective will cause more harm, than bring actual benefits.

Another aspect of the abovementioned migration was a phenomenon which was called “Euro-orphans” – meaning that either one or two parents working abroad were leaving their children behind in the country. Despite the fact that in most cases the parents left their children in the care of other family members, there were also cases in which teenage children were left in the country without any supervision. Sociologists and psychologists feared that despite the undoubtedly fair motives of the parents, i.e. ensuring financial safety for their children, the phenomenon would bring many negative effects in the social sphere (weakening of family links, behavioural issues, worse results at school, increased risk of crime within this group of children). Fortunately, the studies which were carried out³¹ did not confirm such a negative

²⁹ Poland also actively participated in the preparations to the Partnership project supporting a Mobility Partnership between the EU and Moldova, signed on 5 June 2008. (EU-Moldova Joint Declaration on a mobility partnership). The following projects have been implemented within the scope of the partnership (financed through 2008 Polish foreign aid program provided through the Polish Ministry of Foreign Affairs:

- *Strengthening of the reception and detention capacities of the migration services of the Republic of Moldova* – being an answer to the educational needs of the Moldova migration services, concerning the knowledge about the Polish migration management system and a transfer of Polish experience in the field of linked migration flows;

- *Combating human trafficking within the aspect of the strengthening of the Moldovan migration management system and international cooperation. Polish-Moldovan exchange of experience and good practices* – being an answer to the need of strengthening the capacities and efficiency of the public administration authorities in combating and preventing illegal migration and human trafficking, postulated by the Moldovan party in a document *Moldovan position on the Moldova-EU mobility Partnership*.

³⁰ Post-accession emigration of Poles concerned migration mainly towards the EU member states, especially Great Britain, Germany, Ireland, and Italy. A few percent of the emigrants have chosen non-EU European countries, particularly Norway.

³¹ Among others, Bartłomiej Walczak, *Post-accession migrations from a perspective of a student. Preliminary diagnosis of social and pedagogical effect of the “Euro-migration” of parents and caretakers*, Pedagogium Wyższa Szkoła Pedagogiki Resocjalizacyjnej - <http://www.brpd.gov.pl/eurosieroctwo/Pedagogium.pdf>

scenario but they drew attention to the issue of the price which has to be taken into account when one makes a decision concerning economic migration and at the same time leaves the closest family members behind.

2.3 The most important developments in Poland in 2008

2.3.1 Control and Monitoring of Immigration

On 24 October 2008 the Parliament adopted the Act on the amendments to the Act on foreigners and some other acts, which were to implement, among other things, regulations enabling foreigners to travel within the small border traffic, according to the rules stipulated in the Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention. Pursuant to the Act, local border traffic relates to citizens of the countries which are not member states of the European Union bordering on Poland, i.e. Russians, Belarusians, Ukrainians who want to enter the Polish border zone without visas. It has been stipulated that they will be allowed to cross the border on the basis of a special permit, but only after the countries concerned sign the agreement on local border traffic with Poland³².

The Act also puts in order regulations concerning entry into Poland, uniform and national visas and their annulment, under the regulations being in force in the countries of the Schengen zone (uniform visa entitles a holder to remain on the territory of a country of the Schengen area for 3 months, whereas national visa entitles a person to stay more than 3 months in a country which issues the visa).

Provisions aimed at implementation of the Directive of the Council 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals³³, were also included in the amendment. The Act also takes into account the Council Decision of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals³⁴.

In relation to the Act of 24 October 2008 on the amendments to the Act on foreigners and some other acts, the Border Guard was given new responsibilities and new powers concerning proceedings concerning legalization of a stay of foreigners, among which are:

- community interview;
- determining whereabouts of a spouse or other family member of a foreigner, and of a person with whom a foreigner has links of a family nature;
- checking the place indicated by a foreigner as his/her whereabouts.

New legal provisions made it necessary to prepare and issue ordinances by the Minister of the Interior and Administration, including:

³² On 28 March 2008 an Agreement was signed in Kiev between the Government of the Republic of Poland and the Cabinet of the Ministers of Ukraine on local border traffic rules, and on 22 December 2008, in Warsaw, a protocol was signed between the Government of the Republic of Poland and the Cabinet of the Ministers of Ukraine on changes to the Agreement between the Government of the Republic of Poland and the Cabinet of the Ministers of Ukraine on local border traffic rules.

³³ OJ L 149 of 2.06.2001.

³⁴ OJ L 60 of 27.02.2004.

- ordinance of the Minister of the Interior and Administration, of 23 December 2008, on community interview carried out by the officers of the Border Guard in the proceedings involving foreigners;
- ordinance of the Minister of the Interior and Administration, of 24 December 2008, on checking a dwelling unit by the officers of the Border Guard;
- ordinance of the Minister of the Interior and Administration, of 20 February 2009, on checking whether a foreigner's job is legal, on running a business activity by foreigners, and entrusting foreigners with the performance of work.

In addition, it is worth noting that the Central Statistical Office started preparing the National Population and Housing Census³⁵ which will take place in 2011. During the preparations a discussion took place regarding the possibility of obtaining more detailed information about the whereabouts and activities of the foreigners on the territory of Poland.

The effects of joining the Schengen zone³⁶

Poland's accession to the Schengen zone resulted in a significant decrease in the border traffic on the borders with Belarus, the Russian Federation, and Ukraine. The number of foreigners crossing the borders with the abovementioned countries has almost halved since 2007 (cf. tables 1-3 Border traffic – the number of border crossings/ data from the National Border Guard Headquarters Strategic Analyses Office). The following factors had an influence on the abovementioned situation: high prices of visas and increased requirements for obtaining them, and – at the beginning – problems with the efficiency of the visa applications examination in the diplomatic posts, resulting from the necessity to apply new procedures, including additional examinations³⁷.

