

# Business-related immigration

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## Admitting third-country nationals to Poland for business purposes

Report produced by the National Contact Point to the European Migration Network in Poland



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# Introduction

This National Report was prepared by the Ministry of the Interior and Administration acting as the coordinator of the National Contact Point to the European Migration Network in Poland (PL NCP EMN). This Report follows the common specifications and methodology prepared by the European Migration Network (EMN).



The European Migration Network was established by Council Decision 2008/381/EC in order to provide up-to-date objective, reliable and comparable information on migration and asylum to Community institutions, Member States authorities and to general public, with a view to supporting policy-making in the EU. The EMN is co-ordinated and financially supported by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

The electronic version (both English and Polish) of the National Report is available from [www.emn.gov.pl](http://www.emn.gov.pl) under "EMN Poland Publications".

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#### DISCLAIMER:

This Report has been produced by the National Contact Point to the European Migration Network in Poland (PL NCP EMN). This report does not necessarily reflect the opinions and views of the institutions – members of the PL NCP EMN, or the European Commission, nor are they bound by its conclusions.

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This report on business immigration for business purpose was prepared by the National Contact Point of the European Migration Network in Poland (PL NCP EMN) within Polish membership in EMN<sup>1</sup> and constitutes contribution to the report of European Migration Network synthesising the knowledge about admitting third-country citizens who arrive to the European Union Member States for business purposes<sup>2</sup>.

The main contribution was provided by the Migration Policy Department of the Ministry of the Interior and Administration with the cooperation with Consular Department of the Ministry of Foreign Affairs, Labour Market Department of the Ministry of Family, Labour and Social Policy, the Office for Foreigners, Border Guard Headquarters, Strategy and Analysis Department, Support Instrument Department and Electronic Economy Department of the Ministry of Development, Polish Information and Foreign Investment Agency, Customs, Taxation and Games Control Department, Fiscal Control Department and Income Tax Department of the Ministry of Finance, Information Department of the Central Statistics Office, Department of the Control of Social Insurance Contribution Payers, departments of foreigners of the particular voivodship offices, representatives of the non-governmental organisations working for the benefit of foreigners in Poland and independent experts.

The purpose of this report is to present the policy on admitting business immigrants which is currently performed in Poland. Among other things, the actions which Poland takes in order to facilitate and encourage business immigrants inflow to Poland, rate in which the particular entities get engaged in performing the actions encouraging the foreigners to run business activity in Poland, the most often signalled barriers concerning admitting the business immigrants as well as the scale of migration in Poland connected with business activity, and also undesired effects, i.e. misusing the business migration route were analysed.

The National Contact Points to the European Migration Network, European Commission, policy-makers both at the national and European levels, national executive institutions and society – nongovernmental organisations, research institutes and other interested entities constitute the group of recipients of this study.

The report follows the common specifications and methodologies adopted by the European Migration Network.

#### Methodology applied

The report is largely based on desk analysis of existing documents that were provided by public institutions responsible for shaping the policy in the scope of admitting business immigrants to Poland as well as non-governmental institutions and organisations researching and promoting the business activity among the foreigners.

The collected literature and conducted researches on the subject of business-related migration to Poland were also reviewed. The unstructured expert interviews were conducted with the representatives of non-governmental organisations acting for the benefit of foreigners in Poland and implementing projects addressed to the foreign entrepreneurs as well as representatives of the business environment (two international corporations providing modern services for business in Poland).

The information included in the national report relates to the Polish legal framework as at 31 August 2015 in particular to the Act on Foreigners of 12th December 2013<sup>3</sup> and Act on the Freedom to Run Business Activity<sup>4</sup>.

The report refers also to the strategic documents – crucial for business immigration to Poland – such as "Long-term Strategy of the Development, Poland 2030. Third Wave of Modernity", "Short-term Strategy of the Development 2020", "Strategy of Innovativeness and Competitiveness of Economy "Dynamic Poland 2020" and "Migration Policy of Poland – the Current State of Play and Further Actions".

The statistics generated by the Central Statistical Office, Ministry of Development, Ministry of Foreign Affairs and Office for Foreigners were used as the main data source for data presented in the report.

#### Definitions

For the purpose of this study, the definition of the "business migrant" covers primarily the migration to Poland of the following third-country nationals<sup>5</sup>:

- investors who are not involved in the day to day operations or in the management of business.
- business owners who set up/take over the running business activity and are actively involved in its everyday management,
- self-employed persons.

1. Polish NCP EMN consists currently of the representatives of the Ministry of the Interior and Administration (National Coordinator), the Ministry of Family, Labour and Social Policy, the Office for Foreigners, Border Guards and Central Statistical Office.  
2. The synthesis report is available at the website of the European Migration Network: [www.emn.europa.eu](http://www.emn.europa.eu).  
3. Unified text, Journal of Laws of 2013 item 1650.  
4. Unified text, Journal of Laws of 2004, No 173, item 1807.

5. In accordance with the EMN Glossary 3.0, a 'third-country national' refers to any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union, and who is not a person enjoying the Union right to freedom of movement as defined in Article 2(5) of the Schengen Borders Code. This definition means that nationals of Norway, Iceland, Liechtenstein and Switzerland are not considered to be third-country nationals.

The scope of the study includes also, but in a limited scope, other persons who come to Poland for the business purposes and in particular the six categories of natural persons supplying services pursuant to international trade agreements within so-called "Mode 4".<sup>6</sup> These include:

- business visitors for establishment purposes - BVEP<sup>7</sup>,
- business sellers - BS,
- contractual services suppliers - CSS,
- intra-corporate transferees - ICT,
- independent professionals - IP,
- graduate trainees/trainee employees - GT.

Taking into consideration the fact that not all aforementioned categories of persons are covered by the appropriate EU regulations (directive

concerning the employees transferred within the company fills this gap in a big part, moreover some parts of harmonisation for short-term employees – BVEP and BS – was created by the Schengen acquis), the national regulations on entry and stay to which the aforementioned persons are subject were presented in the EMN study.

The possible EU harmonisation of the regulation concerning the entry and stay in the EU of the aforementioned persons may be significant because it may constitute the peculiar asset in the negotiations on free trade agreements between the European Union and the third countries, increasing at the same time the probability of granting the EU entrepreneurs the similar rights, on a reciprocal basis.

The detailed definitions used in the report were included in the specifications to the European Migration Network study<sup>8</sup>.

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6. "Mode 4" is one of four ways in which the services may be rendered in the international context within the General Agreement concerning Trade in Services (GATS). It covers rendering services by the service provider of one Member of the Agreement by the presence of the physical persons at the territory of the other Member, and covers the temporary character of the flow of natural persons in order to provide these services.

7. The adopted definitions of particular categories of persons are described in detail in the annex to the EMN synthesis report on admitting third-country nationals for business purposes (the report is available on [www.emn.europa.eu](http://www.emn.europa.eu)).

8. Specifications are available at the website of the European Migration Network: [www.emn.europa.eu](http://www.emn.europa.eu).

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**The system of foreigners' admission to Poland does not currently provide any special migration channel/ special programme addressed to the foreigners coming to Poland for business purposes. Nevertheless, business migrants, according to provisions of the "Migration Policy of Poland – the current state of play and further actions", constitute a significant group of foreigners who should be covered by preferential legal regulations concerning the entry, stay and work in Poland.**

## Summary

The provisions in the key documents of the strategic nature demonstrate that “business migrants” constitute a significant group of foreigners for Poland which can boost the economy (subsection 1.1.).

As for specific legal provisions addressed to this group of migrants, the approach adopted by Poland envisages however some important restrictions (subsection 1.3.). Not all foreigners may carry out business activity in all forms available in Poland. It primarily concerns visa holders (including people entering Poland for the first time) as well as many (though not all of them) persons residing in Poland on the basis of temporary residence permits. What is important, the subjective scope of foreigners who may run business activity in all forms available in Poland (i.e. under the same terms and conditions as Polish citizens) was extended in 2014. However, it is still relatively narrow.

As regards immigration regulations, the system of foreigners' admission to Poland does not provide any special migration channel/special programme addressed to the foreigners arriving to Poland for business purposes within which any specific entry facilitations are guaranteed in a systematic way (subsection 1.4.). Although consuls may at present facilitate the entry of persons declaring the willingness to engage in the business activity in Poland (including by means of procedural facilitations), it occurs in individual cases and is conditioned by the circumstances in individual case.

In this context it should be highlighted that important changes with regard to criteria for granting temporary residence permit for the purpose of running business activity were introduced in May 2014.

The new prerequisites for granting the permit, similarly as the previous provisions of the Act on Foreigners, provide for granting the permit only to

those foreigners who run business activity bringing profits to the Republic of Poland, however, the legislator introduced more objective criteria for verifying this prerequisite. New criteria entitle a person who has just arrived in Poland in order to run business activity and resides on the basis of visa to legalise his/her stay for the period up to 3 years. This provision gives the possibility to “postpone” the moment of meeting the criteria of economic-social character.

Regardless of the lack of special admission programme aimed to facilitate the admission of business migrants, it is possible to list the range of tools of various nature which are aimed to encourage migrants to run their business activity in Poland in a direct or indirect way (subsection 1.6.).

Despite the fact that there are a few sources of data concerning business migrations in Poland, it is highly complicated to provide the number of this category precisely (section 2). According to the data of the Central Statistic Office, over 26 thousand entities with foreign capital were registered in Poland at the end of 2013. Among them, only 20% were companies with foreign capital from outside the EU/EEC which means that mainly EU citizens run business activity in Poland.

As for the foreigners running business activity individually, the number of them is growing systematically from year to year. However, on average, every second individual business activity run by a foreigner stops existing after approx. 3 years from setting up.

Regardless of the current scale of business-related migration to Poland, the example of concentration of Chinese and Vietnamese companies in Wólka Kosowska (located near Warsaw), demonstrates how big an impact entrepreneurship among foreigners can have on a country in a socio-economic dimension (section 4).

It is worth reiterating that risk of illegal migration in the context of business activity conducted by the foreigners is currently low (section 3). What is more, in the opinion of the Border Guards, the latest liberalization of the migration law with regard to legalisation of the stay on the basis of conducting business activity in Poland hasn't affected yet the scale of misuse nor the new undesirable phenomena in this area has occurred.

Many challenges faced by business migrants in Poland correspond to the challenges that the Polish citizens face and it is related to the institutional and legal environment, in which entrepreneurs in Poland

operate (e.g. labour costs, tax system, issues related to the specific stages of establishing a company) – section 4. What is interesting, the overview of challenges is not always similar for the specific groups of foreign entrepreneurs. It depends on many factors such as: the scale of the business activity, sector in which it is conducted and the capital (financial, human and social) which the foreigner has at her/his disposal.

Regardless of challenges identified, Poland, according to many experts, over time becomes more and more attractive place to carry out business activity, including for companies operating in modern business services as well as technological companies.

# 1

## Policy framework for admitting third-country nationals for business purposes

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## 1.0 Policy framework for admitting third-country nationals for business purposes

### 1.1 National strategy for admitting third-country nationals for business purposes

In Poland one strategic document which would refer to all issues connected with accepting the foreigners for the business purpose has not been drafted so far. In fact, Poland has a strategic document related to migration entitled "Migration policy of Poland – the current state of play and further actions"<sup>9</sup> (together with the Action Plan<sup>10</sup>), however, it presents only the general framework for entry and stay policy of state towards different types of migration to Poland including the business migration.

What is important, the priorities, actions, recommendations and suggestions concerning admitting business migrants were included in several documents of different ranges and nature among which the following should be listed:

- **"Migration Policy of Poland – the current state of play and further actions"** together with the Action Plan indicates the foreign investors, foreigners running business activities (in particular creating new workplaces) and foreigners delegated to work in Poland by foreign employers as a group of foreigners who should be covered by preferential legal regulations concerning the entry, stay and work in Poland. This document emphasises that the presence of these persons has potentially significant impact on the labour market and therefore the procedures referring to obtaining the right to stay

and to conduct a certain business activity by them should be facilitated maximally and constitute one of the elements of the incentive system to invest in Poland. Moreover, in the light of experiences connected with the role of business activity performed individually, including self-employment, for the economy and labour market, it is recommended that the rules on access to this market segment for the foreigners should be drawn up among the rules regulating the access to running the business activity in Poland, analogically to the regulations on access to the associated labour market (the possible form of such regulations would be the adequate provisions referring to the labour of foreigners). Moreover, the need of the following was indicated:

- **Introduction of the solutions** – consisting in enabling the persons of Polish origin to settle in Poland and in connection with it to acquire rights among others in the scope of setting up and performing the business activity pursuant to the same conditions as Polish citizens,
- **better correlation** – between the provisions of the acts regulating the entry, stay and return of foreigners and the act on labour, running the business activity, etc. in order to specify the rights of particular categories of foreigners and

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<sup>9</sup>. Adopted by the Council of Ministers in July 2012.

<sup>10</sup>. Adopted by the interministerial Committee on Migration in December 2013.



tasks performed by competent institutions in a transparent way.

- **Long-term Strategy of the Development, Poland 2030. Third wave of modernity**, which, in order to increase the efficiency and competitiveness of the Polish economy, indicates that leveraging foreign investments is necessary<sup>11</sup>, in particular in the period to 2010 both in the area of industrial production and services – including primarily in three areas – business processes outsourcing services (Business Process Offshoring), establishing service centres in Poland (Shared Service Centre) as well as knowledge or research centres (Knowledge Process Outsourcing).
- **Short-term Strategy of the Development 2020**, in which the inflow of foreign investments including at first in the form of huge corporations placing their manufactures, service centres or research centres in Poland, is perceived as a significant factor affecting the Polish export growth (by providing the access to the international distribution channels and global marketing support). The document also emphasises the role of research – development investments type green-field in the developments of technologically advanced sectors of economy.  
The strategy also underlines the role of small and middle companies (both the ones run by Polish citizens as well as foreigners) in the increase in competitiveness and efficiency of economy. It is necessary to improve the frame conditions of running business activity in Poland so that their number grew constantly. These conditions often constitute the barrier to enter the market for the smallest companies. It is to be connected with the reduction of unnecessary charges and administration barriers, including facilitation and consolidation of tax regulations (actions performed to 2015) and then with the full development of digital public services (e-administration) so that the employer could deal with the majority of cases via the Internet (the activities planned to be

performed after 2015). The improvement of the conditions to run business activity is to be accompanied with the improvement of the quality of provided law so that the institutional surrounding contributed to the development of entrepreneurship in Poland in a greater extent (in this context it is significant to limit the bureaucracy, reduction of number of dismissals, registers of regulated activity, licenses, authorisations, reduction of administration burdens, control).

- **Strategy of Innovativeness and Competitiveness of Economy “Dynamic Poland 2020”** (one of nine strategies performing the long- and middle-term strategies of the development of the country) – constitutes the extension of the recommendations and action formulated in the strategies of higher rank. At first, it indicates the need to focus on acquiring investments directed to national priorities of the scientific and technological development, development of the highly qualified staff, better paid workplaces and facilitating in the use of foreign sources to finance national contributions to B+R+I (research, development and innovations). The document underlines that the direct foreign investments (DFI) do not guarantee growth benefits themselves. Thus, the taken actions should head for maximisation of the learning process from the foreign sources and maintaining the local industrial base and promotion of connections between the national companies and foreign investors should be a condition of obtaining maximal benefits from the investments.  
In order to encourage investors to invest capital in Poland as well as to attract attention of the international business environments, it is necessary to focus on promoting Poland as a country friendly to investors, with high human resources potential, innovative and creative as well as touristic attractive. What is important, the document stresses that it is necessary to create coherent policy and synergy in promoting the Polish economy, culture and tourism in order to achieve this aim. Also the appropriate policy of

the development of own investments directed to international connection should be the additional incentive to attract foreign investors.

Moreover, the document makes reference to the actions which may contribute to attracting foreign investments. They comprise:

- **Preparation of the complex investment policy in Poland** by: indicating branches with the highest investment and growth potential in Poland (including the ones generating many work places); drawing up the code of good practices in proceeding with a potential investor; promotion of privatisation plans; creating legal framework for the functioning of foreign state property funds and creation of good practices of the state accepting this type of investments; creating incentives for the investments and capital funds including the incentive for partners connected with the socially responsible investments; creating incentives to reinvest profits in Poland.
- **Actions to perform the cluster policy at the area of special economic zones**, including the actions referring to the future of SSE (in particular improvement of the current policy in order to boost the economic activity dynamic in the economic zones and to provide long-term benefits for the companies functioning there).
- **Integrating of the system of innovation support and supporting the foreign investors** – actions in the scope of supporting the foreign entities acting or intending to act at the territory of Poland (in particular reformulation of the criteria of such a support) including among others investments in the national research activity, maintaining the local industrial base and promotion of connections between the national companies and foreign investors, cooperation with local research and

development centres, high schools).

- **National intelligent specialisations** – document in which the priorities (19 intelligent specialisations) were indicated in the scope of scientific and innovative policy in Poland. The specialisations were indicated within the following areas: healthy society, agriculture and food and environmental bio-economy, sustained energy production, raw materials and waste management and innovative technologies and industrial processes.
- **The programme of supporting investments which are crucial for Polish economy for years 2011 – 2020** (accepted by the Council of Ministers on 5th July 2011) the purpose of which is the increase in innovativeness and competitiveness of the Polish economy by supporting new production investments (performed by Polish and foreign companies) in the priority sectors<sup>12</sup>, investments in the sector of modern services and of research and development as well as production investments generating new work places with high productivity (so called significant investments).
- **National Strategy of Regional Development 2010 – 2020: Regions, Towns, Rural areas**, in which the role of the regional policy of Poland was specified in supporting the inflow of foreign investments to particular regions. Thus, it is to support all activities of the local government authorities in creating coherent, competitive investment offers and in using investments to strengthen the development effect, including the increase in investment level at the areas with the smallest share of direct foreign investments and the lowest level of social and economic development. The regional policy is to perform these activities by specially addresses priorities within the appropriate regional programmes and they are to refer to particular investment

11. The proper definition here of the foreign investor is the one used by OECD according to which the foreign investor is the physical or legal person or the group of companies which are associated

financially possessing at least 10% of shares (stocks) in the initial capital of the company registered in Poland or at least 10% of votes at the meeting of shareholders.

12. Automotive sector (in particular the production of car vehicles, body works, trailers and semitrailers, parts, components and accessories to car vehicles and their engines and production of tyres), electronic and production of domestic appliances (in particular production of computers, radio equipment and apparatuses, television and telecommunication, systems and subassemblies), air (in particular production of aircrafts, parts and accessories to aircrafts and their engines, service activity in the scope of repair, maintenance and repairs

of aircrafts and air engines), biotechnological (in particular production in the scope of white biotechnology being used in the industrial processes, red one connected with medicine and healthcare and green dealing with aspects connected with agriculture), agriculture and food (in particular food production and activity connected with innovative methods of its processing, packing and storing); included in 19 national intelligent specialisations.

projects within DFI but also other big investments having the basic development meaning (e.g. nuclear power plant, retention containers, etc.) and connected with:

- **Supporting the development and modernisation** of the appropriate transport, environmental and other infrastructure connected directly with the given investment,
- **Improving the quality of human resources** of persons working or cooperating with investors,
- **Using the investment** to strengthen the ability to cooperate of the companies from the given area with the consideration of public assistance principles,
- **Creating the conditions to use the investment to create and introduce innovative solutions** in the scientific centres and companies. The greater integration of local government authorities' efforts with the activity of special institutions acting at the national level (PAIIZ) and the regional one, including special economic zones is to be a significant area in the regional policy activity.