Table 1. The number of border crossings with Ukraine

	2008	2007	
total	16 210 956	19 201 528	-15,6%
Poles	11 051 621	9 298 340	+18,9%
foreigners	5 159 335	9 903 188	-47,9%

Table 2. The number of border crossings with the Republic of Belarus

	2008	2007	
total	5 294 822	9 477 408	-44,1%
Poles	946 534	1 326 382	-28,6%
foreigners	4 348 288	8 151 026	-46,7%

³⁵ A census provides the most detailed information about the number of population, its territorial distribution, geographical-social and professional structure, socio-economic characteristics of households and families, about their resources and housing conditions on every level of the territorial division: nationwide, regional, and local. The previous census took place in 2002, before Poland's accession to the European Union.

³⁶ On the basis of the materials of the Migration Policy Department of the Ministry of the Interior and Administration and the Border Guard Headquarters.

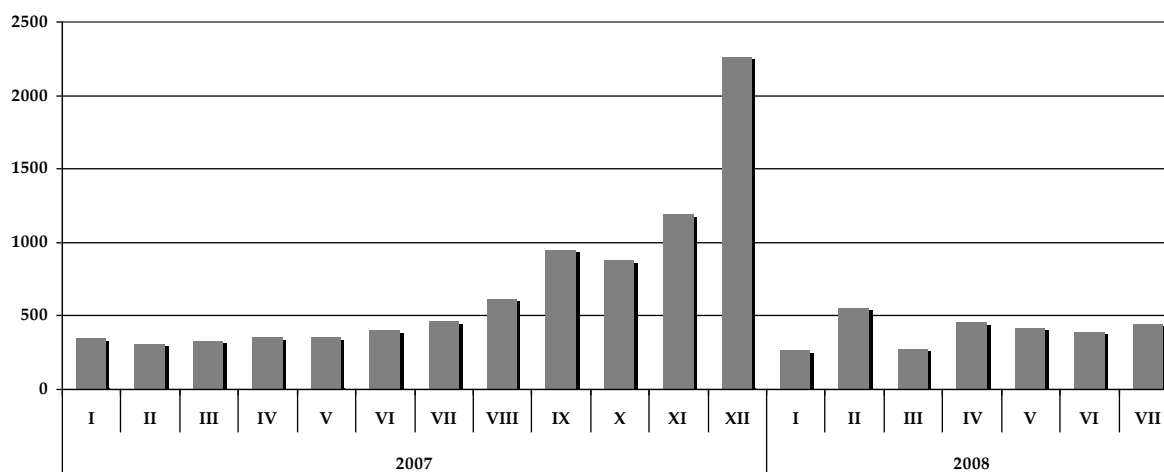
³⁷ Visa regulations prior to Poland's accession to the Schengen zone were, from the point of view of the foreigners, more liberal.

Table 3. The number of border crossings with the Russian Federation

	2008	2007	
total	1 915 592	2 910 458	-34,2%
Poles	1 128 702	1 479 902	-23,7%
foreigners	786 890	1 430 556	-45,0%

After Poland has joined the Schengen zone, the number of applications for international protection from the citizens of the Russian Federation of Chechen nationality has decreased, after a period of their significant increase directly before this event. The abovementioned situation was related to the fears of the foreigners that once Poland joins the Schengen zone, the applications of the foreigners submitted directly in the national border will not be accepted.

**The number of Russian citizens who applied for refugee status
in the period 01.2007- 07.2008**



Source: Prepared by the Migration Analyses Unit of the Migration Policy Department of the Ministry of the Interior and Administration on the basis of the data from the Office for Foreigners

In the period directly after Poland's accession to the Schengen zone, there were reported numerous cases concerning the Russian Federation citizens of Chechen nationality who after having lodged in Poland application for the refugee status were detained by the border service of the neighbouring countries. Refugees' preferred directions were Austria, Belgium, and Germany.

In 2008 there was an increased number of requests (3 596 compared to 1 473 in 2007) sent to Poland concerning the Dublin II Regulation from other countries applying it, especially Austria and France; most of them pertain to fingerprint identification in the Eurodac system. Poland takes fingerprints of all groups of foreigners indicated in the Regulation: persons applying for the international protection on the territory of the Republic of Poland and persons detained on the territory due to illegal border crossing. In 2008 there was also a significant increase in the number of the persons transferred to Poland (1916 persons compared to 485 persons in 2007) on the basis of the Regulation.

In 2008 13.5 million border crossings by foreigners were recorded. However, it should be noticed that in 2008 the Border Guard did not draw up border traffic statistics on the internal EU border.

In 2008, the officers of the Border Guard refused entry to 16 852 foreigners from the migration risk countries due to issues related to illegal migration, which meant a drop by 44,2% compared to the previous year.

The data submitted by the Board Guard shows that in 2008 2 547 foreigners heading in the direction of Poland were detained due to attempting to cross or crossing the national border illegally. At the same time, compared to the previous year, there was a twofold increase in persons heading out of Poland and attempting to cross the national border (3 027 foreigners were detained).

2.3.2 Refugee Protection and Asylum

On 29 May 2008 the Act on amendments to the Act on granting protection to foreigners within the territory of the Republic of Poland, and some other acts, entered into force³⁸. The amendment has been introduced in relation to the necessity to implement to the Polish law the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted³⁹.

Additionally, the amendment introduced to the Polish legal system regulations from the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status⁴⁰.

Rules on refugee status before the amendment entered into force, ⁴¹:

The Act of 13 June 2003 on granting protection to foreigners within the territory of Poland, comprehensively defined rules and conditions of granting protection to foreigners on the territory of the Republic of Poland and conduct of proceedings in such cases.

the Act stipulated that the protection may be ensured by granting a refugee status, asylum, temporary protection, and a tolerated stay permit.

Granting of the refugee status takes place according to the submitted application if all the conditions stipulated in Article 1 paragraph A of the Geneva Convention 1951, are met. If the application concerned also children and a spouse of a foreigner, they would also be granted the refugee status, since it has been decided that their legal situation similar to the legal situation of the foreigner submitting the application, so there would be a single proceeding, except for the situation in which a foreigner was born on the territory of the Republic of Poland after his/her parent had already initiated proceedings, in such case separate proceeding was initiated (however, in practice, the same decision was made as in the case of the parent). If the foreigner's application was rejected, the same applied to his family members included in the application.

³⁸ Journal of Laws of 2008, No 70, item 416.

³⁹ OJ L 304 of 30.9.2004. (Official Journal of the EU L 304 of 30.09.2004, page 12; Official Journal of the EU Special Polish Edition, chapter. 19, vol. 7, page 96).

⁴⁰ OJ L 326 of 13.12.2005.

⁴¹ Prepared on the basis of the justification to the act, published on the internet website of the Public Information Newsletter of the Ministry of the Interior and Administration.

During the procedure of granting refugee status not only the criteria necessary to be recognized as a refugee were examined, but also – if the requirements were found not met – other circumstances that would result in protection from refoulement, including in particular adequate norms of the Convention for the Protection of Human Rights and Fundamental Freedoms. A foreigner, who did not fulfil the criteria to be recognized as a refugee, but should be protected from deportation, was granted protection in the form of a tolerated stay permit (national protection status). Tolerated stay permit legalized a foreigner's stay on the territory of the Republic of Poland and enabled him/her to benefit from numerous facilitations stipulated in acts regulating different areas of life. If, however, a foreigner did not meet the conditions for being granted refugee status or a tolerated stay permit, then – except for some provisions stipulated in the Act – he/she was ordered to leave the territory of the Republic of Poland. Decision on the legal situation of a foreigner was made during one proceeding by one administrative body.

Due to the fact that the refugee proceedings also relate to persons who require special treatment, i.e. unaccompanied minors and other persons, particularly the disabled or tortured, some other provisions have been made concerning proceedings in such cases, but the practice has shown that some of the regulations need to be made more precise.

New provisions introduced by amendments to the Act:

The most important amendment introduced through the Act on the amendments to the Act on granting protection to foreigners on the territory of the Republic of Poland, and some other acts, in relation the previous regulations on that matter, was adding a new form of protection granted to foreigners on the territory of the Republic of Poland.

Among other forms stipulated in the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland a new form of protection for foreigners - subsidiary protection - was introduced. It has been agreed that the refugee status is a basic form of protection, so every application for protection is treated as a refugee status application, i.e. an application for the protection stipulated in the Convention related to the status of refugees, drawn in Geneva on 28 July 1951, which denotes the broadest rights.

If during the proceedings it has transpired that a foreigner did not meet the requirements to be granted a refugee status, then conditions are examined for granting other, subsidiary form of protection, and if such conditions again are not fulfilled, then tolerated stay is considered.

Two exceptions from the above have been stipulated in the Act:

- the first one concerns application for an asylum –which is an institution of the national law, granting broad protection, which results in granting foreigner a settlement permit, which is granted if there exists a broadly understood need to protect a foreigner, and if it is in vivid interest of the Republic of Poland;

- the second exception concerns an application for tolerated stay permit due to the court's opinion or due to the decision of the Minister of Justice on refusal to extradition. It is the only justified case in which a tolerated stay permit may be issued upon the application of a foreigner.

In the regulations of the abovementioned Act, reasons for granting refugee status have been more precisely defined, and also circumstances justifying granting of a subsidiary protection according to the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Current regulations on refugee proceedings have been supplemented with solutions from Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Pursuant to Article 3, paragraph 3 of the Directive 2004/83/EC another possibility of ending the proceeding on granting refugee status to the applicant and persons included in the application, has been introduced.

Additionally, the Act is more precise about the situation of an applicant's child who was born after the initiation of the proceedings on granting the refugee status to the parent. It has been decided that the legal situation of a child is inseparable from the legal situation of a parent, so a decision has been made to include the child in the proceedings concerning the parent. Hence, the evidence which is collected during the proceeding shall become a basis for issuing the same decision, in principle, on the applicant and his/her whole family.

A regulation has also been introduced to the Act, under which an applicant may submit an application on granting refugee status on behalf of persons accompanying him/her: a dependant spouse and children, with a written permission of the spouse. It has also been stipulated that a written permission of the spouse on submitting the application on his/her behalf makes the foreigner the appointed representative also of the children.

As a result of the amendment to the Act of 13 June 2003 on granting protection to the foreigners within the territory of the Republic of Poland, since May 2008, foreigners applying for refugee status, after the proceedings have been continuing for more than 6 months, may apply for a document confirming this fact by the Head of the Office for Foreigners. Thus, they may work legally in Poland without the necessity to apply for a work permit.

Statistical data:

In 2008, 8 517 foreigners submitted applications for granting them refugee status in Poland, which compared to the previous year (in 2007 - 10 048 persons) was less by 1531 persons. Large majority of persons applying for protection on the territory of Poland (91%) were citizens of the Russian Federation (7 760 of the submitted applications), 90% of which were people declaring Chechen nationality (6 963 persons).