Summing up, it is possible to state that the provisions in the key documents of the strategic nature demonstrate that "business migrants" constitute a significant group of foreigners for Poland. The inflow of foreign investors/investments (understood as physical, legal persons or group of companies associated financially) to Poland is perceived by the decision-makers as highly desired and constitutes a significant development impulse. Then it is connected with the range of actions (among others promotional ones, creation of an incentive programme) which are to encourage investors to invest their capital in Poland.

At the same time, it is stated in those documents that investments do not guarantee the automatic increase in competitiveness and innovativeness of Poland and it is necessary to take actions which would make it possible to obtain maximum benefits from the investments.

From the point of view of profitability, the following foreign investments are preferred:

- In the priority sectors and/or included in 19 national intelligent specialisations,
- In the sectors of modern services (in the areas: service of business processes, joint service centres and advanced services based on the special knowledge) and of research and development type green-field,
- In the production generating new workplaces with high productivity (so called significant investments).

In the strategic approach to foreign investments the issue of differentiated investment attractiveness of Poland in the regional approach (share of new foreign investments is focused on the most competitive regions Poland from the economic point of view – in Mazowieckie, Małopolskie, Śląskie and Dolnośląskie provinces; for comparison in years 2007 – 2010 Eastern Poland attracted only 6% of the inflow of DFI to Poland) and what is connected with this issue the need to support the actions taken in order to increase the attractiveness of the areas which require it the most.

Taking into consideration the fact that the direction of the policy on entry and stay constitutes one component of the strategic approach to the migration for the business purposes, it is worth noticing that foreign investors, foreigners running business activity and foreigners delegated to work in Poland by foreign employers have been defined as a priority group of foreigners, pursuant to the provisions of strategic documents, towards whom the preferential legal solutions concerning the entry, stay and work should be adopted.

It should be noticed at the same time that the Ministry of Economy has been performing the complex strategy to improve the conditions of running business activity in Poland for a few years the beneficiaries of which are to be all persons interested in running business activity independently of the citizenship possessed by them or the residence status. Thus, foreigners are not a separate category of persons to whom the specific actions are directed in this scope.

## 1.2 Actors involved in the development of the national policy regarding business-related migration

In Poland, the number of entities that participate in both indirect and direct creation of policy connected with admitting migrants arriving to Poland for business purposes is numerous and it is impossible to indicate one institution which would deal with this subject in a complex way and at the same time would coordinate all actions of the state taken in this scope by different entities. The following entities should be listed, among others:

- **Ministry of Development (MD)** – formulates the policy in the scope of innovativeness and for the benefit of the development of companies (i.e. introducing facilitations to set up and run business activities, supporting the friendly system of the company surroundings e.g. facilitating and limiting the control in companies, decreasing the level of the necessary capital in companies); stipulates the terms and conditions, pursuant to which foreigners may run business activity in Poland; it also designs and creates investment incentives, and via the Trade and Investment Promotion Sections, i.e. foreign units of the Minister of Development operating at the Embassies and Consulates of the Republic of Poland (currently there are 49 such units located at practically every continent) it i.e. promotes Poland and the Polish economy, undertakes activities to encourage foreign companies to invest in Poland and provides assistance in establishing commercial relations between Polish and foreign companies; coordinates the "Strategy of Innovativeness and Competitiveness of Economy - Dynamic Poland 2020" - one of nine national strategies of Poland;
- **Polish Information and Foreign Investment Agency (PAIIZ)** – operating as stock company with only one shareholder – the State Treasury – it deals with widely-understood handling of foreign investors, it supports companies that are already operating in Poland, it also helps new investors in entering into the Polish market and to take best advantage of the opportunities (assistance in completing required administrative and legal procedures in the course of the project implementation, access to comprehensive information regarding economic and legal background of the investment, assistance in finding relevant partners and suppliers as well as locations). PAIIZ also creates a positive image of Poland abroad and promotes Poland as a convenient place for foreign investments (inter alia via marketing campaigns, investment seminars, workshops, study visits and cooperation with Polish embassies);
- **Network of Regional Investor Assistance Centres** (systemic project of the Ministry of Development) intended to inter alia increase the level of foreign investment in Poland via ensuring access to information on the conditions for running business activity in Poland, investment incentives, the most recent investment offers and regional microeconomic data;
- **Ministry of Family, Labour, and Social Policy (MFLSP)** – prepares legal framework regarding hiring foreigners, including persons performing certain type of work in the company they own (e.g. managing the company) and natural persons supplying services pursuant to international trade agreements (within so-called "Mode 4");
- **Ministry of Foreign Affairs (MFA)** along with the network of Polish consular units and embassies – it establishes the policy on issuing visas to foreigners arriving in Poland for business purposes, and via economic sections and trade and investment sections of Polish diplomatic facilities, it promotes Poland as an attractive place to implement directive foreign investments within the EU, it provides economic information regarding Poland's economic growth;
- **Ministry of the Interior and Administration (MIA)** along with: Office for Foreigners and Border Guard – as the leading entity responsible for coordinating the measures intended to implement national migration policy, has a deciding influence on legislative solutions. Due to its competences

within combating illegal immigration, the measures undertaken by MIA are first and foremost intended to effectively detect and prevent abuses of legislative procedures. Moreover, the Ministry coordinates the implementation process of strategic document "Migration Policy of Poland – current state of play and further actions";

- **Ministry of the Treasury (MT)** – shaping regulations with respect to commercialisation (transforming state companies into commercial companies or partnerships) and privatisation that foreign investors are allowed to participate in;
- **other public administration authorities** responsible for shaping regulations on awarding concessions, permits, licences, professional entitlements and making entries into the registers of regulated activity required to perform certain forms of activity (e.g. Ministry of Environment, Ministry of Development, Ministry of the Interior and Administration, Ministry of Finance, Ministry of Agriculture and Rural Development);
- **local authorities** – considering the strategic objectives related to the development of individual areas of Poland, local authorities are willing to undertake initiatives intended to increase the attractiveness of the given area as a place for business activity run by foreigners. These include: developing and upgrading the infrastructure that

facilitates commencing, running and developing business activity, promoting the given area, ensuring comprehensive information services for potential investors, rendering administrative services in an efficient and professional manner, establishing favourable financial conditions for undertaking and expanding business activity, e.g. by public aid programmes. The presence of foreign investors is to be an important factor that increases the rank and competitiveness of individual cities and regions;

- **other organisations** (bilateral chambers of commerce, foundations; associations) – taking actions for the benefit of improving the investment climate in Poland, supporting the entrepreneurship among migrants and which often lobby for introducing solutions facilitating running the business activity by foreigners in Poland;
- **inspecting authorities** (e.g. fiscal inspection offices, Social Insurance Institution ([pl.] ZUS), National Labour Inspection ([pl.] PIP) – undertake measures intended to more efficiently detect and prevent abuses/infringements;
- **other institutions promoting the Polish economy**, including the Council for the Promotion of Poland, Polish Agency for Enterprise Development.

- 3. joint stock company,
  - 4. limited liability company,
- as well as joining such companies or purchase or take shares or stocks in them.

It means that they do not, as a rule, have rights to run activity in a form of unlimited company, partnership and as physical persons (in a form of individual business activity).

The foreigner has to possess appropriate form of residence in Poland to run business activity also in other forms so according to the same rules as Polish

citizens, including:

1. permanent residence permit,
2. long-term residence permit of the European Union citizen,
3. temporary residence permit:
  - a. granted for the purpose of studying (first grade, second grade, unified master studies or third grade studies),
  - b. granted for the purpose of family reunification (with the exclusion of a few selected cases),
  - c. granted for the purpose of running business activity, granted to continue to run business activity pursuant to the registration in CEIDG,
  - d. granted due to being married with the Polish citizen residing in Poland,
4. international protection (refugee's status, supplementary protection) or national protection (agreement for residence due to humanitarian aspects or agreement for tolerated stay), may use the temporary protection in Poland,
5. valid Card of the Pole.

Rights guaranteeing the foreigner setting up and running the business activity according to the same rules as Polish citizens (independently of the residence status) may, apart from that, arise from the international agreements concluded by Poland. At present, only the residents of the United States have such a possibility on the basis of bilateral agreement concluded in 1994.

Moreover, the citizens of EU/EEC and members of their families have the same scope of rights in the context of running business activity<sup>13</sup>.

The above means that the foreigner (with the exception of the citizens of the USA, EU states and members of their families) who come to Poland to run business activity and do not possess any family relations (see: case 3b, 3d and 5) and migration history connected with it (see case 3c) and also who are not beneficiaries of international and national protection potentially acquires the right to run business activity in all forms on average after 5 years of residence in Poland (and having obtained the permanent residents permit). Until that time, the possibility to run business activity is limited to four out of seven forms of these activities.

## 1.4 Terms of entry and stay of foreigners coming to Poland for business purposes

Poland does not offer any special migration channel/ special programme to the foreigners coming to Poland for business purposes (including e.g. foreign entrepreneurs or investors) within which the particular facilities with regard to entry and residence legalisation would be guaranteed in a systematic way.

The foreigners intending to come to Poland for business purposes have to contact Polish consulate or diplomatic entity in their country of residence (or should there be no such a place – in another third country) in order to receive a visa (national or Schengen) to run business activity – type "4". The conditions required to be met when applying for a visa are:

1. Visa application which has to be electronically registered (via the platform e-Konsulat), filled, printed and signed supplemented by the current photograph,

2. Visa fee (if required),
3. Valid travel document satisfying given criteria,
4. Presenting the proof of possessing an appropriate valid travel medical insurance for the amount of at least EUR 30,000 or in case of the national visa another medical insurance issued by the appropriate institution in Poland (e.g. the proof of payment of the voluntary health insurance in NFZ [National Health Fund]),
5. Submitting the documents confirming:
  - a. Possessing the sufficient means to cover the foreigners' maintenance costs throughout the entry, planned stay and return from the territory of Schengen or Poland,
  - b. Readiness to leave the territory of Schengen after the expiry of the validity term of visa,
  - c. Purpose of entry, e.g. registration in KRS

<sup>13</sup> Article 13 of the Act on the Freedom of Running Business Activity (unified text Journal of Laws of 2013, item. 672).

## 1.3 Conditions of running business activity by foreigners in Poland

Running the business activity by foreigners in Poland is subject to significant restrictions. Not all foreigners may run business activity in all available forms. At first, it refers to persons who stay in Poland on the basis of visas (including the ones arriving in Poland for the first time), as well as a range (but not all) of persons staying in Poland for the temporary residence permit. These foreigners may run business activities only in four selected forms, i.e. in a form of company:

1. limited partnership,
2. limited-stock partnership,

[National Court Register], articles of the company confirmed to be true copy by the public notary, documents confirming the financial condition of the company, invitation/reference letter from the company operating in Poland with which the foreigner cooperates, proof to run business with Polish companies or entities from other EU states in the past, financial capital which the foreigner wants to invest in Poland,

- d. Other data and information included in the visa application (e.g. birth certificate, marriage certificate);
6. Foreigner must not be on the list of foreigners whose stay is undesired in Poland or in the Schengen Information System for the purpose of visa refusal,
7. No prerequisites to regard the foreigner as a person who may infringe the public order, safety, the interest of the Republic of Poland or international relations of one of the Schengen states.

For the visa type "4" may apply among others the foreigners who:

- Stay abroad and do not possess the legal residence in Poland but have already the company registered in the National Court Register in Poland (e.g. by the Internet or by the proxy),
- Stay abroad, do not have the legal residence in Poland and just intend to invest/run business activity in Poland (do not have the set up company).

However, what is important, in both cases the foreigner has to prove his intention and justify the necessity to enter to Poland and the consul takes the final decision whether the presented evidence is sufficient to issue the visa. Analysing the visa application, the consul takes also into consideration the local conditions in the country of origin.

Due to these reasons, it is impossible to indicate the closed catalogue of documents confirming the entry to Poland which are necessary to obtain Polish visa and what is more the catalogue of criteria which the consul uses issuing visas to run business activity.

Their character and number may vary depending on the applicant's situation and may for example depend on:

- The fact whether the foreigner has run business activity on the territory of his/her country (is experienced in this scope) or not as well as on the fact what is the financial status of the run company,
- The fact whether he/she concluded commercial relations with Polish/foreign partners or not,
- The fact whether the country of origin of the foreigner is regarded as the country of high migration risk or not.

The situation is slightly different when it comes to Schengen visas the issuing of which is unified and regulated by the Union Visa Code. In connection with this fact, the foreigner applying for having the visa type C granted is obliged to submit the documents connected with the aim of journey specified in appendix II to Visa Code. Additionally, the European Commission due to particular local conditions in more than 30 countries<sup>14</sup>, issued the decision in the matter of detailing the list of supplementary documents required in the visa procedures in these states which means that the foreigner applying for the visa in the consulate situated in one of these countries has to submit documents which have been included in this list.

Thus, consulates take advantage of relatively big autonomy at issuing visas, especially in relation to the national visas and may facilitate – in the individual course and depending on the circumstances – the entrance of persons declaring the willingness to engage in the business activity in Poland.

Independently of this fact, the Ministry of Foreign Affairs is trying to introduce temporary solutions which facilitate the service among others of the entrepreneurs and investors coming from the countries outside the EU such as:

- expanding the network of consular offices, e.g. in the context of China, there are works being conducted intended to launch a network of Visa Application Collection Centres and to establish a new consulate in the central part of China, in the case of Tajikistan citizens who have problems with travelling to Uzbekistan (the relevant consular district), considerations are made

to organise frequent travels of a consul from Tashkent to Dushanbe, with a mobile consular point, that could collect visa applications and fingerprints (Tajikistan citizens may also apply for a visa in the Polish units in Ankara and Islamabad, where they can travel without a visa);

- introducing organisational solutions intended to facilitate handling entrepreneurs and investors from third countries, e.g. including implementation of special procedures for reliable/serious/credible/desired businessmen/entrepreneurs/investors (the applicants are handled out of turn and/or without the need to register with the e-consulate system that is often blocked by tourist companies, and their meetings are arranged by e-mail via consular inbox that is personally handled by the consul, visas are issued in expedited procedure, e.g. in one day, and if Polish partners confirm the plans of long term cooperation, Schengen visas valid for a couple of years are issued. Such solutions have been implemented in consular offices/agencies in:
  - Nigeria (Abuja), whose consular district covers 10 states: Nigeria, Benin, Ghana, Equatorial Guinea, Cameroon, Liberia, Sierra Leone, Togo and Côte d'Ivoire) and the remaining countries of North Africa;
  - Iraq (Erbil);
  - India;
  - Russia and Ukraine – additionally, in the context of implementing the Visa Information System in 2015 in these countries that require personal attendance for the purposes of collecting fingerprints for the purposes of obtaining Schengen visas, considerations are made regarding launching of a special VIP path in the Visa Application Collection Centres (outsourcing), consisting in meeting with applicants at special centres, where the applicants will be able to submit visa applications and fingerprints out of turn.

However, it is necessary to remember that the above solutions (including procedural facilitations) are not implemented in a systematic way as it happens in some EU states which have introduced special migration programmes dedicated to the persons migrating for business reasons.

The duration of the whole visa procedure varies depending on the country in which the foreigners apply for visa. The average duration of the procedure amounts to about a month. However, it is worth adding that in connection with the increased interest of the Ukrainian citizens to obtain Polish visas for the last couple of months, the time of waiting to place the visa application in consulates in Ukraine takes currently up to a few months, which significantly extended the duration of the whole procedure.

As a rule, visas are not extended. That is why when their validity comes to an end, the foreigner should apply to the Voivode to have the temporary residence permit granted in connection with the circumstances described in article 142 of the Act on Foreigners of 12th December 2013 (temporary residence permit in order to run business activity) which is the basic form of residence legalisation in Poland in case of foreigners migrating in the business purposes. The residence of the basis of this permit may be legalised at first for the foreigners who:

- Conduct the business activity in a form of limited partnership, limited – stock company, joint stock company and limited liability company or
- Taken over or purchased the shares or stock in the joint stock company or limited liability company.

In fact also the foreigners who run business activity in other forms, including in a form of unlimited company, partnership or in an individual form (therefore running the business activity according to the same rules as Polish citizens) may apply for above mentioned residence permit, however, it concerns only two groups of foreigners:

- Citizens of the USA (the possibility to run business activity according to the rules binding for Polish citizens arises from the provisions of bilateral international agreement),
- Foreigners who continue running business activity registered previous on the basis of the entry to CEIDG (or in a form of individual business activity) and these are the persons who stayed in Poland on the basis of temporary residence permit during studies (who started running individual business activity while learning<sup>15</sup> and intend to stay in Poland after

14. In Russia, China, Saudi Arabia, Indonesia, Vietnam, Bosnia and Herzegovina, Sri Lanka, Turkey, Egypt, the United Kingdom, Chile, Kazakhstan, Nicaragua, Jordan, Kosovo, the USA, Belarus, Cameroon,

Georgia, Moldova, Ukraine, the United Arab Emirates, the Republic of Green Cape, Kenya, the Philippines, Algeria, Costa Rica, Mozambique and Uzbekistan.

15. Pursuant to article 13 item 2 point 1 letter c of the Act on Freedom of Running Business Activity (full-time student who stay in Poland on the basis of the temporary residence permit granted in order to study at

the university may run business activity according to the same rules as Polish citizens).

graduation from full-time studies) or joining families who continue the stay in a new purpose, i.e. continuity of business activity).

It is worth emphasising that the regulation giving the possibility to legalise the residence to the graduates of Polish universities who run their businesses in a form of individual company during studies, was introduced with the Act on Foreigners of 12th December 2013, it is a response for unbeneficial from the foreign student situation that after completing his/her studies in Poland and together with it the change of residence status, the scope was limited in which he/she was entitled to run business activity in Poland (he/she could only run business activity in four selected forms i.e. in a form of limited partnership, limited-joint-stock company, limited liability company and could also join such companies or take or purchase shares or stocks in them), which led to the situations in which the foreigner was forced to cease any further business activity in a previous form<sup>16</sup>.

The temporary residence permit for the purpose of running business activity is also granted to the foreigners who:

- Perform the work in a limited liability company or stock company (which they created or the shares/stocks of which they took over/purchased) by holding the position of a member of the management board – in such a situation it is required that the foreigner possesses health insurance, source of steady and regular income sufficient to cover the maintenance costs of himself and the members of the family he supports and the company which he manages or will manage has to meet the requirements specified below in point 7 (article 142 item 1 point 3 of the Act on Foreigners). Having obtained the residence permit, pursuant to the general rule, it is required to obtain the work permit type B. It is worth mentioning that should the foreigner stay in Poland for the period not exceeding 6 months in total within the consecutive 12 months, the subject permit is not required;
- Perform work in the limited liability company or

stock company (which they created or the shares/stocks of which they took over/purchased) other than the member of the management board, e.g. as a director – in such a situation it is required that the foreigner possesses health insurance, source of steady and regular income sufficient to cover the maintenance costs of himself and the members of the family he supports. Having obtained the residence permit, pursuant to the general rule, it is required to obtain the work permit (if it is required).