In 2008, the ratio of applicants granted refugee status as defined in the Convention related to the status of refugees of 1951⁴² was 2.18% (in 2001-2006 it was between 4-5% of the total number of applications, in 2007 the numbers dropped to 1.15%). However, it should be emphasised that, in contrast to the low number of applicants which were granted refugee status, the percentage of foreigners who were granted protection on the territory of the Republic of Poland was much higher and amounted to over 30% (it is related to the fact that a lot of foreigners who were refused refugee status, were at the same time granted tolerated stay permits or subsidiary protection.)

In 2008, refugee status was granted to 186 persons. The number of persons who were granted a tolerated stay permit was 1507. Additionally, since 29 May 2008, 1074 persons were granted subsidiary protection.

2.3.3 Unaccompanied Minors (and other vulnerable groups)

Unaccompanied minors

On 29 May 2008, the Act on the amendments to the Act on granting protection to the foreigners within the territory of the Republic Poland, and some other acts, entered into force providing an amendment in the regulations on unaccompanied minors applying for refugee

⁴² Convention related to the status of refugees signed in Geneva on 28 July 1951 (Journal of Laws 1991, No 119, item 515 and 517).

status. Pursuant to Article 17 of the Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, regulations have been changed defining procedures concerning unaccompanied minors, particularly the ways of interviewing the minors. Under the Act, the court may place an unaccompanied minor only in a care and educational facility. In that way, the solution which has been adopted is similar to those pertaining to unaccompanied minors having Polish citizenship. Prior regulations stipulated that an unaccompanied minor, who was 13 years of age or older, could be placed in a refugee centre for foreigners applying for refugee status. The introduced amendments also regulated issues concerning financing of the minors' stay on the territory of the Republic of Poland.

Other foreigners belonging to vulnerable groups

Regulations on procedures concerning granting the refugee status to foreigners, were supplemented in relation to foreigners who were subject to violence, or were disabled, by defining the group of foreigners that require special treatment. The basis for using different approach, stemming from the regulations on special proceeding in granting refugee status, is a result of psychological or medical examination confirming that the foreigner was subject to violence or is disabled (previously it was matter of the decision of an administrative body). Previous regulations which were in favour of special procedures, caused doubts by not being precise about the circumstances confirming that a foreigner was subject to violence or was disabled.

2.3.4 Economic Migration

Large scale of economic migration of Poles after 2004 contributed to the increase in financial transfers, investments, decrease of unemployment in the country, but at the same time, lack of employees in some of the industry sectors (construction, agriculture, services), which in turn made employers more interested in foreign workforce. In reference to the above, in 2008 the Ministry of Labour and Social Policy continued actions which aimed at acquiring foreign workforce by, *inter alia*, facilitating access to the labour market for the citizens of the countries bordering Poland in the East, who traditionally have been the largest foreign group working in Poland.

The foreigners exempted from the obligation to hold the above permit under Article 87 of Act of 20 April 2004 on promotion of employment and labour market institutions⁴³ are those who, *inter alia*:

- 1) have been granted refugee status in the Republic of Poland;
- 2) have permit to settle, long-term EC resident's residence permit, tolerated stay permit, are under temporary protection; are members of the family of a Polish citizen and at the same time are citizens of the European Union member states, citizens of the non-EU countries of the European Economic Area, countries which are not parties to the Agreement on the European Economic Area, who can use the right of the freedom of movement under agreements concluded by these countries with the European Community and its member states;
- 3) are spouses of a Polish citizen, and at the same time are not citizens of the countries listed in point c, if they have residence permit for the fixed period on the territory of the Republic of Poland due to contracting a marriage;

⁴³ Journal of Laws from 2008, No 69, item 415, as amended (consolidated text).

4) are citizens of the European Union member states.

Additionally, exemption from the above obligation pertains also to persons granted the long-term EC resident's residence permit in other EU country, persons who are being granted residence permit for a fixed period in relation to, inter alia, their intention to start business activity (Article 53, paragraph 1, item 13 of the Act on foreigners), scientists - persons holding adequate residence title (under Article 53, paragraph 1, item 17-18 of the Act on foreigners) and persons exempt from the obligation under separate regulations (particularly ordinance of the Minister of Labour and Social Policy of 30 August 2006 on performance of work by foreigners without the obligation to obtain a work permit⁴⁴).

Referring to the actions undertaken by labour department, which aim at facilitating the access to Polish labour market for the citizens of Ukraine, Belarus, and Russia, one should pay attention to the fact that since 1 February 2008, the period of legal employment without work permit for the citizens of the abovementioned countries has been lengthened from three to six months within subsequent 12 months, which was supposed to increase the number of economic migrants from the East. An employer who intends to employ an above-mentioned foreigner should submit a written declaration of employing a foreign worker and register the declaration with a local labour office. The original copy of the declaration is then sent to the foreigner, who on its basis may be granted a work visa.

In 2008, 156 105 declarations were registered, 142 960 out of which concerned Ukrainian citizens (91.5% of all declarations). Most of the employers recruited workers for agriculture, construction, industry, but also household services, transportation, and hotel industry. Temporary work agencies were also interested in such recruitment of workers.

The number of foreigners who obtained work permit on the territory of the Republic of Poland, is relatively low, yet some growing trends do appear (in 2008, 18 022 persons obtained work permits, in 2007 – 12 153, in 2006 – 10 754, in 2005 - 10 304), which may account for high share of foreigners in the grey market. At the same time, it should be noticed that the scale of permits issued at that time could have been influenced by foreigners performing jobs that did not require the above permit.

2.3.5 Family Reunification

In 2008 there were no significant changes in this field.

2.3.6 Other legal migration

(Include details of any developments of other legal routes for entry, e.g. for study purposes, researchers - in context also of directives 2004/114/EC and 2005/71/EC, stay for medical treatment, extended stay)

Migration of students:

In 2008, an action plan was developed, aimed at introducing student visas for foreign students, following the example of some of the European Union countries, and to follow the Community regulations – introduction of special residence documents for students, stipulated in the Council Directive 2004/114/EC⁴⁵ of 13 December 2004 on the conditions of admission

⁴⁴ Journal of Laws from 2006, No 156, item 1116

⁴⁵ OJ L 375 of 23.12.2004.

of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

The introduction and issuance of a student visa will make it possible to choose talented foreigners interested in student-paid studies in Poland, and will ensure more effective monitoring of long-term stays of foreigners on the territory of the Republic of Poland. This solution will also facilitate the collection of statistical data and observation of changes in the migration flows among foreign students, comparing them with international tendencies, and projecting the influx intensity of the foreign students and Ph.D. students coming to Poland, in the context of birth rate drop, which could pose difficulties for Polish universities.

Statistical data

Statistical data clearly shows that persons who begin studies in Poland are becoming an increasingly visible and numerous group of foreigners. In the academic year 2008/2009, 10 251 foreigners were studying in Polish higher schools, 40% of whom were persons of Polish origin. It confirms that foreigners are appreciating increasingly the level of higher education in Poland and Polish university diplomas. It is also important for the development of the universities themselves, and provides opportunities for financing their activities and research.

In medical university departments, as of 30 November 2008, 4,874 foreigners studied in Poland (including 1,132 Norwegians, 867 students from the USA, 746 Swedes, 532 Taiwanese, 371 Canadians), among whom 4,460 were students of student-paid medical studies conducted in English, and 201 persons were students of free-of-charge studies with no scholarship benefits.

According to the data from 1 October 2008, in the units supervised by the Minister of Health, 96 foreigners participated in studies, postgraduate internships, specialization trainings, and doctoral studies under scholarship conditions (63 - studies, 19 - postgraduate internships, 14 - specializations and doctoral studies). These students were granted scholarships of the Government of the Republic of Poland by the Minister of Health.

Local border traffic

Furthermore, on 28 March 2008 in Kiev, an Agreement was signed between the Government of the Republic of Poland and the Cabinet of the Ministers of Ukraine on local border traffic rules, and on 22 December 2009 in Warsaw, a Protocol was signed between the Government of the Republic of Poland and the Cabinet of the Ministers of Ukraine on changes to the Agreement between the Government of the Republic of Poland and the Cabinet of the Ministers of Ukraine on local border traffic rules, which is at the last stage of the ratification process. Regulations of these agreements ensured comparability of treatment of both parties to the Agreement, and guaranteed a balance between facilitating border crossing for the border region citizens who act bona fide and cross the external land border frequently for fair reasons, and, on the other hand, a need to prevent illegal immigration and potential threats to the safety such as criminal activity. It should be noted that the Agreement entered into force just on 2 July 2009.

2.3.7 Citizenship and Naturalization

Changes in regulations:

On 20 November 2008, the Senate of the Republic of Poland adopted a resolution on introducing an Act on Polish citizenship and addressed it to the Sejm of the Republic of Poland. Until the end of 2008, the Sejm was working on this law. The act set forth general

rules for the process and conditions of obtaining, revoking, and confirmation of having or revoking Polish citizenship, competence of authorities in these cases, and keeping the registers. The new act on citizenship is based on the basic rules included in the European Convention on Citizenship, particularly on the rule expressing every man's right to citizenship. It should be emphasised that the bill includes a new title to Polish citizenship – restoration of citizenship. The introduction of the restoration of Polish citizenship meets the expectations of many former Polish citizens, who lost it for political reasons and would like to have it restored.

Statistical data:

Statistical data shows that acquiring Polish citizenship has become a very attractive procedure for some foreigners since Poland joined the European Union, and in the period directly prior to the accession to the Schengen zone. While in 2005, 2 696 persons of foreign origin were granted Polish citizenship (these were mainly citizens of Ukraine – 746, Belarus – 324, and Russia – 242), in 2006 there was a sharp drop (only 677), but in 2007 the number increased again to 1 190. In 2008, 1693 foreigners were granted Polish citizenship (in 2007 – 1190, in 2006 - 677). The largest number of persons came from Ukraine (557), Belarus (232), and Russia (104). Significant majority of persons (80% of persons granted Polish citizenship) referred to Article 8 of the Act of 15 February 1962 on Polish citizenship. Pursuant to Article 8 of the Act of 15 February 1962 on Polish citizenship (Journal of Laws of 2000, No 28, item 353, as amended – consolidated text), a foreigner may be granted Polish citizenship upon application, if he/re has been residing on the territory of the Republic of Poland for at least 5 years, on the basis of a permit to settle, long-term resident's EC residence permit, or right of residence.

Repatriation

As regards Poland, repatriation denotes return on special conditions of persons of Polish origin, who stayed in the East, particularly in the Asian region of the former Union of Soviet Socialist Republics, and who could not settle in Poland due to deportation, exile, and other persecutions for national or political reasons.

In 2008, a total of 178 applications were submitted, 139 of which concerned the issuance of repatriation visa, and 39 were applications for permit to settle and issuance of residence card for a spouse of the repatriate. In 2008, in the repatriation process, 260 persons entered Poland on the basis of repatriation visas or visas issued to a spouse of the repatriate.