Should the foreigner hold a position of a member of the management board of the company being subject to a registration in the register of entrepreneurs but does not possess shares or stocks in it, he should apply for another type of residence permit – single residence permit for work and stay. In this situation the foreigner must possess health insurance, source of steady and regular income sufficient to cover the maintenance costs of himself and the members of the family he supports and the company which he manages or will manage has to meet the requirements specified below in point 7<sup>17</sup> (article 142 item 1 point 3 of the Act on Foreigners).

The foreigner applying for the temporary residence permit for the purpose of running business activities is obliged to:

1. Submit a properly filled application form,
2. Submit a valid travel document (or in certain cases, another document confirming his/her identity), current photographs, the evidence of making the stamp duty in the amount of PLN 340,
3. Possess health insurance (in the understanding of the provisions to provide healthcare financed from public funds or the confirmation of covering the treatment costs by the insurer at the territory of the Republic of Poland – insurance policy),
4. Possess stable and regular source of income to support yourself and your family being your dependants,
5. Possess the consent of the competent body to

take a certain position or perform the job when the obligation of obtaining it arises from separate provisions,

6. Have the place of residence provided in Poland.
7. Submit supporting documents confirming carrying out business activities, which should:
  - a. in the tax year preceding the submission of an application for granting the foreigner a residence permit, generate income in an amount not lower than 12-fold of the average monthly wage in the voivodeship in which this entity is established or domiciled (wage in the third quarter of the year preceding the submission of the application, announced by the President of the Central Statistical Office), or
  - b. employ for an indefinite time and on an full-time basis, for at least 1 year preceding the submission of the application, minimum 2 employees who are Polish nationals or foreigners who are entitled to take up employment in Poland without the need to obtain work permit<sup>18</sup>, or
  - c. proves that it has financial means sufficient to meet in the future conditions described in the point a) or is taking efforts to meet these conditions in the future, in particular ones contributing to the growth of investment, technology transfer, innovations or creation of work places.

It is worth mentioning that the criterion included in point c is particularly significant because it entitles a person who has just arrived in Poland in order to run business activity and resides on the basis of visa to legalise his/her stay for the period up to 3 years. This provision gives the possibility to “postpone” the moment of meeting the certain criteria (without specification how far it should be postponed); therefore it allows the individual approach to each case.

During the legalisation procedure the economic factors (financial aspect of the run activity) and economic and social (creating the workplaces/employing workers) are tested which affect the efficiency of the business activity run by the foreigner.

In this context it should be added that together

with introducing the new Act on Foreigners (1st May 2014), the criteria to grant the temporary residence permit for the purpose of running business activity were changed significantly. The new prerequisites for granting the permit, similarly as the previous provisions of the Act on Foreigners, provide for granting the permit only to those foreigners who run business activity bringing profits to the Republic of Poland, however, the legislator introduced more objective criteria for verifying this prerequisite.

Such a regulation was, on one hand, to facilitate the residence legalisation to the foreigners coming to Poland for business purposes and on the other hand – to facilitate the public administration bodies deciding in the matters referring to foreign entrepreneurs. According to the old legal order, the head of province was obliged to determine whether the foreigner ran a business activity which is beneficial for the national economy on the basis of provisions binding in this scope of the Republic of Poland and in particular the one which would contribute to the increase in investments, transfer of technology, introduction of profitable innovations or creation of new work places. Meeting the above criterion, due to the fact that it was formulated in a very general way, was often difficult to prove by a foreigner and also fail to give the possibility to obtain such a permit to the foreigner who just started the business activity in Poland.

Taking into consideration the fact that the binding Act on Foreigners does not precise which documents should be submitted to the voivode in order to meet the requirements described in points a-c, the catalogue of evidence is open<sup>19</sup>.

Without doubts, the Head of Office for Foreigners will play a significant role in shaping the policy of granting residence permits on the basis of new criteria in the future due to considering appeal procedures as well as administration courts and their decisions which shall shape the interpretation of the law.

However, the example documents required in order to confirm that the business activity run by the foreigner meets the income criterion (see: point a) or it employs the specified number of employees (see

16. K. Naranovich (ed.), Mapa drogowa do przyjaźniejszej integracji migrantów i polskiego społeczeństwa – praktyczny poradnik dla odpowiedzialnych za wprowadzenie zmian [A Roadmap to a More Friendly Integration of Immigrants and Polish Society - a Practical Guide for People Responsible for Implementing the Changes

Development], Fundacja Rozwoju Oprócz Granic [Foundation of Development “Beyond Borders”], Warsaw, p. 108.

17. Requirements mentioned in article 142 item 1 point 3 of the Act on Foreigners of 12th June 2013.

18. Foreigners referred to in Article 87(1)(1)-(9) of the Act of 20 April 2004 on employment promotion and labour market institutions, i.e. beneficiaries of international and national protection, foreigners holding permanent residence permit or long-term resident's EU residence permit, EU/EEA citizens.

19. After an initiation of the procedure, the body calls the foreigners to submit the particular documents needed to perform an evaluation of the assessment, based on the circumstances of the individual case.

point b) are:

- tax statement, e.g. PIT-36, CIT-8 or PIT-28 together with confirmation of its placing in the fiscal office,
- income certificate issued by the head of the fiscal office,
- balance sheet of the company together with the current profit and loss account,
- financial statement,
- agreements of bank accounts and turnover of funds at these accounts, invoices,
- employment agreements on the basis of which the workers are employed,
- employees' registering in the Social Insurance (with the confirmation of their receive to the Social Insurance) and name monthly reports to the Social Insurance,
- foreigner's statement about the employment status,
- employees' payroll,
- no Dues Tax Office Certificate, no Dues Social Insurance Certificate.

The documents confirming the fact of possessing funds enabling to meet the income or social criteria in the future or of running the actions by the foreigner allowing to meet the criteria in the future may be:

- business plan,
- documents proving the planned investments: commercial contracts and cooperation contracts made that might cause an increase of revenues as time flows, lease agreements for office space, halls, warehouses, points of sale, contracts for accounting services, contracts for purchasing real property, machines and vehicles, warehouse stock, partial settlements with tax office, balance sheets and profit and loss accounts, employment contracts for the employees already hired and their ZUS registration, documents confirming that a job offer has been submitted to the poviät employment office, bank agreements for bank loans, documents confirming that the share capital was paid or confirming that the company meets its contractual obligations towards partners, e.g. waybills, customs declarations, etc.

The term "funds" does not refer only to finances which the foreigner has to possess at the moment of applying for the residence permit. The catalogue of documents which the foreigner may submit in order

to prove meeting the specific requirements in the future is thus treated as open.

Should the foreigner meet all the statutory requirements, the residence permit is granted to him/her for the period necessary to satisfy the purpose of stay in Poland, however, no longer than 3 years (with the possibility to apply for the next permit) and the card of residence is given to him/her.

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In conclusion, the subjective scope of foreigners who may run business activity in all forms available in Poland (i.e. according to the same rules as Polish citizens) was extended in 2014. However, it is still relatively narrow.

The foreigner staying abroad and intending to come to Poland for the business purposes for the first time (not having migration experience in Poland, therefore, not possessing the basis of residence in Poland, i.e. visa, residence permit) may run business activity only in specific (4 out of 7) forms of commercial companies, i.e. in a form:

1. limited partnership,
2. limited-stock partnership,
3. joint stock company,
4. limited liability company;

has also the right to join such companies or purchase or take over shares or stocks in them.

Only the selected groups of foreigners, mainly the persons residing in Poland for a long time or residing in Poland in connection with family reunification or the ones who have these obligations on the basis of international agreements or Union provisions (among others persons covered with the international protection, holders of EU long-term residence permit) as well as citizens of the United States (pursuant to the provisions of the bilateral agreement in this scope) may take advantage of the possibility to run business activity by physical persons (in a form of individual business activity) being the most popular form of running business activity in Poland so far.

The system of foreigners' admission to Poland does not provide any special migration channel/special programme addressed to the foreigners coming to Poland for business purposes within which any specific entry facilitations are guaranteed in a systematic way. Although consuls may at present facilitate the entry

of persons declaring the willingness to engage in the business activity in Poland (including by means of procedural facilitations), it occurs only in individual cases and is conditioned by the circumstances in individual case.

In the context of legalisation procedures at the territory of Poland it is necessary to state that the provisions regulating the residence of persons running business activity were strict a short time ago. It was connected mainly due to the requirement of innovativeness and profitability for the national economy which the business activity had to meet. According to the nongovernmental organisations acting for the benefit of migrants, this requirement impeded the possibility to run a business activity by foreigners in a significant way in practice because – as it arose both from the practice of administration bodies as well as court and administration jurisdiction – it was often interpreted very strictly. For example, the person running business activity giving him the possibility of self-maintenance, paying taxes and contributions for social and health insurance and even employing workers including also Polish citizens often received negative decisions justified with the fact that the activity run by him "was not beneficial for the national economy". The different practice of using this provision in particular regions of Poland was an additional problem.

In response to the above challenges, significant facilities were introduced in legalisation provisions referring to the foreigners running business activities in 2014. They consisted in precisising and objecting the criteria of testing the prerequisite of running the business activity which is beneficial for the Republic of Poland (which is the basis to grant temporary residence permit).

Introduction of the possibility to apply for the permanent residence by the persons of Polish origins (solution being the implementation of the constitution right that these persons may settle in Poland) was another significant change, therefore, these persons just after obtaining the subject permit acquire full rights in the scope of setting up and running business activity in Poland. At the same time, the number of persons authorised to run business activity under the

same conditions as Polish citizens increased.

In 2014, within the government administration, the important discussion over the possibility of consideration the other extra-economic factors such as e.g. supplying new products, infrastructure improvement, increase in the availability of services at applying for the residence permit due to run business activity<sup>20</sup>. The result of the discussion in which the representatives of the Office for Foreigners, Ministry of Economy, Ministry of the Interior and Ministry of Labour and Social Policy participated was the conclusion that there is no possibility to define these criteria precisely and any normative construction which is not based on objective economic factors:

- will cause uncertainty concerning the result of proceedings to have the permit granted arising from the lack of clarity and increased discretion of such criteria which will extend and complicate the procedure in a consequence,
- will increase the number of abuses and will constitute the incentive to circumvent the immigration provisions by proving the criteria which cannot be verified in the administration proceedings,
- may cause the increase in self-employment in order to circumvent immigration provisions,
- may have a negative impact on the economy (discourage to present income or increase the employment).

The social clauses which cause big interpretational doubts or are not used at all and which exist in the provisions of public procurement law at present were provided as the example of problems in using such criteria in practice.

It was indicated that the current state of law in this area seems to be satisfactory and allows to have an individual approach to each case with simultaneous consideration of the prospects to achieve appropriate economic profitability in the future. However, it was agreed that the real assessment of current provisions functioning including the value of established economic criteria) should occur after the appropriate period of using them (for instance after 2 years of introducing the new act on foreigners).

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20. Undertaking analysis in this area was included in the Implementation Plan for the document "Polish Migration Policy - Current Status and Proposed Actions" and was the direct response to the postulates

of nongovernmental organisations made within the social consultations of the subject Plan.

## 1.5 Other business persons

In addition to investors and entrepreneurs or self-employed persons, the scope of this study covers also other business persons, in particular six categories of natural persons who supply service under international trade agreements, so-called "Mode 4"<sup>21</sup>:

- business visitors for establishment purposes<sup>22</sup>,
- business sellers,
- contractual services suppliers,

- intra-corporate transferees,
- independent professionals,
- graduate trainees/trainee employees.

Due to the scope of data on migration aggregated by Poland, it is impossible to indicate the size of individual categories of persons listed above who enter Poland/reside in Poland.

**TABLE 1**

Policy on admission and access to the labour market of foreigners – natural persons supplying services within so-called „Mode 4”

Categories of other business persons supplying services within "Mode 4"	Required residence documents	Required work permit	Facilitations applied
Business visitors for establishment purposes (BVEP)	visa	type E <sup>23</sup>	Entitles foreigner to work in Poland up to 30 days within the 6 consecutive months without the work permit. If foreigner plans to work in Poland longer, work permit (if s/he is not exempt from the obligation to have it on the basis of other regulations) is required but no labour market test is carried out. Moreover, a foreigner has to be entitled to a wage that equals only to at least 70% of average wage registered in the voivodship.
Intra-corporate transferees (ICT)	visa/temporary residence permit	type C <sup>24</sup>	Entitles foreigner to work in Poland up to 30 days within the calendar year without the work permit. If a foreigner plan to work in Poland longer, work permit (if s/he is not exempt from the obligation to have it on the basis of other regulations) is required but no labour market test is carried out. Moreover, a foreigner has to be entitled to a wage that equals only to at least 70% of average wage registered in the voivodship.

<sup>21</sup>. The "Mode 4" is one of the four modes of international service supply, under the General Agreement on Trade in Services (GATS). It includes services supplied by a Party of the Agreement - service supplier, by the presence of natural persons in the territory of another Party of the Agreement, and it covers the temporary movement of natural persons for the purpose of supplying a service.

<sup>22</sup>. The adopted definitions of particular categories of persons are included in the annex to the EMN synthesis report on admitting third-country nationals for business purposes (the report is available

under [www.emn.europa.eu](http://www.emn.europa.eu)).

<sup>23</sup>. It refers to people perform work for a foreign employer and are delegated to the territory of the Republic of Poland for a period exceeding 3 months within the 6 consecutive months in situations which do not fall under the provisions for types A-D work permits.

<sup>24</sup>. It refers to people who perform work for a foreign employer and are delegated to the territory of the Republic of Poland for a period exceeding 30 days in a calendar year to a branch or plant belonging to the foreign employer.

Business sellers (BS)	visa	type E	Entitles foreigner to work in Poland up to 30 days within the 6 consecutive months without the work permit. If foreigners plan to work in Poland longer, work permit (if s/he is not exempt from the obligation to have it on the basis of other regulations) is required but no labour market test is carried out. Moreover, a foreigner has to be entitled to a wage that is only at least 70% of average wage in the voivodship.
Independent professionals (IP)	visa/temporary residence permit	type A <sup>25</sup>	Labour market test is required but exceptions exist. Moreover, a foreigner has to be entitled to a wage that is comparable with the remuneration of other workers in the same occupation.
Contractual services suppliers (CSS)	visa/temporary residence permit	type D <sup>26</sup>	Work permit (if s/he is not exempt from the obligation to have it on the basis of other regulations) is required but no labour market test is carried out. Moreover, a foreigner has to be entitled to a wage that equals only to at least 70% of average wage registered in the voivodship.
Graduate trainees (GT)	visa/temporary residence permit	type C	Entitles foreigner to work in Poland up to 30 days within the calendar year without the work permit. If foreigners plan to work in Poland longer, work permit (if s/he is not exempt from the obligation to have it on the basis of other regulations) is required but no labour market test is carried out. Moreover, a foreigner has to be entitled to a wage that equals only to at least 70% of average wage registered in the voivodship.

## 1.6 Actions aimed at attracting business migrants

Independently of the lack of special admission programme aimed to facilitate the admission of the business migrants to Poland, it is possible to list the range of tools of various nature which are aimed to encourage migrants of these group to run their business activity in Poland in a direct or indirect way. These, among others, include:

- **Promotion actions** including the ones in the countries of origin of the migrants consisting in the promotion of Poland as an attractive economic partner in the international market and creating positive image of the country – actions comprising so called national marketing

(organisation and participation in seminars/ conferences, exhibitions, foreign fairs, issuing publications, publication of information at the websites of various institutions, cooperation with national and foreign media) thus providing general knowledge about running business activity in Poland including among others available investment incentives, condition of Polish economy and labour market, companies which invested in Poland successfully, etc.,

- **Economic missions** (at different levels) to the countries of migrants' origin and lobbying from the government institutions and state agencies during

<sup>25</sup>. It refers to people who perform work in Poland under an employment contract or a civil law contract with an employer whose seat/residence is on the territory of Poland.

<sup>26</sup>. It refers to people who perform work for a foreign employer that does not have a branch, plant or other organised form of business activity in Poland and is delegated to the Republic of Poland in order to engage in export, i.e. a temporary and occasional service.

official foreign visits or other foreign contacts,

- **Investment incentives:**

- Government grants for employment and investment – given within “Programme of supporting investments of significant meaning for Polish economy in years 2011 – 2010” to the employees planning investments in the priority sectors or significant production investments in other sectors (with minimal qualified costs PLN 750 million and creating at least 200 new work places or with the nominal qualified costs of PLN 500 million and creating at least 500 new work places);
- Loan funds offering investment, operating and operating – investment loans give loans mainly to micro, small and middle companies as well as to persons who intend to set up such a company;
- Special economic zones (established pursuant to the Act of 20 October 1994 on special economic zones) – a location where an entrepreneur may commence business activity within the pre-prepared area and run it without paying income tax (form of a public aid). At the moment, there are 14 special economic zones in Poland;
- Technological and industrial parks – places, where the gathering of many companies from one industry and supporting research and development facilities streamlines their quick development;
- Exemptions from taxes and local fees, including real estate tax, agricultural and forest tax (the commune councils, by means of resolutions, may decide to exempt certain categories of entrepreneurs from tax, the exemptions concern also economic activities which were granted status of research and development centres) or exemptions from real estate tax

for companies carrying out new investment projects;

- Research and development centres (RDC) – status of RDC may be requested by entrepreneurs who carry out innovative activities, particularly in the area of research and development works. The status of a RDC involves exemption from property tax as well as agricultural and forest tax (in total, the exemption might cover up to EUR 200 thousand within 3 subsequent years).
- **Grants** provided from structural funds of the European Union the beneficiary of which may be at first small and middle companies;
- **Procedural facilitations** e.g. facilitations during visa application procedure; exemption from the necessity to possess the work permit if the foreigner performing the work consisting in providing the function in the company management board, stay in Poland for the period not exceeding 6 months in total within the consecutive 12 months;
- **Special rights** arising from bilateral agreements concluded between Poland and other countries of immigrants’ origin, e.g. in case of the citizens of the USA;
- **Information and counselling support** (e.g. practical factual support, direct contacts with the environment of investors and foreign companies interested in economic activity in Poland) and incubation services including the ones rendered by specialised centres working within the national system of services, Network of Investors’ and Exporters’ Service Centres, PAIIZ, labour offices, town offices (e.g. Entrepreneurship Centre Smolna in Warsaw), Polish Agency of Entrepreneurship Development, Trade and Investment Promotion Departments of Embassies and Consultants of the Republic of Poland, etc.

**TABLE 2**

Available supporting instruments in particular states of the Central and East Europe

SOURCE: PAIIZ report: “Investment incentives in selected countries of Middle and East Europe”

State	Poland	Czech Republic	Slovakia	Romania	Rumunia	Bulgaria	Serbia
Investment grant	○	○	○	○	○	○	○
Grant for employment	○	○	○	○	○	○	○
Grant for training		○		○		○	
Exemption or release from income tax	○	○	○	○		○	○
Exemption from real estate tax	○	○			○		
Exemption from other taxes					○	○	○
Real estate sale at lower price		○	○			○	
Other specific	○			○		○	○



# 2

## Profile of business migrants coming to Poland with regard to selected migrants' groups

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## 2.0 Profile of business migrants coming to Poland with regard to selected migrants' groups

Despite the fact that there are a couple of sources of data concerning business migrations in Poland, it is highly complicated to give the number of this category precisely. The reasons for this are, among others, current legal regulations in the light of which there are two registers of companies in Poland: Central Register and Information on Business Activity (CEDIG managed by the Ministry of Development), including the data concerning the individual business activities and the National Court Register ([pl.] KRS, managed by the Ministry of Justice) in which the data about the commercial law companies are generated but are not aggregated by citizenship.

The periodical research of the Central Statistical Office which covers the entities running business activity in which the foreign capital is invested is a significant source of information. However, these data do not consider the entities running the bank, broker, insurance activity or investment and retirement companies, high schools, individual farms in agriculture as well as independent public healthcare entities and culture institutions possessing the status of a legal person. Moreover, the data including the division of entities into the countries of capital origin should be treated with a particular care. It is caused by the fact that if the persons from different countries possess shares in a given entity then its data are included in each of these countries.

On the other hand, the data from the Social Insurance Institution inform about the number of persons running non-agricultural business activity (together with the cooperating persons) who possess

social insurance in Poland<sup>27</sup>. When interpreting these data it is worth underlining that they include among others members of the management board who depending on the titles pursuant to which provide their functions may or may not be subject of insurance in Social Insurance (as the titles of obligatory insurance comprise employment agreements and civil and law agreements, the member of the management board providing this function of the basis of appointment is not subject of insurance in Social Insurance) and the number of whom may be different depending on the company, as a result, the number of insured persons is not equal to the number of companies/entities running business activity in Poland.

Additionally, the data on visas aggregated by the Ministry of Foreign Affairs and the data of the Office for Foreigners referring to the residence permits are crucial as far as this study is concerned. However, what is important, the data concerning the issued business visas (type 4) refer to the wide group of persons, not necessarily running the company on the territory of Poland including among others persons coming to Poland in order to take part in the meeting/event/training of the business character. These data do not also cover the entrepreneurs coming from countries that are not covered by the visa obligation.

Taking the above limits into consideration, the information about the scale of business migrations to Poland was presented on the basis of the data of the Central Statistical Office and the Ministry of Development.

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<sup>27</sup>. Persons working in Poland at their own account are covered by the obligatory pension, disabled pension and accident insurance, and they may join the voluntary sick insurance, i.e. upon their application.

## 2.1 Overall scale of the phenomenon

According to the data of the Central Statistical Office, over 26 thousand (about 0.8% more than a year earlier, see: chart 1) entities with foreign capital were registered in Poland at the end of 2013. Among them, only 20% (5,323 – see: table 3) were companies with foreign capital from outside the EU/EEC which means that mainly EU citizens run business activity in Poland.

The structure of the entities in question (independently of the foreign capital origin) as far as legal forms are concerned has not been changed for years – the vast majority (about 95%) constitute limited liability companies. While analysing the size of entities, the peculiar tendency may also be identified. Micro and small companies are dominant – respectively to 9 and 29 employees (they constitute 67% of total number of companies). In the class of middle companies with the number of employees to 50 or to 249 persons, there were 10.3% of the whole group and in the class of big entities with the number of employees 250 and more – 4.8%.

Every year about 400 new companies with foreign capital from outside the countries of the EU/EEC is registered (see: chart 2).

The biggest number of companies (over half) with the capital from outside the EU/EEC countries ran the business activity connected with trade and repair of car vehicles and industrial processing – see: table 4.

As for the foreigners running individual business activity, their number is growing systematically from year to year – see: chart 3. The percentage of foreigners in the total number of persons running individual business activity is very low and amounts less than 1%<sup>28</sup>.

Among all individual companies set up by foreigners in years 2009 – 2011, only 40% were still active in January 2015 (see: table 5). It means that, on average, every second individual business activity run by a foreigner stops existing after about 3 years from setting up.

In this context it should be stressed that similar

situation (but what is interesting in a slightly greater scale) is noticed in case of Polish citizens (see: table 6).

It seems that among the reasons for closing down companies set up by foreigners and Poles after 3 years are:

- Ending the preferences in the scope of social insurance contributions (persons starting the business activity for the first time after 5 years are entitled to pay lower social insurance contributions in the period of the first 24 calendar months),
- Using all granted supporting funds to start and develop the business activity (single grants to set up business activity are granted to certain persons including among others the ones registered as unemployed by the labour offices) or/and limited access to credits to develop business activity,
- Negative verification of the adopted business model.

At the same time, it should be underlined that the alternative scenario explaining such a high percentage of liquidated business activities may be also the fact of changing the activity in a different legal form (e.g. as a result of taking decision to expand and extend the scope of activity).

The structure of the origin countries of foreigners running the discussed business activity is relatively monolithic – see: chart 4. More than half of foreigners come from four countries: Ukraine, Belarus, Vietnam and Armenia.

The similar conclusions can be reached when analysing of the type of performed activity. The trade activity (retail and wholesale, mainly of textiles), gastronomic and connected with teaching foreign languages and translations is dominant (see: table 7).

As for foreigners being the members of the management boards in the limited liability company or joint stock companies who stay in Poland for a total period of 6 months within the consecutive 12 months, the number of work permit issued for them<sup>31</sup>

CHART 1

Number of entities with foreign capital from outside the EU/EEC, by the capital origin (value at the end of the year)

SOURCE: Own elaboration on the basis of the Central Statistical Office data

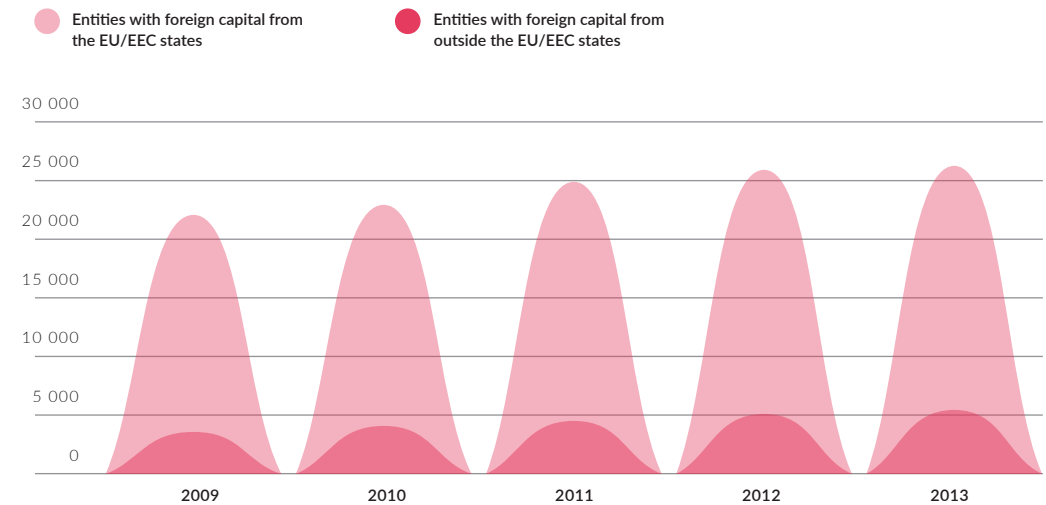


TABLE 3

Number of entities with the capital from outside of the EU/EEC according to the legal forms (value at the end of the year)

SOURCE: Own elaboration on the basis of the Central Statistical Office data

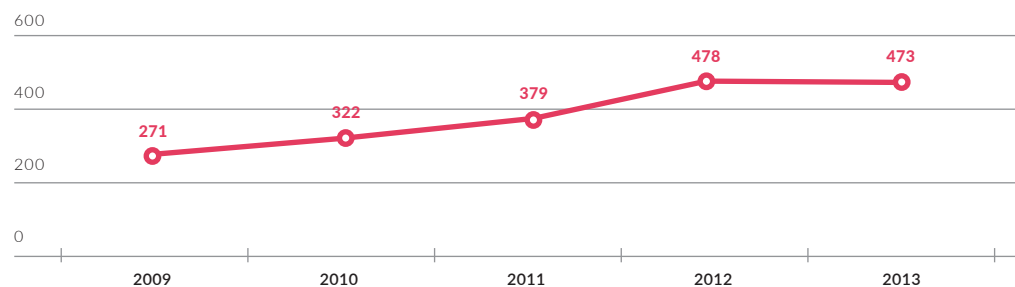
Legal forms	2009	2010	2011	2012	2013
<b>Total</b>	<b>3 859</b>	<b>4 106</b>	<b>4 712</b>	<b>5 135</b>	<b>5 323</b>
Limited liability companies	3 591	3 829	4 428	4 840	5 030
Joint-stock companies	160	156	147	152	151
Limited partnerships	77	81	93	99	94
Branches of foreign companies	20	26	26	20	18
Limit and stock companies	1	3	5	10	17
Civil partnerships	4	4	6	6	7
Unlimited partnerships	6	7	7	6	5
Without a particular legal form	0	0	0	2	1

28. Among 1.6 million of persons who set up the individual business activity in years 2009-2014, the number of foreigners amounted to 8,325.

## CHART 2

Number of new entities with the capital from outside the EU/EEC countries

SOURCE: Own elaboration on the basis of the Central Statistical Office data



## TABLE 4

Number of entities with the capital from outside the EU/EEC countries in 2013, by PKD sections

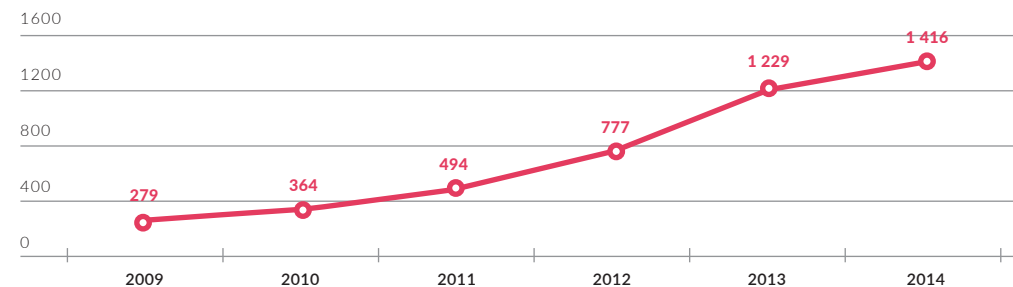
SOURCE: Own elaboration on the basis of the Central Statistical Office data

PKD section	Share %	Share %
<b>Total</b>	<b>5 323</b>	<b>100%</b>
Trade, repair of car vehicles	2 543	47,8%
Industrial processing	711	13,4%
Professional, scientific activity	364	6,8%
Construction	272	5,1%
Information and communication	254	4,8%
Real estate market service	240	4,5%
Transport and warehousing activity	224	4,2%
Accommodation and gastronomy	190	3,6%
Administration and supporting activity	166	3,1%
Financial and insurance activity	80	1,5%
Production and supplying electricity, gas, water	65	1,2%
Healthcare and social support	45	0,8%
Other service activity	38	0,7%
Agriculture, forestry, hunting and fishing	30	0,6%
Mining and excavation	29	0,5%
Activity connected with culture, entertainment and recreation	29	0,5%
Education	22	0,4%
Water supply, sewage treatment and waste management, remediation	21	0,4%

## CHART 3

Number of citizens from outside the EU/EEC running individual business activity, by the year of starting business activity<sup>30</sup>

SOURCE: Own elaboration on the basis of the Ministry of Development data



## TABLE 5

Number of citizens from outside the EU/EEC running individual business activity, by the year of starting business activity<sup>30</sup>

SOURCE: Own elaboration on the basis of the Ministry of Development data

Year of starting the activity	2009	2010	2011	2012	2013	2014	TOTAL
Number of entities independently on the current status of running business activity	692	935	1 259	1 677	1 919	1 843	<b>8 325</b>
Number of active entities when generating the summary (21st January 2015)	279	364	494	777	1 229	1 416	<b>4 559</b>
% of active entities when generating the summary (21st January 2015)	40,3%	38,9%	39,2%	46,3%	64,0%	76,8%	<b>54,8%</b>

## TABLE 6

Number of Polish citizens running individual business activity, by the year of starting business activity

SOURCE: Own elaboration on the basis of the Ministry of Development data

Year of starting the activity	2009	2010	2011	2012	2013	2014	TOTAL
Number of entities independently on the current status of running business activity	187 156	245 217	267 892	293 037	313 804	304 295	<b>1 611 401</b>
Number of active entities when generating the summary (8th July 2015)	81 122	92 945	104 136	127 065	170 150	220 293	<b>795 711</b>
% of active entities when generating the summary (8th July 2015)	43,3%	37,9%	38,9%	43,4%	54,2%	72,4%	<b>48,3%</b>

29. Number covers the active entities as at the date of generating the summary (21st January 2015). The summary may include the

persons possessing double citizenships.

30. The summary may include people holding double citizenship.

is falling systematically and amounted to 541 permits in 2014, twice less than 2 years earlier (see: table 8).

About 45% of the work permits were granted to foreigners performing functions of members of the management boards in the companies acting in the sector connected with the wholesale and retail sale and the biggest group constitute the citizens of Ukraine (32%), China (9%) and Russia (8%) – see: chart 5.

In the context of entry procedures, Poland registers on average 300 thousand application for a business visa every year (see: chart 6), which constitutes about 20% of all visa applications registered by Polish diplomatic posts. While in a period 2011 – 2013 the number of visa applications was growing systematically, in 2014 a slight fall was noticed by about 4%. It is necessary to underline that the share of business visa refusals in 2011 – 2014 amounted to about 2.8% so it was relatively low. Additionally, in 2014 it significantly decreased.

However, the completely reverse tendency may be observed in case of legalisation procedures in Poland (see: chart 7). For years the number of

applications to grant the residence permit due to running business activity was critically low and amounted to only 1 – 2% of all legalisation applications. Year 2014 was a breakthrough when triple the applications were submitted and it was a direct reaction to the new, more liberal regulations in this scope. The citizens of Ukraine, Russia and Vietnam were the foreigners who took advantage of the possibility to legalise the residence in Poland pursuant to new provisions and thus they took advantage of the changes in law in 2014 the most.

The growing tendency persisted in first half of year 2015 when 711 permits were granted.

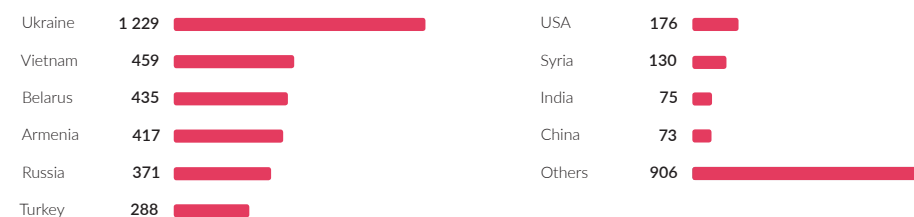
The group of foreigners who legalise their residence in Poland on the above-mentioned basis are the persons at the age 35 – 64 (in 2014 the percentage of this group of foreigners among all persons who received the discussed type of permit amounted about 58%). The men are also dominant (in 2014 they constitutes 72% of all persons).

The percentage of negative decisions amounted to 9% in years 2009 - 2014.

#### CHART 4

Number of citizens from outside the EU/EEC running individual business activity, by citizenship

SOURCE: Own elaboration on the basis of the Ministry of Development data



#### TABLE 7

Number of citizens from outside the EU/ECC who started individual business activity in years 2009 – 2014, by type of activity<sup>32</sup>

SOURCE: Own elaboration on the basis of the Ministry of Development data

PKD section	Number of entities	Share %
Restaurants and other gastronomic entities	870	10,8%
Retain sale of textiles, clothes and footwear at stalls and markets	710	8,8%
Teaching foreign languages	364	4,5%
Retail sale of other products run at stalls and markets	268	3,3%
Wholesale of clothes and footwear	229	2,8%
Retail sale run by sending houses or the Internet	205	2,5%
Hairdressing and other cosmetic operations	204	2,5%
Retail sale of clothes run in special shops	196	2,4%
Other counselling in the scope of running business activity and management	168	2,1%
Other retail sale run in non-special shops	132	1,6%
Road transport of goods	129	1,6%
Activity connected with software	116	1,4%
Wholesale of textiles	114	1,4%
Activity connected with translations	112	1,4%
General doctor's practice	110	1,4%
Construction work connected with erecting residential and non-residential buildings	104	1,3%
Wholesale and retail sale of cars and vans	103	1,3%
Others	3 959	48,9%
<b>Total</b>	<b>8 093</b>	<b>100,0%</b>

31. If their stay in Poland does not exceed 6 months in total within consecutive 12 months, the work permit is not required.