Card of the Pole

On 29 March 2008, the Act of 7 September 2007 on the Card of the Pole, entered into force⁴⁶. Upon receiving the Card – a document confirming belonging to the Polish nation – its holder has a right to:

- receive long-term residence visa free of charge, authorising to crossing the borders of the Republic of Poland;
- undertake employment on the territory of the Republic of Poland without work permit obligations;
- benefit from the education system free of charge;
- carry out economic activity in Poland on the same conditions as Polish citizens;
- benefit from free medical services in emergencies
- be exempted from payments for visiting state museum;

⁴⁶ Journal of Laws 2007, No 180, item 1280, with amendments (Journal of Laws 08.216.1367).

- benefit from priority treatment in applying for financial means from the state budget or the local government budgets allocated for supporting the Poles abroad.

Only the citizens of the fifteen countries which are former USSR republics, can apply for the Card. The Act does not apply to Poles living in other countries of the world. Being granted the Card of Poles does not mean that one is automatically granted Polish citizenship, or a permit to settle on the territory of the Republic of Poland, or cross the Polish border without a valid visa.

In 2008, 15 925 applications for the Card of Pole were submitted, and 7.891 Cards were granted.

2.3.8 Integration

A foreigner granted refugee status is provided with support aimed at integration, and as of 29 May 2008 the abovementioned form of aid is also granted to the foreigners under subsidiary protection. From the moment the new rules have been in force, the previously made decisions on tolerated stay permit in the refugee proceedings have become by the virtue of law, decisions on granting subsidiary protection. In reference to the above, persons who had obtained a tolerated stay permit before the changes entered into force, have automatically been included in the integration aid.

The aid is realized through an Individual Integration Programme (IPI), agreed upon by a regional family support centre and a refugee, defining the amount, scope, and form of support, depending on the individual life situation of a refugee and his/her family. Within IPI, a refugee and his/her family is granted aid in the form of money benefits for a living and for covering costs related to studying Polish language, paying health insurance and specialist counselling.

In 2008, PLN 4,466,436.00 from the state budget was spent on the IPI aid for refugees; the aid was provided to 1754 foreigners, including, for the first time, persons under subsidiary protection (in 2007, PLN 1,895,646.00 was spent; aid was provided to 640 foreigners).

As of 31 December 2008, in 22 centres there were 4853 foreigners awaiting decision on granting refugee status (1710 persons were given benefits outside the centres). In 2008, costs incurred by the Office for Foreigners on persons applying for refugee status amounted to PLN 81,319,032.00 (64% increase as compared to previous year), while the expenditures on supporting voluntary returns increased by 400%.

2.3.9 Illegal Immigration

(Including any regularisations or changes in policy towards illegal entry and/or stay)

Pursuant to Article 18 of the Act of 24 May 2007 on the amendments to the Act on foreigners and some other acts (*Journal of Laws* 2007 No 120, item 818), in the period of 6 months since the amendment entered into force, i.e. till 20 January 2008, foreigners staying in Poland illegally could have applied to a provincial governor (voivod) for a residence permit for 1 year. To benefit from regularisation, a foreigner had to fulfil the following requirements:

- have a proof of a documented 10-year, uninterrupted stay in Poland,
- indicate a dwelling unit with a legal title to occupy it
- have a promise of issuance of work permit, or a declaration of an employer about employing a foreigner

- possess property or income allowing to make a living and pay for medical treatment for a duration of one year, for the applicant and his/her family, without the support of the resources from the social assistance,
- obtain a positive opinion of competent authorities confirming that he/she does not constitute a threat regarding defensibility and security of the state, or security protection and public order,
- not participate in the previous abolition programme, which took place in 2003.

Voivod granted temporary visas to foreigners who submitted an application for residence permit, and to persons included in the application, until final decision was made on residence permit for a fixed period of time. Before making a decision on granting a residence permit voivod was obliged to request information, to the extent required, to decide, whether a foreigner's stay on the territory of the Republic of Poland posed danger to the defensibility or security, or safety and public order.

In a decision of refusing to grant residence permit for a fixed period a date was given, by which the foreigner was obliged to leave the territory of the Republic of Poland. Such decision was accompanied by adequate regulations on procedures for persons obliged to leave the territory of the Republic of Poland. If the foreigner left the territory of the Republic of Poland by the date given in the decision, his/her data was not recorded in a list of persons, whose presence on the territory of the Republic of Poland is undesirable, unless, it was required by defensibility and security of the state, or safety and public order

If the decision was positive, a foreigner, for duration of one year since the end of the proceeding, could legally remain on the territory of the Republic of Poland, and then apply for residence permits on general rules included in the Act on foreigners.

According to the data on 31.05.2008, 2029 foreigners applied for a residence permit for a fixed period within the framework of this procedure (1992 applications were submitted).

Similarly to the first abolition in 2003, the majority of foreigners were of the following citizenships: Vietnamese (1123 persons) and Armenian (577 persons), which constitutes 83.9% of all foreigners who benefited from regularisation.

The percentage of foreigners – citizens of the countries who are direct neighbours of Poland - was 8,58% compared to all foreigners using this instrument: from Ukraine -115 persons, from the Russian Federation – 43, and from Belarus – 16.

Due to restrictive criteria to be met by immigrants who stay in Poland illegally, the number of foreigners who were able to legalize their stay on the basis of this regularisation mechanism was very low, so the actions undertaken did not have a significant influence on the situation of illegal migrants in Poland.