32. The summary includes only persons from outsider the EU/EEC holding only one citizenship.

**TABLE 8**

Number of permits B type work granted to foreigners

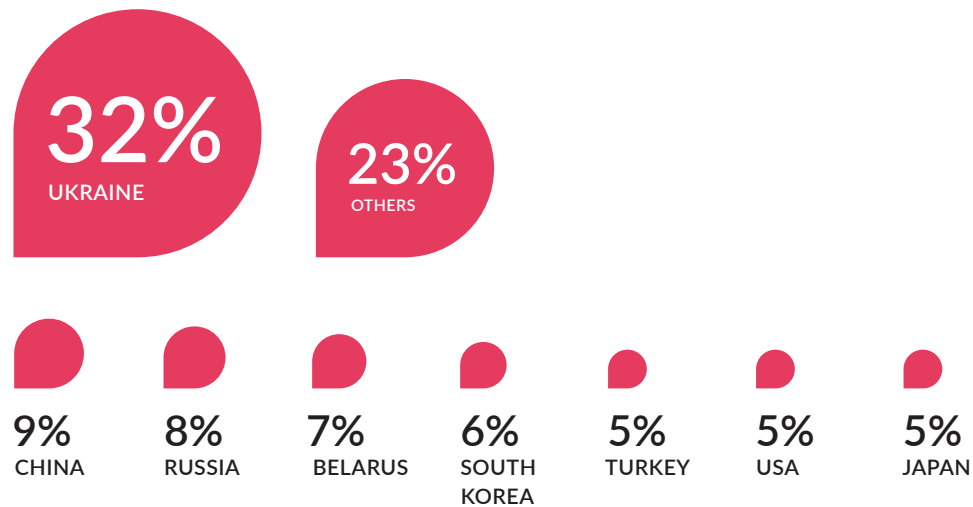
SOURCE: Own elaboration on the basis of the Ministry of Family, Labour and Social Policy data



**CHART 5**

Number of work permits type B granted in 2014, by citizenship

SOURCE: Own elaboration on the basis of the Ministry of Family, Labour and Social Policy data



**TABLE 9**

Number of persons running non-agricultural business activity (together with the cooperating persons) who at the end of 2013 and 2014 were covered by the social insurance in Poland, by citizenship

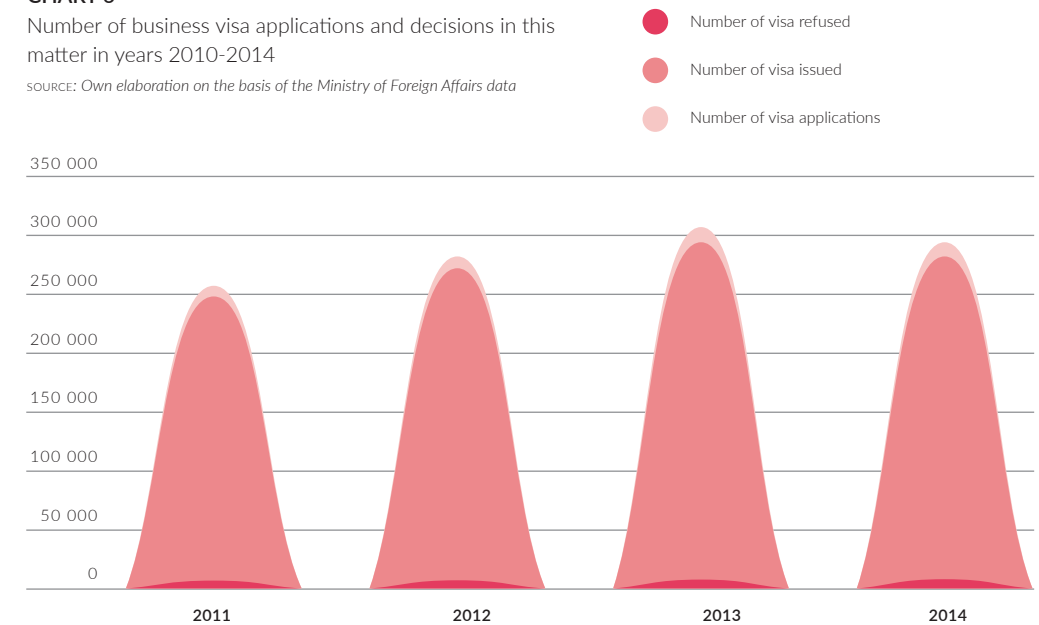
ŹRÓDŁO: Own elaboration on the basis of the Social Insurance Institution data

Citizenship	2013		2014	
	Number of people	% share	Number of people	% share
Total	8 203	100,0%	8 234	100,0%
Ukraine	2 157	26,3%	2 304	28,0%
Vietnam	818	10,0%	875	10,6%
Belarus	651	7,9%	683	8,3%
Armenia	631	7,7%	642	7,8%
Russia	511	6,2%	533	6,5%
Turkey	311	3,8%	327	4,0%
USA	244	3,0%	246	3,0%
Syria	150	1,8%	160	1,9%
India	145	1,8%	162	2,0%
China	135	1,6%	135	1,6%
Others	2 450	29,9%	2 167	26,3%

**CHART 6**

Number of business visa applications and decisions in this matter in years 2010-2014

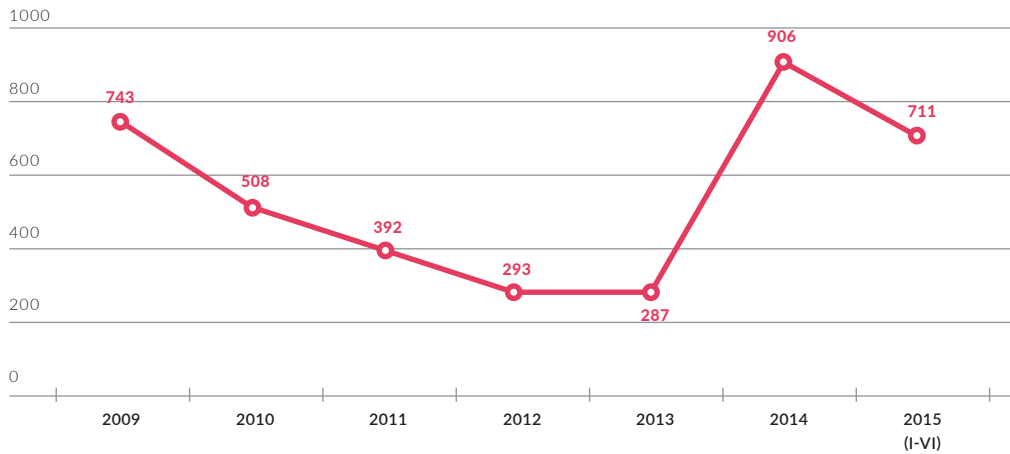
SOURCE: Own elaboration on the basis of the Ministry of Foreign Affairs data



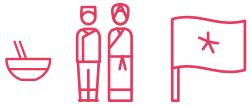
## CHART 7

Number of residence permits for a fixed period/temporary residence permit for the purpose of running business activity in years 2009 – 2015 (I-VI)

SOURCE: Own elaboration on the basis of the Office for Foreigners data



## 2.2 Vietnamese



First Vietnamese enterprises were established before 1989 and were engaged in trade at marketplaces. Establishing small mercantile companies by Vietnamese immigrants from the turn of 20th-21st century was to a very large extent the answer to the number of limitations in the access to the primary labour market at that time and stemmed from the substantially low level of human capital they had at their disposal<sup>33</sup>. The Vietnamese were the first to offer on marketplaces cheap ethnic cuisine, which gave them competitive advantage over the other

entrepreneurs, both foreign and native<sup>34</sup>. These forms of business activity over time became traditional for this group of immigrants.

While the nineties of the 20th century were the best period for the Vietnamese trade (using experience in small retail sector from the period before the transformation and remoulding international migration networks into networks of business nature, they responded to the growing need of cheap products that occurred among the Polish people, including clothing), along with the end of

33. K. Wysieńska (ed.), *Sprzedawac, gotowac, budowac? Plany i strategie Chinczykow i Wietnamczykow w Polsce* [To Sell, Cook, Build? Plans and Strategies of the Chinese and Vietnamese in Poland], Warsaw 2012, p. 56.

34. *Spolecznosc wietnamska w Polsce. Polityka migracyjna Wietnamu. Raport* [The Vietnamese Society in Poland. The Vietnamese Migration Policy. Report], The Division for Migration Analysis, The Department of Migration Policy, The Ministry of the Interior and Administration, Warsaw 2007, p. 84.

the transformation process, economic growth and improvement of the living conditions in Poland, the demand for cheap products offered by the salesmen from Asia gradually lowered and this activity became unprofitable. Additional influence on the deterioration of the situation of the Vietnamese entrepreneurs from the mercantile branch (both small and more developed) had the occurrence of the competition in the form of international supermarket chains and cheap clothing chains, closing of the 10th Anniversary Stadium in Warsaw (marketplace) and relocating the same business model to new conditions in market halls at Marywilka Street in Warsaw, in Nadarzyn and in Wólka Kosowska (along with higher costs of business activity in the new place and a lower number of clients).

It is worth pointing out that the Vietnamese immigrants from the subsequent waves of migration remain mostly continuators and duplicate the already existing scheme for business conduct, which proved to be successful in the nineties of the 20th century, but currently has stopped being effective.

As the researchers highlight, regardless of the experienced difficulties in conducting business activity in Poland, the Vietnamese entrepreneurs demonstrate lack of creativity in formulation of new directions of economic adaptation (including changing the sector of operation)<sup>35</sup>. Only some of

them are involved in other types of service industry, such as: travel agencies, cosmetic and hairdressing services, insurance, educational services, transportation, repair and building services<sup>36</sup>. Moreover, the Vietnamese capital was engaged in building two market halls in Wólka Kosowska<sup>37</sup>. People of Vietnamese nationality manage as well a couple of shopping centres<sup>38</sup> located in Wólka.

Referring to the remaining characteristics of the business activity of the immigrants from Vietnam, it needs to be highlighted that most of the Vietnamese companies belong to the group of the so-called microenterprises (employing less than nine people)<sup>39</sup>. Moreover, as trade and gastronomy are focused on the Polish client, services are addressed mostly to the ethnic society<sup>40</sup>.

Moreover, as trade and gastronomy are focused on the Polish client, services are addressed mostly to the ethnic society

What is important, the analysis of the functioning of the distribution channels of goods sold in shopping centers in Wólka Kosowska demonstrates that the Vietnamese, not having direct contacts with Chinese factories, play the role of the intermediary and are forced to buy goods in Wólka Kosowska or to import them from e.g. Germany, where containers are imported from China by sea<sup>41</sup>.

35. The cause of such state the researchers believe to be, inter alia, lack of financial capital and the lack among the Vietnamese conducting business activity of people with business or economic education (in the case of the first generation, the case is different with the second one).

36. K. Wysieńska (ed.), *Sprzedawac, gotowac, budowac...* [To Sell, Cook, Build...], op.cit., p. 108-112.

37. *Ibid.*, p. 118.

38. N. Kłorek, M. Szulecka, *Migranckie instytucje ekonomiczne i ich wplyw na otoczenie. Przyklad centrow handlowych w wólce kosowskiej. Raport z badan* [Migration Economic Institutions and Their Influence on the Society. The Example of the Shopping Centers in Wólka Kosowska. Report from the Research], Analysis Reports, Ex-

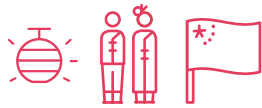
pertise – No 2/2013, The Association of Legal Intervention, Warsaw 2013, p. 28.

39. In market halls, where the Vietnamese conduct their trading activity, it is typical to open companies operating in separate trading boxes and employing usually two or three employees from the owner's country of origin (possibly the family members). Depending on the place, the owner can personally perform work in the box or does not have to be engaged in the sales, remaining on a day-to-day basis outside the center or abroad.

40. K. Wysieńska (ed.), *Sprzedawac, gotowac, budowac...* [To Sell, Cook, Build...], op.cit., p. 108, 118.

41. N. Kłorek, M. Szulecka, *Migranckie instytucje...* [Migration Economic Institutions...], op.cit., p. 54-55.

## 2.3 Chinese



Contrary to the Vietnamese, Chinese entrepreneurs for many years were not interested in Poland. A few factors added to this, most importantly the competition from the local entrepreneurs and immigrants from Vietnam and Armenia and difficulties in obtaining a visa/residence permit. The Chinese more willingly chose other countries of East-Central Europe (mostly Hungary, Czech Republic) or countries of Western Europe, in which the chances of achieving economic success were greater.

Only after the accession of Poland to the European Union, the Chinese migrants started to perceive Poland as an attractive place to locate their investments. What is important, many of them arrived to Poland straight from other countries of the region and very often conduct parallel companies in two or three countries<sup>42</sup>.

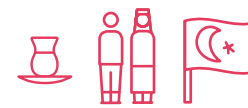
Substantial competitive advantage of the entrepreneurs from China deserves attention, including mainly direct connections with manufacturers in China (which undoubtedly influences the attractiveness of the offered products in comparison to the products e.g. offered by the Vietnamese entrepreneurs)<sup>43</sup> and

the possibility of obtaining support from the Chinese state in the form of a guarantee of export and loans.

Chinese capital dominates in the shopping center in Wólka Kosowska and Jaworzno-Jeleń (company that manages the center in Jaworzno was established in 2007 from the initiative of the Chinese entrepreneurs, who had operated earlier in Croatia and Bosnia and Herzegovina)<sup>44</sup>.

Nevertheless, it needs to be stated that the share of Chinese investments in Poland, taking into consideration the Chinese economic potential is still marginal. In Poland (similarly to other countries of East-Central Europe) the Chinese mostly invest in infrastructure, industry (including automotive industry) and raw materials. Entrepreneurs from China currently explore potential areas of investment. According to the experts, growing shares in the services sector<sup>45</sup> need to be expected. From the words of the President of the Polish Information and Foreign Investment Agency it can be assumed that the Chinese investments have a chance to develop in the following areas: IT, telecommunication, research centres, food industry and food processing industry<sup>46</sup>.

## 2.4 Turks



First Turkish entrepreneurs, most of whom were small traders, arrived to Poland at the beginning of the economic and political transformation (at the end of the eighties), constituting the first wave of the Turkish migration. Conducting business activity in Poland was facilitated because of the trade contacts established in the seventies of the 20th century between the Turkish producers and wholesale distributors and the Polish citizens importing (often illegally) goods from Turkey. Over time, the lack of limitations in the conducted import-export activity and low import duty led to the mass commercial market, as a result of which the so-called small "suitcase trade" was displaced by the wholesalers with suitably large capital.

Together with the development of the capitalist economy the needs of the Polish market underwent a change, the sign of which was the decrease in the demand on cheap textiles and shoes from Turkey caused by the competition of the Chinese goods. Reacting to those changes, the Turkish entrepreneurs started to invest in other sectors of economy, such as real estate trade, construction sector and electronic assembly and planning to extend the ongoing business activity they started to bring new business partners – the Turkish entrepreneurs and investors who at the end of the nineties initiated the second wave of the Turkish migration<sup>47</sup>.

Currently, the most important sector of operation of the Turkish companies is the textile industry,

construction industry, services, electronic industry and – relatively new field of activity – the catering and tourist industry (travel agencies, contract travel intermediaries). The representatives of the oldest migration wave to Poland operate within three sectors: textiles trade, catering and tourist industry (tourist industry is especially popular among the Turks in the Pomeranian region), many of them conduct many businesses at once, owning, for example, a trade and tourist company or tourist and catering company (it is a group relatively affluent and well-educated). Additionally, a part of entrepreneurs imports food products from Turkey (especially olive oil<sup>48</sup>).

Some of the Turkish businessmen clearly used the experience gained in Poland when deciding to expand in other European markets. However, a group of the Turks can be also distinguished – members of the European diaspora (mostly from Germany), who looking for the interesting investment opportunities, started to conduct business activity in Poland<sup>49</sup>.

One of the biggest investments of the Turkish companies in Poland are the following: building of two shopping centers in Warsaw (Blue City and Maximus shopping centers), building the Reform Plaza skyscraper in Warsaw, building a market hall in Wólka Kosowska, residential housing estate in Lesznowola municipality, building the Warsaw metro by the Gülermak company (together with the Italian company with which they constituted a consortium) and the acquisition of the Warsaw Vistula university<sup>50</sup>.

42. K. Wysieńska (ed.), *Sprzedawać, gotować, budować...* [To Sell, Cook, Build...], op.cit., p. 115, 118.

43. N. Klorek, M. Szulecka, *Migranckie instytucje...* [Migration Economic Institutions...], op.cit., p. 54-55.

44. K. Wysieńska (ed.), *Sprzedawać, gotować, budować...* [To Sell, Cook, Build...], op.cit., p. 115, 118.

45. K. A. Nawrot, *Kierunki inwestycyjne Chin. Jakich inwestycji chińskich może oczekiwać Polska* [Investment Directions of China. Which Chinese Investment Can Poland Expect?], Poznań 2012, p. 18.

46. Article 'Chińskie inwestycje w Polsce. Będzie ich więcej?' [Chinese Investments in Poland. Will There Be More?]" on the website money.pl (access the 5th of June 2015).

47. I. Koryś, O. Żuchaj, *Turkish Migratory Flows To Poland: General Description*, The Institute for Social Studies of the University of Warsaw, „Prace Migracyjne” [“Migration Works”] 2000, No. 37, p. 6-7.

48. A. Piłat, J. Segeš-Frelak, K. Wysieńska (ed.), *Mała Azja w Polsce: Plany...* [Small Asia in Poland...], op.cit., p. 105-106.

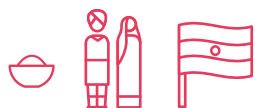
49. K. Pędziwiatr, *Turkish Community in Poland: from Textile Vendors*

to Top Managers, In: Kujawa, K., eds (2014) *Polish-Turkish Foreign Policy: 600 Years of Bilateral Relations*, Çanakkale University Publishing House, p. 5.

50. A. Piłat, J. Segeš-Frelak, K. Wysieńska (ed.), *Mała Azja w Polsce: Plany...* [Small Asia in Poland...], op.cit., p. 105-106.



## 2.5 Indians



Business people and entrepreneurs constituted the largest group of the Indian migrants coming to Poland, which make this migration to be of relatively specific character.

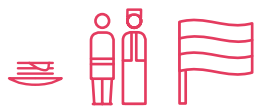
Relatively the largest number of the business migrants from India came to Poland in the first half of the nineties, in relation to the possibilities that the political transformation created. Those people were aware of the political and economic situation of the region and had business experience in other parts of the world<sup>51</sup>.

Currently, the business activity they conduct most often is related to the catering and textile industry. The business activity of the Indians concentrates also around the spa chains, travel agencies and schools<sup>52</sup>.

What is important, the growing in the recent years inflow of Indians to Poland results from the Indian investments, among others of such companies as TATA, Infosys, Videocon<sup>53</sup>.

The Indian center in Poland is in Raszyn (located near Warsaw). Another cities, in which the large number of Indian migrants lives are Łódź and Pabianice<sup>54</sup>.

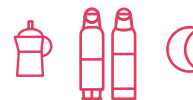
## 2.6 Armenian



The area of Armenians' activity in Poland are trade (mostly in marketplaces) and the catering industry. As trade is the Armenians' domain and was the reason of the first wave of departures<sup>55</sup> (in the nineties they traded in many marketplaces in Poland, mostly with electronic gadgets, home appliances, dishes and products from plastic and toys)<sup>56</sup> the subsequent waves of the Armenian entrepreneurs most often dealt also with catering activity.

Among the Armenian entrepreneurs can be found also the owners of currency exchange bureaus, pawnshops, prosperous shops and restaurants, repair and construction companies, transport companies, production companies and companies performing services for real estates offices and companies<sup>57</sup>.

## 2.7 Arab community



The business migration of the citizens of the Arab countries in Poland have a relatively short history as the migration from the Arabic world itself have a quite short history and unique specificity. The first representatives of this group of foreigners started to come to Poland at the end of the fifties of the 20th century. They were not, however, typical economic migrants, but students who came to Poland on the basis of the international agreements between Poland and the Arab countries with the socialist background. It was the Polish response (similarly to the other countries of East-Central Europe of the Soviet bloc) to the UN appeal to provide educational support to the developing countries, the so-called Third World countries, including the new countries of Middle East and North Africa. The first scholars of the Polish government, who arrived before 1960 came from Syria, Iraq and Sudan. In the next years further international agreements were signed, as a result of which the number of foreign students grew systematically. They came from, inter alia, Tunisia, Jordan, Yemen, Palestine, Lebanon or Iraq.

Most of the students returned home after graduation or during the studies, part of them stayed and settled in Poland (those are mostly men, most of them married Polish women). After 1989 the number of the students from the Arab countries decreased and gradually other reasons for coming to Poland occurred, e.g. conducting business activity. Business migration is not, however, the only reason for the arrival to Poland, taking into consideration the language barrier (even though it is typical for the Arab society in Poland to be well-educated, knowing foreign languages – most often English and/or French, without the knowledge of the Polish language or the help of the Polish partner it is difficult to open and conduct business activity).

Such activity is performed in Poland by people who know Polish or use all sorts of help from people knowing Polish (Polish citizens or foreigners knowing Polish, e.g. also coming from the Arab country).

On the other hand, the citizens of the Arab countries more often decide to move to countries of Western Europe; in Poland business activities are being launched by people who have settled here or are planning to do so (because of marriage) start their businesses. The Arab migration to Poland is most often of accidental and random nature rather than being a purposeful choice.

Even though business migration is only one of the several reasons of arrival of the citizens of the Arab countries to Poland, conducting business activity is rather popular in this community. It is worth adding that most of the people decide to open a company to have a source of income for themselves and their family. It is often the only possibility to gain income, as a result of difficulties in getting a job (e.g. because of the language barriers or as a result of stereotyping at the labour market<sup>58</sup>). Only a small part of people (among others the representatives of the older generation of the Syrian migration to Poland) considers business activity as an additional form of income (mostly well-educated in Poland specialists, having nationality, who next to having contract work are the owners of companies).

Among the companies opened most often by the migrants from the Arab countries are trade companies, e.g. shops with the assortment of products from the country of origin or offering oriental products, gastronomic premises in larger cities of Poland (with the two types of activity they are most often associated with) or companies intermediating between the Polish and Arab investors. Other companies (training, medical, construction) are less visible on the Polish market.

51. Ibidem, p. 94.

52. Ibidem, p. 91.

53. Ibidem, p. 91.

54. Ibidem, p. 19.

55. T. Marciniak, Trzecia fala, trzeci aspekt. Nowa zaradność ormiańskiej imigracji w Polsce [The Third Wave, the Third Aspect. New Resourcefulness of the Armenian Immigration in Poland], „Przegląd Polonijny” [“Polonia Review”] 1998, no 3, p. 134.

56. M. Ząbek, Ormianie w Polsce. Nowa diaspora w latach 1990–2007, [Armenians in Poland. The New Diaspora between 1990-2007] [in:] Dylematy kaukaskie. Problemy narodowościowe i migracyjne [Caucasian Dilemmas. The Problem of Nationality and Migration], edit. M. Ząbek, DiG Publishing House, Warsaw 2010, p. 355.

57. A. Piłat, J. Segeš-Frelak, K. Wysieńska (ed.), Mała Azja w Polsce: Plany... [Small Asia in Poland...], op.cit., p. 111.

58. Despite the general image of the Arab society in Poland, on the labour market two stereotypes can be identified: that the Arabs are rich and do not need jobs and if they look for a job they should look

for it in gastronomic premises commonly called “kebabs”, even though such a job is chosen only by the part of the immigrants from the Arab countries.

Gastronomic premises constitute for this group of foreigners the simplest form of activity. Part of the people who are not familiar with the language (mostly those who arrived to Poland recently) are employed in the "Arabic" premises and as soon as they learn how to manage such a place (and the Polish language), they sometimes decide to open their own gastronomic premises<sup>59</sup>.

It is hard to assess the accurate number of the entrepreneurs from the Arab countries in Poland. The difficulty itself is to assess the sole "Arab country", as there is no common definition of such a country adopted<sup>60</sup>. The number of gastronomic premises or shops with oriental assortment in Poland, which seems to be "Arabic" cannot be the indicator as well, because they are not necessarily owned by the citizens of the Arab countries.

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<sup>59</sup>. For many people from the latest migration wave work in gastronomy constitutes a form of stigma and "vicious circle", from which it is hard to release – they start to work in gastronomy because they do not know Polish well enough, but in this type of work there is no time and opportunity to learn the language or to integrate, so they are forced to perform such a job for the further years of the stay in

Poland, especially if they look for a job that is consistent with their education, experience gained in the gastronomic premises is not welcome by the employers.

<sup>60</sup>. It is usually assumed that the Arab countries are twenty two countries which belong to the League of Arab States, but then the citizens or residents of other countries would be omitted (e.g. Israel, European countries).

# 3

## Abuses of immigration channels for business purposes

**3.1** Inspecting institutions and exchange of information between them

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**3.2** The frequency of controls

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### 3.0 Abuses of immigration channels for business purposes

#### 3.1 Inspecting institutions and exchange of information between them

Entrepreneurs, including entrepreneurs – foreigners, may be inspected by many inspecting institutions, including institutions established by the constitution or of particular significance, that are entitled to conduct inspections of extensive range as well as specialist inspections. Inspecting entitlements are also held by authorities issuing concessions, permits and licences to conduct business activity and authorities making entries into the registers of regulated professions. In practice, the majority of inspections is focused on a narrow range of specialised entities, as well as on medium-sized and large companies, typical for such types of activity as: production and wholesale trading in pharmaceuticals, railway transportation, civil aviation, banking activity, insurance activity, radio and television, etc.

According to the Ministry of Economy's estimations, a given entrepreneur may be inspected by up to 8-10 inspection institutions, provided that all these authorities decide to inspect the given entrepreneur in one calendar year. The analyses conducted so far indicated that among the inspection institutions whose inspection scope pertains to all entrepreneurs, inspections are most often conducted by tax offices and tax inspection offices, the State Sanitary Inspection, State Labour Inspection, Social Insurance Institution, Trade Inspection, State Fire Service, customs service, Inspection of Environmental Protection<sup>61</sup>.

Major inspection authorities with respect to business activity conducted by foreigners are as follows:

- **Border Guard**, it is the main institution responsible for controlling the legality of the business activity, legality of performing work (including, e.g. if holding a position in the company requires a work permit) and entrusting work to foreigners, legality of stay in Poland,
- **Police** – controlling legality of the foreigner's stay in Poland, sometimes, together with the commune guard, verifies the company's data registered in the register on business activity,
- **Commune (urban) Guard** – controls the legality of the conducted activity (registration in the business activity register),
- **Social Insurance Institution ([pl.] ZUS)** – inspection related to social insurance and contributions to the Labour Fund,
- **State Labour Inspection** – inspection with respect to adherence to the labour laws,
- **tax inspection offices** – inspection with respect to adherence to the tax laws,
- **Customs Service** – inspection with respect to adherence to the customs laws,
- **Police or Prosecutor's Office** – inspections in the event of a suspected offence.

<sup>61</sup>. The answer of 21 May 2013 of the Undersecretary of State in the Ministry of Economy to an interpellation no. 17184 on the

In this context, it is worth highlighting that the control of the business activity of the foreigners, which in the narrow meaning of the word is not strictly control, takes place also at the stage of the visa application procedure and legalisation procedure. Immigration authorities, i.e. consul, voivode and the Head for the Office for Foreigners verifying the fulfilment of the criteria necessary to obtain a visa or residence permit, examine circumstances related to the foreigner's activity, e.g. financial condition of the company, planned investments or the state of cooperation with contractors.

In order to ensure the proper effectiveness of the controlling actions, multiple-step cooperation of the aforementioned authorities is needed within the scope of the exchange of information. The sharing information obligation often arises from the statutory provisions on the functioning of individual institutions. The mentioned obligation is implemented e.g. by sending relevant notifications about the infringements or suspicions revealed by the given inspecting institution to the relevant institutions or by providing access to certain data collected by the given institutions.

For example, the Border Guard in the course of its inspecting obligations cooperates with other public administration authorities, in particular with the Police, State Labour Inspection, Customs Service, Social Insurance Institution, tax inspection offices and trade unions and employers' associations. In the event of suspecting infringement of law related to social security, labour law, taxation law, customs law or suspecting an offence, the Border Guard notifies the relevant authorities, in particular: Social Insurance Institution, State Labour Inspection, customs service, tax inspection office, Police or Prosecutor's Office (in 2012-2013 the Border Guard sent 256 and 104 notifications respectively, with the majority of them directed to ZUS, SLI and tax inspection offices). Moreover, the Border Guard is entitled to access data held by ZUS (in the matters related to controlling the legality of work of foreigners, e.g. foreigners being members of management board and entrusting work to foreigners), it also uses information from the systems: Pobyt, VIS, SIS and in the CEIDG and NCR search engine.

Similar cooperation mechanisms apply to the State Labour Inspection that in the course of its inspections cooperates with other authorities and services,

to which it directs notifications on suspected or determined infringement. Notifications directed to heads of communes, ZUS, and tax inspection offices/tax offices dominate, and in the case of controlling legality of employment of foreigners – to Border Guard and voivods (in 2010-2012 sent 452 notifications to BG regarding illegal work of foreigners and 616 notifications to voivods). Moreover, State Labour Inspection has access to data collected by ZUS and in the registers of tax payers, unemployed, court registers, criminal registers, registers of national economy entities, in the population registration systems.

Another example of statutory cooperation is the cooperation which during immigration proceedings voivods and consuls undertake with various national bodies. Voivods, in the matters raising doubts, including in the event of suspecting counterfeiting documents by the foreigner applying for the residence permit, are entitled to contact the relevant authorities to verify their authenticity, e.g. to tax offices, Social Insurance Institution, customs authorities, Police or Border Guard that disposes of relevant equipment. They may also move to the Border Guard or the State Labour Inspection to hold an inspection in this respect, including community interviews during which information is collected concerning, among others: place of residence, financial situation, the living conditions of the foreigner and performing work by him/her or conducting business.

Consuls verify (with the use of specialist equipment present in all consular offices) the quality and authenticity of a document presented by a third-country national (particularly those of countries with the status of 'high migration risk'), including travel documents (i.e. the authenticity of visa stickers) as well as supporting documents. Additionally, consuls cooperate with proper national bodies, i.e. in the matters raising doubts, they are entitled to turn to the relevant authorities to conduct visa consultations.

Sometimes the obligation to inform other institutions about irregularities determined in the course of inspection is not due to the provisions of law, yet in line with the common practice, individual inspection institutions notify relevant institutions. It is so e.g. in the case of tax inspection offices, as well as Police and Commune Guard that informs Border Guard about the cases of foreigners conducting

business activity illegally.

Irrespective of the aforementioned, for the purposes of strengthening cooperation, individual institutions also make agreements on mutual

### 3.2 The frequency of controls

Depending on the institution, inspections of the business activities carried out by foreigners may be implemented randomly or performed pursuant to a plan of inspections.

The first type of inspections is performed by the Border Guard, which conducts them based on the monitoring and migration research. In 2013, 410 such inspections were held, while in 2014 – 767. They pertained mainly to the wholesale and retail commerce sector (approx. 75-85% of inspections) and companies active in accommodation and catering services (approx. 10%)<sup>62</sup>.

Other institutions, including State Labour Inspection, Customs Service, Social Insurance Institution and tax inspection office, as a general rule, hold inspections based on annual and long-term plans of work drafted on the basis of the risk analysis as well as results of the inspection activities conducted until now. In majority of cases, inspections are held with no reservations made towards individual groups of foreigners, but only towards phenomena that might result in irregularities in specific area. Moreover, the State Labour Inspection conducts ad hoc inspections in the event of justified suspicion of irregularities (in particular on the basis of complaints, requests and notifications from other institutions, information published in the media, own information, etc.). In 2013, 4 298 controls were conducted in entities owned by foreigners (both third-country nationals and EU citizens) and 2 026 controls of legality of employment and performing work by foreigners<sup>63</sup>.

cooperation (e.g. a cooperation agreement made in 2008 by and between Border Guard and State Labour Inspection that provides e.g. for joint employment inspections and sharing information).

Social Insurance Institution (ZUS) inspections take place every 5 years as a rule. In justified cases (e.g. infringement of provisions of law by the tax payer or complaints filed by insured persons), ZUS inspection may be held more frequently. Currently, due to the relatively short period of limitation (5 years) in the case of contribution liabilities, inspections of ZUS are more frequent (in 2009, there were 59,552 inspections held in total, while in 2013 – 72,405). ZUS estimated that in 2011-2014 approx. 350 inspections of payers of contributions were held, in the case of which the registration documents for insurance stated that they are citizens of a country outside EU/EEA (category of payers of contributions is an extensive category and includes both foreigners performing work and running business activity).

On the other hand, tax inspection offices inspections have their own analytical departments that, by using modern IT solutions and specialist databases, conduct analyses in order to select entities to be controlled, they determine the areas that are most vulnerable to committing tax fraud. This helps to increase the efficiency of inspections. A given entity is selected for inspection and inclusion in the plan e.g. due to the probability of irregularities that could result in decreasing tax obligations of that entity that is derived from the analyses. However, it is not possible to indicate the frequency of inspections conducted with respect to the given group of tax payers, including the analysed group of foreigners, as the Ministry of Finance does not collect such data. In total, in 2009-2014, the number of inspections held was approx. 10 thousand a year.

number of inspections in companies and the rights of entrepreneurs vis-à-vis bodies performing inspection.

62. Other controls concerned entities operating in the following sectors: agriculture and forestry, construction, manufacturing, other services, transportation and warehousing, information and communication, real estate activities, professional, scientific and technical services, administrative and support service activities, education,

households with employed persons.

63. In total, 1 890 entities were inspected (the majority of them were small enterprises employing up to 9 people), in which 13.6 thousand foreigners from 114 countries were performing work, including nearly 10.7 thousand foreigners - non-nationals of a Member State of the EU/EEA or Switzerland. These figures relate to various categories of for-

### 3.3 Consequences of detected irregularities

In the event of irregularities detected during the visa procedure or legalisation procedure, consul or voivode is entitled to refuse to grant a visa or a residence permit. It is allowed to revoke the visa or residence permit granted, the consequence of which a decision requiring the foreigner to return to his/her country of origin can be issued. Additionally, when entering the territory of Poland Border Guards each time decide whether there were any abuses in the applying for a visa and, in justified cases, can refuse the foreigner entry into Poland.

Undertaking business activity in contradiction with the provisions of law results in issuing a decision obliging the foreigner to leave, which contains a ban on re-entry to Poland or Schengen zone countries (for the period from 1 to 3 years). The day on which the decision on obligation to return becomes final, the visa is annulled and a temporary residence permit and a work permit expires by virtue of law.

The same sanctions apply as regards the foreigners that within their business activity perform work on a specific position, e.g. a director, if they perform or performed that work without the relevant work permit (if required) or were fined for illegal work (a foreigner that works illegally is subject to a fine of at least PLN 1000).

During the inspection, Border Guard may demand provision of such documents as: registration in the Central Registration and Information of Business or entry to the National Court Register, entry in the regulated professions register or a required concession or permit. Border Guard officers also inspect travel documents and the document entitled to stay within the territory of Poland of the foreigner running business activity.

On the day the decision obliging the foreigner to leave becomes binding, the national visa, temporary residence permit and work permit expire by law.

- Moreover, if the person runs business activity:
- without the required registration in the register of entrepreneurs,
  - without the required registration in the regulated

professions register or without the required concession or permit,

- fails to report any changes to the data subject to entry to the register of entrepreneurs<sup>64</sup>

the person is also subject to criminal sanctions in the form of restriction of freedom or fine<sup>65</sup>.

In 2013, as a result of controls, Border Guard issued return decisions or submitted an application to the voivod to issue such a decision to 57 foreigners, while in the first six months of 2014 – to 19 foreigners. It is important to mention that as of 1 May 2014, in connection with the fact that the Act of 12 December 2013 on foreigners entered into force, the competences of the Border Guard were extended and now BG issues all return decisions. As of May 2014 BG issued 34 decisions obliging foreigners to return, 22 of them pertained to Ukrainian citizens, 11 to nationals of Morocco and 1 to a citizen of Libya.

Also, in 2013 the Border Guard imposed fines (as a penalty notice) or submitted an application to the court to impose such a penalty on 144 foreigners, while in 2014 – to 536 foreigners. The penalties or motions pertained in particular to citizens of Bulgaria, Romania and Ukraine.

Moreover, if the foreigner while running business activity entrusts illegal performance of work or through misleading the foreigner, to take advantage of the misconception, of the professional relationship or inability to properly understand the undertaken activity, forces a foreigner to work illegally, is subjected to criminal sanctions in the form of a fine of at least PLN 3000 or a fine of up to PLN 10,000<sup>66</sup>.

In addition, the sanctions for infringement of provisions in respective areas in which a company operates are the following:

- with respect to social insurance and contributions to Labour Fund – fine, additional fees,
- with respect to tax laws, the provisions of freight exchange, customs and gambling law – fine, imprisonment, restriction of freedom,
- with respect to labour laws – decision to cease

meanours.

65. Article 60<sup>1</sup> of the Act of 20 May 1971 – Code of Misdemeanours.

66. Article 60<sup>1</sup> § 2 of the Act of 20 May 1971 – Code of Misdemeanours.

running the activity, related to payment of remuneration or another performance, oral order to remove the determined irregularities, reporting

suspected crime to the prosecutor's office, imposing a fine or penalty notice.

### 3.4 The nature and scale of the identified abuses

In the context of the migration procedures<sup>67</sup>, in practice two types of abuses can be discussed:

- abuses related to the entry into Poland under the false pretences of conducting business activity, including not fulfilling minimum requirements for entry into Poland (both during applying for a visa<sup>68</sup> and at the moment of crossing the border<sup>69</sup>), or the attempt to extort a visa presenting false documents,
- abuses detected among the foreigners already residing and conducting business activity in Poland, including, inter alia, failure to fulfill minimum requirements to legalise one's stay in Poland<sup>70</sup>, the attempt to extort the permit presenting false documents, staying in the country regardless of the residence permit expiration, when the aim of the residence is other than the declared one.

In the context of the first category of abuses, the phenomenon which deserves attention noted by the Border Guard is extorting visas issued for the purpose of conducting business activity. As it stems from the Border Guards data, the so-called business visas are the second most often extorted visas by the foreigners, right after work visas. It is related mostly to the citizens of Ukraine and, to a lesser extent, the citizens of Russia and Belarus, Georgia, Uzbekistan, Moldova, Iraq, Mongolia, India, Armenia, China, Kazakhstan and Jordan (refers to data from 2011-2014). The actual purpose of entering into Poland of the foreigners who extort a business visa is, most

meanours.

67. Irregularities in other areas, e.g. in tax law, have not been described in the subchapter because of the lack of the possibility to distinguish the selected category from the overviews prepared by the particular controlling institutions.

68. Art. 65 paragraph 1 of the Act of the 12th December 2013 formulates premises justifying the refusal to issue a national visa.

69. Art. 65 paragraph 1 of the Act of the 12th December 2013 on the

often, the willingness to purchase or sell e.g. scarce goods, smuggling of the excise goods (the activity of the so-called "mules") or travelling to other EU countries.

What is interesting, the popularity of the procedure of business visa extortion is a result of the possibility to obtain an invitation to collaborate relatively easily (e.g. trade companies are eager to issue such invitations in order to increase sales), which constitute the basis for applying for a visa, as well as wide access to intermediating agencies (including tourist agencies and criminal groups) in the visa procedure functioning in Ukraine, Belarus or Moldova. The agencies deal with selling counterfeit visas or supplemental documents necessary to apply for a visa, including most importantly the cooperation invitation or the cooperation agreement. Significant is also the fact of issuing mass cooperation invitations by the companies dealing with the selling of supplemental documents and making the purpose of visa application reliable.

Most of the cases of visa extortion are revealed by the Border Guards at the moment of entry into the territory of Poland. The foreigners in such cases usually do not possess any documents confirming their declared character of the entry, do not have knowledge about the entities with which they allegedly want to build business cooperation or the documents which are supposed to confirm the purpose of their entry are falsified.

Furthermore, Border Guards identify cases of conducting business activity (mostly companies

foreigners formulates premises to refuse entry into Poland.

70. Art. 100 of the Act of 12th June 2013 on foreigners formulates premises justifying the refusal to grant temporary residence permit. Moreover, if a foreigner who had been granted the temporary residence permit, did not notice the voivode within 15 days about the cause of obtaining the permit, may be refused another temporary residence permit if the application for another permit was submitted before a year passed from the expiration of the previous permit.