2.3.10 Actions against Human trafficking

On 21 October 2008, the 3rd National Conference on Combating and Preventing Trafficking in Human Beings was organized. Furthermore, as a result of actions of the Unit for Combating and Preventing Human Trafficking at the Ministry of the Interior and Administration, information campaigns were launched, targeted at foreigners coming to Poland to work, and at Poles going abroad to work. A number of information and analytical publications on human trafficking were prepared.

With the use of funds secured for the development aid, a project titled “Combating human trafficking in the context of strengthening the Moldovan migration management system and international cooperation. Polish-Moldovan exchange of experience and good practices” was implemented.

Also, the project of the National Programme for Combating and Preventing Human Trafficking for 2009-2010 was developed.

2.3.11 Return Migration

Actions addressed to Polish citizens:

- In 2008, the Team of Strategic Advisors to the Prime Minister and members of the Re-emigration Working Group (operating within the inter-ministerial Committee for Migration) developed the framework and provisions of the information campaign addressed to Polish economic migrants staying in Great Britain, Ireland, and other European countries who were considering the possibility of returning to Poland. These efforts resulted in the publication of a guide and launch of a website (www.powroty.gov.pl). Both tools aimed at providing Poles with practical information, which might help them in deciding on coming back to Poland;

- on 6 August 2008, the Act of 25 July 2008 on special solutions for tax payers earning part of their income outside the territory of the Republic of Poland⁴⁷ (the so called **tax abolition**), entered into force. It allowed for an abolition or a refund of income tax to be deducted from earnings of Polish tax payers abroad, and it concerned Polish tax payers who in at least one fiscal year, between 2002-2007, were subject to the so called unrestricted tax liability, and generated their income abroad in the period in question. Abolition concerned those tax payers who generated their income abroad in the countries with which Poland signed double taxation avoidance agreement, including the so called proportional deductions. Tax abolition also applied to incomes generated by tax payers from the countries with which Poland did not sign any agreements on double taxation avoidance. The abolition did not apply to incomes generated in those countries and territories, called as “tax paradises” (e.g. Andorra, Monaco, Liechtenstein, Liberia).

Actions addressed to foreigners:

- Voluntary returns:

Assisted Voluntary Return Programme, implemented by IOM Office in Warsaw together with the Office for Foreigners and Border Guard, is realized on the basis of the Agreement of 12 July 2005 between the Minister of the Interior and Administration of the Republic of Poland and the International Organization for Migration on co-operation in the field of voluntary returns of aliens leaving the territory of the Republic of Poland.

The following persons are included in the Programme of voluntary returns (according to Article 1 of the abovementioned Agreement):

- 1) foreigners applying for refugee status:
 - a) whose applications have been left without recognition for formal reasons,
 - b) who received a decision refusing to grant refugee status and refusing a tolerated stay permit;
- 2) foreigners who submitted an application for refugee status, and later resigned from applying;
- 3) foreigners applying for asylum in the Republic of Poland, who were refused asylum;

⁴⁷ Journal of Laws of 6 August 2008, No 143, item 894.

4) foreigners who received a decision, which obliges them to leave the territory of the Republic of Poland.

The aid includes providing information on the situation in the countries of origin, taking care of formal matters related to preparing to return and the organization thereof.

In 2008, IOM granted aid in voluntary return to 962 persons, including 889 citizens of the Russian Federation (in 2007 - 743 persons, in 2006 – 416 persons).

Regardless of the actions coordinated by IOM, in 2008, pursuant to Article 70, paragraph 1⁴⁸ and Article 75 of the Act of 2003 on granting protection to foreigners within the territory of the Republic of Poland, the Head of the Office for Foreigners helped independently 514 foreigners, who expressed such a wish, in voluntary return to their countries of origin.

- Readmission:

Poland is a Party to 20 bilateral agreements on readmission of persons staying illegally in the country, concluded with the governments of the following countries: Austria, Bulgaria, Croatia, the Czech Republic, Greece, Spain, Ireland, Lithuania, Latvia, Macedonia, the Republic of Moldova, Germany, Romania, Slovakia, Slovenia, the Swiss Confederation, Viet Nam, Sweden, Ukraine, Hungary.

Apart from the bilateral agreements, Poland is also Party to the following multilateral agreements, signed within the European Union: Agreement with Macao Special Administrative Region of the People's Republic of China, Hong Kong Special Administrative Region of the People's Republic of China, Democratic Socialist Republic of Sri Lanka, the

⁴⁸ Article 70. 1. The applicant and the person on whose behalf the applicant applies, shall be granted social assistance and medical care, and possibly assistance in voluntary return to the country into which they have a right of entry, hereinafter referred to as "assistance in voluntary return".

2. the regulation of paragraph 1 does not apply to foreigners who:

1) are under subsidiary protection,

2) stays on the territory of the Republic of Poland on the basis of tolerated stay permit – after expiry of a period defined in Article 74, paragraph 1, [2 months after receiving final decision on refugee status, and if the proceeding has been discontinued – after 14 days since receiving the final decision of the discontinuation of the proceeding];

3) stays on the territory of the Republic of Poland on the basis of residence permit for fixed period, permit to settle, or long-term EC resident's residence permit;

4) stays in care and education centre;

5) stays in a guarded centre or in the arrest for the purpose of expulsion;

6) is under temporary arrest or undergoing penalty of the deprivation of liberty.

3. The application of the foreigner described in paragraph. 2 on providing social assistance, medical care, or assistance in voluntary return is left without recognition.

4. A foreigner who before the end of the 2-year period since the day of having received assistance in voluntary return, has submitted another application for refugee status, is eligible to medical care and social assistance in the form of money benefits, which is a third of the amount of money benefits described in Article 72 [if it is required by organizational issues or if it is necessary to:

1) ensure safety to the foreigner, including special situation of single women;

2) protection of public order;

3) protection of and maintaining family ties;

4) preparing a foreigner to live independently outside the centre, after receiving decision on granting refugee status or a refusing decision on refugee status, in which a foreigner was granted subsidiary supervision on a tolerated stay permit].