64. Article 60<sup>1</sup> § 2 of the Act of 20 May 1971 – Code of Misdemeanours.

65. Article 60<sup>1</sup> § 2 of the Act of 20 May 1971 – Code of Misdemeanours.

dealing with wholesale and retail trade within the territory of Podkarpackie, Mazowieckie, Dolnośląskie and Lubelskie Voivodships) contrary to the binding provisions, i.e. without the required registration in the Central Registration and Information on Business of the Republic of Poland (CEIDG), failure to submit the change of the company name, the registered office or conducting the activity during its formal suspension. Also, in this category the offenders are mostly the citizens of Ukraine (rarely the cases of abuses are reported concerning the citizens of Armenia and Mongolia).

It is also worth focusing on fictional business activity conducted by the foreigners (mostly the citizens of Ukraine, Russia and China<sup>71</sup>) observed with various intensity since 2011, most often in the sector of repair and construction services performed for the developers, the sole aim of the activity is to gain large financial rewards for facilitating the legalisation of the stay for foreigners. It involves establishing a company with a short period of functioning (several months or less), which issue a large number of documents (mostly declarations of the intention to employ a foreigner or work permits), which constitute the basis for the application by the foreigners to legalise the stay in Poland.

Also the cases of registering in various time intervals economic entities are noted, which claim one address to be the head office of the company and the functioning of the so-called "virtual offices", which provide their address in exchange of a fee and perform various services, e.g. receiving mail.

The establishment of trade companies, mostly limited liability companies [Sp. z o.o.; the main purpose of it is to make the purpose of the stay reliable and to obtain residence title) can be added to the category of conducting a fictitious activity. After staying in Poland for several months, the shares in the company are often sold to other foreigners who on this basis legalise their stay. It concerns mostly the citizens of Ukraine, Vietnam, Armenia and Belarus.

In terms of control of the legality of the conducting business activity performed by the Border Guards, the sector in which the largest number of abuses is identified is the sector related to the wholesale and retail trade, transportation and accommodation and catering services.

Also, as the practice of CEIDG functioning shows, the foreigners registering individual business activity in the data confirming their entitlement to do so show outdated or erroneous data and after the verification it turns out they do not have the right to conduct such a form of activity in Poland<sup>72</sup>.

Regardless of the above mentioned, the analysis of the selected indicators assessing the intensity of the abuse of immigration law by the foreigners shows that irregularity rate in terms of "business legislation path" is relatively low.

For instance, the share of visa refusals in a period 2011-2014 stood at 3% of the total visa applications (also type C and D), whereas the number of refusals in the procedures for granting a residence permit (in relation to conducting business activity) amounted to approximately 44 decisions (on the contrary, the number of positive decisions granted during this period amounted to 626). Furthermore, in 2014 Border Guards revealed 562 cases of extorted visas granted to conduct business activity (for comparison in 2013 – 590), which constitutes less than a half of all the extorted visas by the foreigners that year, but only 0.2% of all visas "type 4" granted by the Polish consulate that year.

Similar image appears in the light of the return statistics: from among 9 215 return decisions granted in 2013, only in the case of 57 of them the reason to issue the decision was conducting by the foreigner business activity against the law.

It needs to be highlighted that almost 90% of the violations in conducting business activity identified by the Border Guards concerns the citizens of the EU, including Romania and Bulgaria. The citizens of the third countries are rarely registered within this category of violations.

In conclusion, it is worth reiterating that the risk of illegal migration in the context of business activity conducted by the foreigners is currently low. What is more, in the opinion of the Border Guards, the latest liberalisation of the migration law with regard to legalization of the stay on the basis of conducting business activity in Poland has not affected yet the scale of misuse nor the new undesirable phenomena in this area has occurred.

### 3.5 Effectiveness of the measures used to detect and prevent misuse/abuse

Regardless of the low rate of misuse detected, the main challenges faced by institutions responsible for detecting and preventing irregularities have to be identified. These mainly include:

- insufficient exchange of information - according to information received from several voivods, there is often no reply to the requests sent to a given entity for clarification as to the findings and actions undertaken by that entity in the course of immigration procedures;
- limited efficiency of fighting the phenomenon consisting in fictional running of business activity – foreigners cannot be punished pursuant to the provisions on the legality of their business activity, as the business activity was registered legally. In such cases, Border Guard may file a motion to the Prosecutor's Office and to the Ministry of Economy. However, hearing of evidence by the Prosecutor's Office resulting in pressing charges for e.g. facilitating illegal entry into Poland is difficult. On the other hand, the freedom to pursue economic activity limits the competences of the Ministry of Economy to delete such an

entrepreneur from CEIDG (Central Registration and Information on Business). It results in the situation, where the same persons immediately establish another business activity, changing slightly its name or registered office;

- limited number of specialised officers of the Border Guard dealing with inspecting legality of business activity, which are only employed by selected BG units;
- statutory obligation to notify the entrepreneurs about the intention to conduct an inspection by the Border Guard and the State Labour Inspection.

As for other inspecting institutions, including the Social Insurance Institution and tax inspection offices, it is not possible to assess the efficiency of the measures undertaken by these institutions to identify and prevent the irregularities. It is due to the fact that all and any indicators, data and statistics of the tasks refer to the entire group of controlled persons/entities submitted to controls, regardless of their status. Therefore, foreigners carrying out business activity do not constitute a separate group of people.

71. This abuse is most often identified by the Border Guard in relation to the citizens of Poland, not foreigners.

72. Justification to the draft of the act on the amendment of the act on freedom of economic activity and some other acts – version addressed

to the Sejm, p. 16.

# 4

## Effectiveness of policy to attract business migrants

4.1 Effectiveness of selected investment incentives  
> 63

Case study:  
Migrant entrepreneurship in Lesznowola  
commune near Warsaw  
> 65

## 4.0 Effectiveness of policy to attract business migrants

The information provided by the institutions monitoring international trends in the foreign direct investment flow presents that Poland over time becomes increasingly attractive place to conduct business activity.

According to the newest edition of the World Bank report entitled "Doing business 2015", Poland was ranked 32nd on the list of 189 countries examined on the ease of conducting business activity (Ease of Doing Business Index<sup>73</sup>74). In comparison, in 2011 Poland was ranked 70 (out of 183 countries). On the other hand, Poland was ranked after the countries of the region: Estonia (place 17), Latvia (place 23) and Lithuania (place 24).

In line with Ernst&Young report entitled: „EY's attractiveness survey. Europe 2015 – Comeback time”, according to the investors Poland is the most attractive location for the new projects in this part of Europe, constituting investment magnet. This is the opinion of 38% of the surveyed<sup>75</sup> (7 percentage points more than in 2013). Poland ranks first in the East-Central Europe in terms of Direct Foreign Investments – 132 investments in 2014 compared to 107 in 2013 (23% more). Poland ranks second in the East-Central Europe and 3rd on the continent

in general in terms of the number of jobs created by Direct Foreign Investments in 2014 (15 485 compared to 13 862 in 2013, 12% more)<sup>76</sup>. Poland is also one of the most attractive countries in the world in terms of production investments<sup>77</sup>.

Foreign investors positively assess the attractiveness of Poland in the following years. According to the report of the United Nations Conference on Trade and Development titled: „World Investment Report 2014”, Poland was ranked 13. in the world and 5. in Europe in the ranking of the most attractive countries to invest between 2014-2016<sup>78</sup>.

What is interesting, even though, according to the prestigious competitiveness ranking of the World Economic Forum (WEF) the Polish economy remains one of the most competitive among the post-communist countries, after 2010 there is a gentle but visible downward tendency. It is especially important taking into consideration the fact that other countries of our region increase their competitiveness and improve their position in the ranking rapidly. According to the experts, it is the evidence that in the global world it is necessary to continuously strive for improving institutional, legal and socio-economic environment. In the case of Poland the areas which still require further

**73.** Ease of Doing Business Index is aimed to measure the effectiveness of regulations, which influence directly companies in the following areas, among others the course of the selected procedures, time and cost of setting up a company and transferring the proprietorship, without examining other factors such as the proximity of significant markets, the quality of infrastructure, inflation or crime. The position of a particular country in the ranking is based on the average of the 10 categories.

**74.** World Bank, Doing business 2015. Going Beyond Efficiency, Washington 2014, p. 4.

**75.** The publication consists of two parts: the first, including data collected in the course of EY European Investment Monitor on the investments in Europe in 2014 (excluding portfolio investments, mergers and acquisitions) and the second – research on the investor's

perception of the selected countries of Europe and regions of the world. The survey includes 808 decision-makers from international companies took place at the end of January and at the beginning of February 2015.

**76.** Ernst&Young, EY's attractiveness survey. Europe 2014 – Comeback time, 2015, p. 15; <http://www.ey.com/PL/pl/Issues/Business-environment/ey-european-attractiveness-survey-2015> (accessed on 8th June 2015)Raport FDI Intelligence 2014 „Global greenfield investment trends”.

**77.** Report FDI Intelligence 2014 “Global greenfield investment trends”.

**78.** The United Nations Conference on Trade and Development, World Investment Report 2014. Investing in the SDGs: An Action Plan, Mew York and Geneva 2014, p. 28.



development are, among others, transport infrastructure, deregulation, the reduction of burdens for entrepreneurs, flexibility of the labour market, progress in research and development area<sup>79</sup>.

It is worth outlining that countries of East-Central Europe, especially Poland, became in the last years important places on the global scale for the modern (more and more often also advanced) business services performed for international corporations. According to the international ranking of the Tholons company concerning 100 the most attractive localizations for off-shore services, Cracow is classified as the best in Europe location for companies operating in the modern business services sector (9th place, after India and Philippines). Warsaw and Wrocław<sup>80</sup> also ranked high on the list.

Currently there are not only 659 services centres with foreign capital in Poland, but also with the Polish capital (there were approximately 200 in 2007) performing services in more than 30 foreign languages for several dozen countries in the world. The centers are managed mostly by the U.S. and East-Central Europe investors. Thanks to the rapid growth of the sector of modern services for business many new work places are created. At the end of 2014 employment reached more than 150 thousand people (it grows on average 15-20% per year), as much as in traditional sectors of economy, such as motorisation.

The largest share constitute centres performing services in the area of IT (36%). Second place, in terms of the number of entities, belongs to shared services centres (33%), next is BPO – Business Process Outsourcing (20%) and research and development centres (11%). The most frequent processes conducted in the centers are the following: software development, client service, finances and accounting<sup>81</sup>.

The fast developing sector of modern services

stimulates growth in the whole network of business-related services, including real estate market. The growing number of companies providing modern business services in Poland contributes a significant factor that drives the demand for office space in the largest Polish cities. In many cities, these are the companies from the modern business services sector that are major tenants. The majority of office projects implemented outside Warsaw is developed for the purposes of companies from that industry. According to Jones Lang LaSalle, a counselling company operating in the real property market, in Kraków business services centres occupies over half of the total office space in the city, in Łódź and in Wrocław – over 40%, while in Tricity and Katowice – almost one third<sup>82</sup>.

It is also worth noticing that, according to many experts, Poland becomes increasingly attractive place to establish and running technological companies – companies oriented on developing intellectual property of an innovative idea and multiplying its price in the certain currency (Poland has at its disposal, for example, very modern laboratory facilities allowing conducting researches). StartUp Hub Poland Foundation is one of the organisations the aim of which is to create such companies with inventors from East-Central Europe.

The potential attractiveness of Poland as a friendly place for establishing and running technological companies is influenced also by the fact that while in the Silicon Valley it is easier to obtain financing at the stage of the startup maturity (which generates incomes and prospects very well for the future), in Poland it is much easier to obtain financing at the seed stage (so at the stage of extreme risk). This is because, among others, the Polish administration is ready to co-fund such a risk and because the venture capital funds become more and more popular in Poland.

## 4.1 Effectiveness of selected investment incentives

It needs to be highlighted that, in the context with the structure of investment flows to Poland, among the entities which most widely benefit from the investment incentive offered by Poland (not taking into account the Polish companies) are the companies with the capital from the EU countries (mostly from Germany, France, Netherlands and Italy).

### Special Economic Zones

As at the end of 2013 the almost 25% of the capital invested in the zones came from non-EU countries (in particular USA, South Korea, Hong Kong, India and Japan). The highest participation of the cumulative investment value belonged to automotive sector companies (26.4%), followed by producers of rubber and plastic articles, mainly tyres (10.7%) and entrepreneurs manufacturing articles made of other mineral non-metallic raw materials (9.2%)<sup>83</sup>.

Analysis of the dynamics of individual variables (including e.g. the number of permits to conduct business activity within the zones, the size of the investments carried out within the zones and the newly created work places) allows us to state that SEZs in Poland have been attracting investors from abroad, including non-EU investors, for years, constituting an important instrument that promotes investing in Poland (approx. 40% recent investments will be made in SEZs<sup>84</sup>).

SEZ is the location of investments by leading companies, including General Motors Manufacturing Poland Sp. z o.o. (automotive industry – cars), Toyota Motor Manufacturing Poland Sp. z o.o. (automotive industry – gear boxes), NGK Ceramics Polska Sp. z o.o. Automotive industry (ceramic filters for Diesel engines), LG Display Poland Sp. z o.o. (LCD panels production), Toyota Motor Industries Poland Sp. z o.o. (automotive industry – Diesel engines). These companies have belonged to the top fifteen investors in the zones for over five years.

As a result of the zones, many new work places

were created in the areas with structural unemployment and many industrial areas were revitalised. The impact of SEZ on the social and economic environment is extensive. According to the estimates, establishment of SEZ will bring PLN 181.7 billion (no VAT variant) in value for 2013, that is USD 56.6 billion. The expected benefits are distributed over the years 2000-2026, and the said value is an estimate of economic benefits that have appeared and will appear in Poland in the future thanks to SEZ. Quantitatively, it was estimated that PLN 1 million of public aid for enterprises generated:

- PLN 6.95 million investments made by enterprises;
- PLN 0.23 million infrastructural investments made by zone managers as well as local authorities and utilities investors;
- PLN 0.37 million of income tax (CIT) paid by enterprises operating in SEZs (having exhausted tax exemption);
- PLN 4.11 million of VAT paid by enterprises operating in SEZs;
- 31 jobs in enterprises operating in SEZs (factual employment in total)<sup>85</sup>.

As estimated, the growth dynamics will slow down as the date grows near to the year 2026, that is the end of the privileges in the Polish SEZ. The last five years of the functioning of the zones in Poland will be characterised by decreasing numbers of new companies, investment expenses and new work places.

Assessing economic effects of particular zones, it is necessary to bear in mind that to a very large extent they are determined by the geographic location of the territories belonging to them and by the level of development of socio-economic infrastructure and the availability of qualified staff. Areas which are leading in terms of the number of permits granted, the value of investments and the number of work places created are located in the western, southern and central part of Poland,

79. World Economic Forum, The Global Competitiveness Report 2014-2015.

80. Thalons, 2015 Top 100 Outsourcing Destinations, 2014, p. 2.

81. Hays Poland, Polish Information and Foreign Investment Agency, 10 lat sektora nowoczesnych usług biznesowych w Polsce [10 years of the sector

of modern business services in Poland], Warsaw 2015, p. 7-12, 18-22.

82. Article: "Business services sector dominates office space markets outside Warsaw", <http://www.jll.pl/poland/pl-pl/wiadomosci/228/sek-tor-us%C5%82ug-dla-biznesu-dominuje-na-rynkach-biurowych-pozawarszaw%C4%85> (accessed: 26th January 2015).

83. Information on the implementation of the act on special economic zones. As at 31 December 2013, Ministry of Economy, Warsaw 2014, p. 18-22.

84. Article: "Report: Poland attracts foreign investors", <http://www.polskieradio.pl/42/273/Artykul/1161369,Raport-Polska-przycia->

[ga-zagranicznych-inwestorow](#) (accessed: 22 January 2014).

85. Assessment of the operation of special economic zones in Poland prepared by the employees of the University of Łódź – Faculty of Economics and Sociology (Centre for Corporate Finance), Łódź 2013.

thus in the areas much more attractive in terms of investments compared to the northern and eastern part of our country.

It is worth reiterating that in the 2013 international ranking prepared by fDi Magazine of the Financial Times, 5 out of 14 Polish SEZ made its way to the list of 50 best special economic zones in the world<sup>86</sup>.

#### **“Program for supporting investment of strategic importance for the Polish economy 2011-2020”**

As at the end of 2013, 21 investors took advantage of this form of support, including 11 investors from non-EU countries (6 companies from USA, 3 from South Korea, one from Japan and one from India; mainly operating as shared services centres). The programme turned out to be not only popular, but also an effective tool of attracting Direct Foreign Investments and generating new valuable work places. Within the framework of 54 projects carried out, the companies declared to create 23 500 new work places, whereas in reality they created 28% more of them (30 100). The currently binding Programme will operate until the end of 2020. However, the budget assigned for its realisation has been already almost contracted<sup>87</sup>.

It is difficult to assess unequivocally the influence that the instruments in question had on the investors' decision to allocate their investments in Poland. Part of them set up their activity in Poland long before the introduction of the particular incentives. Undoubtedly, in many cases instruments offered by Poland concurred to their decision about developing the activity.

Regardless of the above, opinions on the role which direct or fiscal incentives play on the foreign investors' decision making process vary among the experts. There can be distinguished opinions according to which incentives offered by Poland constitute a very significant magnet for the foreign investors as well as opinions which claim that general investment climate and conditions of conducting business activity are decisive.

It occurs that investment decisions made by the foreigners in the context of Poland need to be perceived as a result of various factors.

According to experts, for years, what brought in investors to Poland were: stable economic and political situation, the size and absorptivity of internal market, geographic location, availability of qualified and productive workers, relatively low labour costs and well-developing industrial sectors.

86. EY Report: Poland – a true special economic zone. In particular until June 2014, <http://www.ey.media.pl/pr/260712/raport-ey-pol-ska-prawdziwa-specjalna-strefa-ekonomiczna-zwlaszcza-do-czerwca-2014> (accessed: 23 January 2014). Hays Poland, Polska Agencja Informacji i Inwestycji Zagranicznych, 10 lat sektora nowoczesnych

usług biznesowych w Polsce, Warszawa 2015, s. 49.

87. Hays Poland, Polish Information and Foreign Investment Agency, 10 lat sektora nowoczesnych usług biznesowych w Polsce [10 years of the sector of modern business services in Poland], Warsaw 2015, p. 49.

## Case study: migrant entrepreneurship in Lesznowola municipality near Warsaw

Assessing socio-economic impacts of entrepreneurship among foreigners, particular attention must be drawn to the commercial centres operating in Lesznowola municipality located near Warsaw (in particular the Wólka Kosowska village), where the largest distribution centre (mainly logistics centres and warehouses) of goods from China and Asia in the Central and Eastern Europe operates (the center is managed by foreign capital companies – mainly with the Vietnamese, Chinese<sup>88</sup> and Turkish capital).

Although the beginnings of foreign investments in Lesznowola municipality date back to the beginning of the 1990s, recently significant increase of foreign capital allocation in the area has been observed.

Over the last decade, hundreds of commercial companies have been established in the municipality (in the early 90s, there were only 30 entrepreneurs operating, while in 2010 there were about 1 300 business entities registered in the Register of Business Activity<sup>89</sup>, in Lesznowola municipality, mainly from China, Vietnam, Turkey, Pakistan, India, USA, Canada, Russia as well as Ireland and Austria<sup>90</sup>), and every year on average 100 new companies are registered<sup>91</sup>. The companies were accompanied by hundreds, and then thousands of employees, including many foreigners.

Entrepreneurship in Wólka Kosowska is of quite distinctive character. The companies operating on the territory of the municipality usually build halls with the warehouse-office space designated for rent and wholesale trade (mostly of clothing and shoes), catering services and various associated services, e.g. providing translation services, tourist services and legal counselling. The companies also invest in residential construction<sup>92</sup>.

Investors and business-owners select Lesznowola municipality due to many factors. They include: good location of the commune (on the outskirts of the capital city), in particular in the context of the nature of the companies' activity that generates heavy traffic of trucks, and also in the context of short distance to the main outlets, as well as positive attitude of local authorities and local community which had at its disposal the entire village and large swath of land and wanted to earmark it for sale, rent and construction of shopping centers. Moreover, the proactive business policy of the municipality that favours investments has also contributed to the development of foreign investments (the municipality has been the leader of the Forbes ranking of attractive places for business since 2009, in the category of towns up to 50 thousand residents). This is in particular due to:

- having comprehensive territory management plans (available on-line at the municipality's website), which is an exception among the surrounding local governments and clearly accelerates the investment process;
- competitive tax rates (local taxes);
- efficient institutional service – the documents required for the investment process are issued fast; the procedures of investment acceptances are also quick; and
- individualised contact with the entrepreneurs (due to the long-term relations with the investors and knowledge of their problems), good mutual relations of officials working at the municipality office and the entrepreneurs, being open to cooperation<sup>93</sup> (the local authorities holds consultations on how to apply for EU funds as well as provide employees an opportunity to participate in English classes<sup>94</sup>).

88. Wólka Kosowska hosts the largest concentration of Vietnamese and Chinese business in Poland.

89. N. Kłorek, M. Szulecka, Migranckie instytucje... [Migration Economic Institutions...], op.cit., p. 61.

90. M. Bieniecki, A. Cybulska, B. Roguska, Integracja ekonomiczna i kulturowa obcokrajowców w gminie Lesznowola, Instytut Spraw Publicznych [Economic and cultural integration of foreigners in Lesznowola municipality], Instytut Spraw Publicznych, Warsaw 2008, p. 7.

91. Center for Information on Economy data, [www.coig.com.pl](http://www.coig.com.pl) (accessed: 20th April 2015).

92. N. Kłorek, M. Szulecka, Migranckie instytucje... [Migration Economic Institutions...], op.cit., p. 36, 65.

N. Kłorek, M. Szulecka, Migranckie instytucje..., op.cit., s. 61.

93. M. Bieniecki, A. Cybulska, B. Roguska, Integracja ekonomiczna... [Economic and cultural integration...], op.cit., p. 9-11.

94. N. Kłorek, M. Szulecka, Migranckie instytucje... [Migration Economic Institutions...], op.cit., p. 61.

Foreign investors also believe it is important that the head of the Lesznowola municipality is currently in his fifth term of office, and consequently implements the policy friendly to foreign investors, and that the personnel at the office is practically unchanged, composed of experienced persons well-known to the entrepreneurs. An important element of the municipality's development is also the fact that the foreign capital, originally as a Chinese centre, attracts other foreign investors<sup>95</sup> (in Lesznowola migration networks played a major part which resulted in attracting subsequent migrants).

Using its fantastic location in terms of logistics, Lesznowola municipality had a privileged position compared to many other Polish municipalities. However, similarly situated, with just as good development potential, somehow failed to be so successful. An example of a nearby Wiązowna municipality might be given to compare, which – despite even better location, landscape and transportation values, is not attractive for foreign investors<sup>96</sup>.

The inflow of foreign investors has significantly changed the image of the municipality and living conditions of its residents. Although there are no comprehensive and reliable statistics related to employment in the commercial centres in Wólka Kosowska, the available studies emphasize the role of the centres as a significant place of work for the entire region and as a contributor to a relatively low unemployment rate in Piaseczno powiat<sup>97</sup>.

Also, the economic significance of the centres for persons not working there but e.g. leasing their real properties as residences or warehouses or providing services for foreigners (i.e. banks, exchange offices, courier company, post office, shops, computer repair points, slot machines, car-wash, pubs, Polish companies offering assistance in legalisation procedures and finding employment, law firms, law and accounting offices etc. – it mainly concerns Poles)<sup>98</sup> must be emphasised. Increase in incomes of those people translates into rising taxes which are and eventually

into rising local budget.

The presence of foreign companies also has a positive impact on the functioning of the municipality and is an economic growth factor e.g. via increased tax revenues to the local budget (revenues from real estate tax generated by the trade centers operating in Wólka Kosowska grow significantly on a year-over-year basis; in 2013, revenues from real estate, agriculture and forest tax amounted to ca. 9 mln PLN and accounted for approx. 10% of local budget)<sup>99</sup> and via the investments in the local infrastructure performed both by the municipality and by the foreign enterprises – e.g. construction of new roads, new local connections within the municipality, sewage treatment plant, new schools, new residential housing estates, launching new transportation connections with Warsaw<sup>100</sup>, which increased the potential of the municipality and it was possible to attract further investments and new residents. The warehouse-commercial centres operating in the Lesznowola municipality also constitute a base for the open-air market trading in Warsaw and are the source of supplies for the traders operating there<sup>101</sup>.

Changes in the surroundings caused by the shopping centers in Wólka Kosowska are assessed by some residents of the municipality in a negative way. It is mostly because of frequent traffic jams and transportation problems, intensive traffic in the parking lots and around the centers, frequent accidents and waste which are generated by the shopping centers<sup>102</sup>. It is worth highlighting that these problems are related to the existence of a large cluster of population. In this context media reports are significant, according to which as a response to traffic jams a modernisation of the crossroad between major communication routes in Wólka Kosowska is planned and which will be financed by the owners of the Asian Shopping Centre<sup>103</sup>.

It is worth reiterating that in Poland there are two other "Chinese" markets in Jaworzno and Rzgów. However, their influence on local economies is much

less significant or, as in the case of shopping center „Ptak”, scarce (employment of Poles and apartments rental for foreigners takes place on a small scale;

revenues which feed into a municipal budget are rather low)<sup>104</sup> as in case of Wólka Kosowska.

95. M. Bieniecki, A. Cybulska, B. Roguska, *Integracja ekonomiczna... [Economic and cultural integration...]*, op.cit., p. 10.

96. *Ibid.*, p.10.

97. N. Klorek, M. Szulecka, *Migranckie instytucje... [Migration Economic Institutions...]*, op.cit., p. 31.

98. *Ibid.*, p.77.

99. Unit for Taxes and Fees Execution of Lesznowola Municipal Office data.

100. N. Klorek, M. Szulecka, *Migranckie instytucje... [Migration Economic Institutions...]*, op.cit., p. 61.

101. M. Bieniecki, A. Cybulska, B. Roguska, *Integracja ekonomiczna... [Economic and cultural integration...]*, op.cit., p. 9.

102. N. Klorek, M. Szulecka, *Migranckie instytucje... [Migration Economic Institutions...]*, op.cit., p. 68

103. Article „Skończyć z korkami" ["End with Traffic Jam"], website [www.nadwisla.pl](http://www.nadwisla.pl) (accessed: 9th of April 2015).

104. N. Klorek, M. Szulecka, *Migranckie instytucje... [Migration Economic Institutions...]*, op.cit., p. 88-94.

# 5

## Challenges and barriers in admitting business migrants

## 5.0 Challenges and barriers in admitting business migrants

Based on source literature and results of the available research on the economic integration of immigrants<sup>105</sup>, conclusions from unstructured interviews with experts specialised in migration field and with representatives business environment in Poland as well as based on experience of institutions dealing with foreign investment assistance and of immigration authorities responsible for application of entry and residence provisions, a number of problems was identified related to admission of business migrants. Due to a diverse nature of those barriers, the following typology was suggested:

- **problems related to entry and legalisation procedures:**

- difficulties in granting visas by the authorities of the countries which act as Poland representatives in visa matters consisting in disregarding differences in visa provisions of both countries, which results in a refusal of granting a business visa or a visa with improper duration of stay,
- insufficient period of allowed stay in Poland on the basis of a visa, during which the foreigner is not able to fully develop their business activity, which in turn causes problems in proving that the foreigner's activity meets the requirements necessary to legalise the stay pursuant to a temporary residence permit,
- uncertainty concerning the duration of stay in Poland, e.g. insufficient period for which the residence permit was granted (e.g. a year), which discourages foreigners from taking investment risk,

- difficulties (to fulfil by foreigners who run small companies or family companies) related to statutory requirements during the procedure for granting a temporary residence permit (including generating an adequate income, employing the required number of workers) – it mostly concerns people conducting business activity in sectors connected with trade, gastronomy, repairing automobiles, repair and construction works, professional activity (e.g. accounting services, translation services), who constitute a significant share of the migrants coming to Poland,
- time-consuming and intricate procedure related to legalizing stay/obtaining work permit (including, among others, the way labour market tests is conducted – people performing work in certain professions and not possessing particular skills are being searched for) and excessive bureaucracy which translates into the necessity to submit the identical documents to different offices or additional documents which in many cases are retained by third parties – representatives, commercial proxies, accountants which makes it difficult to collect them,
- language barrier (lack of knowledge of the Polish language among foreigners or of foreign languages among workers of public administration) and a lack of understanding among foreigners of legal and institutional environment in Poland – it mostly refers to the official language

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<sup>105</sup> Most of all the research of the Institute of Public Affairs, The Association of Legal Intervention, research carried out within the framework of the "Analysis of the situation and needs related to the integration of the foreigners with the Polish society on the example

of the citizens of the third countries residing in Małopolskie Voivodship", project "AMIGA – Active Migrants on the local labour market" and Radosław Stryjewski's research on the issue of economic integration of immigrants of the Muslim religion in Poland as well as MIPEX.

which is often barely understandable among migrants who in everyday life speak Polish very well; it results in problems with filling forms or understanding legal provisions. As a result, foreigners often turn to companies providing paid assistance in this area; in various cases, the companies appear to be unreliable,

- unclear, often amended provisions and lack of precise information in the offices. This causes (often unconscious) breaking the law,
- lack of fast-track procedures for granting work permit/residence permit available for companies carrying out important projects, e.g. relocating key workers for the project whose role is to quickly train a team;

• **problems related to the quality and functioning of the legal and institutional environment:**

- complicated national provisions related to the functioning of the company and difficulties to reach reliable in-depth sources and fully comprehensive information on establishing and managing a company in Poland by foreigners as well as on the rights and obligations of such entrepreneurs, including in terms of tax provisions, accounting and the functioning of the social security system<sup>106</sup>. In this context a translatability of perspectives is extremely important, which a foreigner originating from a country characterised by a different legal and organisational culture, legal and institutional environment has to face,
- barriers related to the labour law, among others provisions on employment and dismissing employees, growing non-wage labour costs, including social security contributions,
- barriers related to public procurement law, including, inter alia, documents provided during the procurement procedure, the communication method between the contracting authority and the contractor, the length of deadlines during the ongoing procedure, the way offers are evaluated, the amount of contractual penalties, the rules of performing a dialogue/negotiations,

- insufficient access to the sources of financing (including, inter alia, loans, EU funds, subsidies from district labour offices) for the newly established business activity (e.g. the non-refundable financial supports offered by the district labour offices can be usually given only to people experiencing difficulties on the labour market, e.g. people with disabilities or unemployed) and insufficient information concerning the possibilities of obtaining financing,
- language barrier in contacts with offices and other institutions (e.g. banks), with which an entrepreneur has frequent contacts (including the lack of the possibility to register limited liability company via the Internet in a different language than Polish – there is no such problem in the case of companies registered via CEDIG),
- excessive bureaucracy reflected in the necessity to provide often identical documents to several offices simultaneously etc.,
- barriers related to vocational training and provisions on training workers, which frequently raise interpretative doubts and offer little flexibility,
- lengthy proceedings before commercial courts, lack of due protection to the creditor, as a result of which the collection process is not effective,
- limitations related to system of investment incentives in Poland, especially with regard to governmental grants and special economic zones and the support from EU Union (e.g. the amount of the financial support, the length of the procedure for granting the support, delay in the realisation of requests for payment, time limitation of the functioning of the special economic zones),
- unfavourable treatment of the selected groups of entrepreneurs by the employers of control offices and uniform services (e.g. the Vietnamese entrepreneurs),
- limitations with regard to access to services offered by academic enterprises incubators<sup>107</sup> – the

cases were noted in which incubators unwillingly accept foreigners,

- small number of initiatives supporting entrepreneurship targeted to foreigners;
- **problems of formal and legal nature:**
  - lack of possibility to conduct a sole proprietorship by a large group of foreigners staying in Poland on the basis of a temporary residence permit or a visa – this form of activity is perceived by the migrants as the easiest and the cheapest one;
- **problems of personal, social and cultural nature:**
  - limited amount of human and social capital (individual features, skills, structure of contacts etc.) among migrants - entrepreneurs,
  - unfamiliarity with the Polish market and consumer – business ideas of migrants based on the experiences from their countries of origin often do not fulfil the needs of the Polish market, which results in the wrong choice of products and marketing strategy of the company. As a result, the foreigners often need much more time to get used to the Polish reality, examine the market and to ensure constant growth for the business,
  - restricting commercial contacts to the representatives of certain migrant community, which results in narrowing the clients base, closing for further cooperation and limiting the possibility to develop (one of the reasons can be mutual stereotypes/prejudices between the Poles and foreigners, e.g. a myth of low quality and cheap Chinese products can lead to the decrease in the demand on products offered by the Asian entrepreneurs),
  - strong competition on the market,
  - fear of investing – uncertainty related to the duration of stay in Poland, e.g. insufficient duration of the residence permit,
  - differences in the standards of performing business activities in Poland and the foreigners countries of origin (e.g. the manner agreements

are concluded, customer relationship).

- **problems related to the policy of a government:**
  - insufficient promotional activity in the selected parts of the world, e.g. in the Arab countries.

Summing up, many challenges which business migrants face in Poland correspond with the challenges that the Polish citizens face and are related with the institutional and legal environment, in which entrepreneurs in Poland operate (e.g. labour costs, tax system, issues related to the specific stages of establishing a company). What is interesting, the set of above-mentioned challenges faced by foreigners is not always the same for specific groups of foreign entrepreneurs. It depends on many factors. The basic factor appears to be the scale of the business activity, sector in which it is conducted and the capital (financial, human and social) which the foreigner has at her/his disposal. Big, international corporations face different challenges than other entities from the sector of small and medium enterprises which, due to their specific character, encounter many barriers impeding growth and operating of their companies, i.e. capital barrier, information and educational barriers.

For obvious reasons immigrants face additional challenges which stem from the sole fact of being a foreigner. In this context it is worth highlighting that the fundamental issues are: the conditions/criteria for legalising one's stay in Poland and the duration of the legalised stay which influences the size and quality of the investment, entrepreneur's engagement and the idea about his/her stay in Poland.

In this context, an interesting recommendation was laid down on one of the meetings devoted to business migration to Poland<sup>108</sup>. It dealt with the change of the spirit of the legal regulations on the legalisation of stay, thus the need to waive the requirement of the balanced employment of the Polish citizens and foreigners in exchange for the criterion of the higher income (e.g. twice as high as the income required in the case of the employed) and of incurred expenditures, as well as human capital possessed and gained contacts etc.

<sup>106</sup>. Lack of understanding of national law often brings financial consequences, which can lead to the collapse of the firm or the necessity to use financial and accounting counselling offered by the

brokers, who are often unreliable and take advantage of the migrants' lack of knowledge.

<sup>107</sup>. Incubators allow to develop business activity under their name, however without the need to register it (the activity takes place with the use of the incubators NIP and REGON numbers).

<sup>108</sup>. The 9th National Migration Network Conference entitled: „Can business be done in Poland? Business activity of the foreigners – policy and practice,” which took place on the 30th June 2015.

Moreover, according to experts, additional barriers not necessarily related to conducting business activity itself should not be created. As one of such barriers they list the impossibility of sole proprietorship (in the form of so-called "self-employment") to be performed by most of the foreigners coming to Poland. It limits entrepreneurship of many migrants, because of which they can only perform the role of an employee on the labour market, not having many possibilities to develop as small entrepreneurs.

The possible change of the catalogue of people who can perform sole proprietorship activities could

be favourable to the so-called freelancers, so people who work for short-term contracts, e.g. translators, photographers, accountants, masseurs, IT specialists and language tutors. Because of the specific character of the performed activity, such people work for several employers or change the employers often which requires several work permits and result in the need to often apply for new ones (if they end/lose a job on the basis of which they were granted work and residence permits, they have to apply for the permit again).

# 6

## Summary

## 6.0 Summary

Over the last few years, there is a growing interest in applying migration policies in order to increase the attractiveness of certain countries in the context of locating in them foreign capital investments. While the pioneers in introducing such solution were in the eighties Saint Kitts and Nevis and Canada, the last five years constituted a period of increased activity of many countries in this scope (including European countries whose migration policy traditionally favoured particular countries rather than skills), which stems from the fact of the willingness to match the needs of the national labour market better, gain economic benefits, become a regional investment "hub" or to gain additional funds to combat with the negative results of the economic crisis, which was widely described and commented on by the European media.

The countries interested in attracting business migrants present a wide range of approaches to the issue of shaping systemic and/or practical solutions in terms of the entry and residence provisions addressed to this type of migrants. It is worth highlighting that more and more countries decide to introduce special admission programmes addressed exclusively to foreign investors and entrepreneurs. Within the framework of those programmes often fast-track admission procedures are introduced, exclusions from the need to fulfil integration requirements and the accelerated process

of family reunification as well as facilitated settlement through issuing long-term residence permits or accelerated access to the naturalisation procedures is offered.

In Poland, entrepreneurship among migrants so far has not been widely and comprehensively discussed in relation to the Polish migration policy. It seems that in the context of this debate much more space is being devoted to labour and educational migrations.

The system of foreigners' admission to Poland does not currently provide any special migration channel/special programme addressed to the foreigners coming to Poland for business purposes within which any specific entry and stay facilitations are guaranteed in a systematic way.

Although experts more often call for introducing regulations which would facilitate settlement of foreigners carrying out business activities in Poland<sup>109</sup>, at present, business migrants who enter Poland are granted residence permits, obtain citizenship, apply for family reunification and access social security system under general terms and conditions, with no particular facilitations in this area.

It does not however mean a lack of Poland's interest in increasing the inflow of investments and a number of foreign entrepreneurs. The provisions in the key documents of the strategic nature clearly demonstrate that the inflow of those migrants to Poland is perceived by the decision-makers as highly desirable and constitutes a major development impulse. It translates into a range

<sup>109</sup>. Article „Immigranci szansą na załatanie demograficznej dziury?“ [„Immigrants – an opportunity to close the demographic gap in Poland?“], [www.wprost.pl](http://www.wprost.pl) (accessed: 23rd August 2015).

<sup>110</sup>. What is important, the emphasis in the investment incentive system created by Poland has been placed on providing support to entrepreneurs executing large scale projects.

<sup>111</sup>. Automotive sector (in particular the production of car vehicles, body works, trailers and semitrailers, parts, components and accessories to car vehicles and their engines and production of tyres), electronic and