5. If in the course of the proceeding related to another application for granting refugee status, new circumstances emerge, concerning persecution, or new circumstances related to the risk of possible serious harm, compared to the circumstances indicated by the foreigner in the previous proceeding, the Head of the Office, by way of decision, grants help to the foreigner under general rules.

Albanian Republic, the Russian Federation, the Agreement with Ukraine, the Agreement with Bosnia and Herzegovina, the Agreement with the Republic of Serbia, the Agreement with the Republic of Montenegro, FYROM (Macedonia) and the Republic of Moldova. The Agreement with Pakistan is at the stage of negotiations.

Furthermore, Poland is a Party to the multilateral agreement on accepting persons staying in the country without permit, concluded between the Government of the Republic of Poland, and the following countries of the Schengen zone: Kingdom of Belgium, Federal Republic of Germany, the French Republic, the Republic of Italy, the Grand Duchy of Luxemburg, and the Kingdom of the Netherlands.

Main reasons for which Poland concludes agreements on readmission, are the following: the wish to strengthen cooperation and efficiency of undertaken actions within the scope of illegal migration control, and a wish to regulate the procedures, and develop and unify procedure rules in cases of expulsion of persons staying illegally in the country.

In 2008, no new readmission agreement was signed by Poland. However, it should be noted that the cooperation with Viet Nam has tightened in relation to the implementation of the agreement on readmission with this country.

In May 2007, the representatives of the Office for Border Traffic Control of the Ministry of Public Security in Hanoi and the representatives of the Border Guard Headquarters met in Warsaw to find new common ways of increasing the efficiency of the implementation of the readmission agreement. The meeting ended with signing of the memorandum of understanding, in which the Vietnamese Party agreed upon cyclical visits of Vietnamese experts in the Republic of Poland, organized to confirm identity of the Vietnamese citizenship and to issue replacement travel documents on the territory of the Republic of Poland to persons detained due to illegal stay or attempting to cross the border illegally, who supposedly possess Vietnamese citizenship. Up to date, five visits took place, the result of which was issuing replacement travel documents and expulsion of 184 Viet Nam citizens.

This form of cooperation is being modified and developed by creating trilateral platform for further actions. In September 2008, a visit of Vietnamese experts was organized, to confirm the identity of the foreigners, subject to expulsion, staying either in Germany, or in Poland. This kind of common action will be continued in May and September 2009, with a financial support of the European Union, being at the disposal of FRONTEX Agency. It is being planned that, the consequences of such actions will result in organization of charter flights to Vietnam to expel foreigners, whose identity will be confirmed during the visits of the experts.

3. Implementation of EU Legislation

The Act on the amendments to the Act on granting protection to the foreigners within the territory of the Republic of Poland, and some other acts, has been passed in relation to the necessity to implement to the Polish law the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Official Journal of the EU L 304 of 30.09.2004, page 12; Official Journal of the EU, Special Polish Edition 19, vol. 7, page 96).

Furthermore, the Act transposed to the Polish legal order, the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status in the Member States (Official Journal of the EU L 326 of 13.12.2005, page 13). The amended Act on granting protection to foreigners on the territory of the Republic of Poland did not include regulations on legal aid of the abovementioned Directive. It has been agreed that they would be taken into account later, since ways of implementing these regulations need to be decided upon.

By adopting the Act on the amendments to the Act on foreigners, and some other acts, regulations of the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (Official Journal of the EU L 149 of 2.06.2001, page 34; Official Journal of the EU Special Polish Edition, chapter 19, vol. 4, page 107), was implemented. The amendment also took into account the provisions of the decision of the Council of 23 February 2004 specifying the criteria and practical arrangements concerning compensation of financial disproportions resulting from the application of the Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (Official Journal of the EU No L 60 of 27.02.2004, page 55; Official Journal of the EU Special Polish Edition, chapter 1, vol. 5, page 25).

Furthermore, the amendment to the Act, introduced provisions related to the local traffic border under the rules stipulated in the regulation (EC) No 1931/2006 of the European Parliament and Council of 20 December 2006 on laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (Official Journal of the EU L 405 of 30.02.2006, page 3).

Appendix – Methodology

The Report has been prepared by the National Contact Point (NCP) to the European Migration Network (EMN) established in October 2008, after the formal establishment of the the European Migration Network by decision of the Council 2008/381/EC of 14 May 2008.

The Polish NCP included representatives of the Ministry of the Interior and Administration (National Coordinator), Office for Foreigners, Minister of Labour and Social Policy, Border Guard, and Central Statistical Office.

Main input to the report was provided by the Migration Policy Department of the Ministry of the Interior and Administration, which is responsible for the dissemination of knowledge of subjects related to the Polish migration policy. Analytical materials and statistical data used in the report were prepared mainly by institutions which compose PL EMN NCP and the inter-ministerial Committee on Migration. Part of the materials came from the Public Information Newsletter of the Ministry of the Interior and Administration⁴⁹.

It should be noted that statistical data was used only to illustrate current trends, and may differ from the data that shall be used for EMN Annual Report on Asylum and Migration Statistics 2008 – the differences will stem from using different data collection methodologies⁵⁰.

⁴⁹ <http://www.bip.mswia.gov.pl>

⁵⁰ Data in the Statistical Report 2008 – on the basis of the Decision (EC) No 862/2007 of the European Parliament and Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers.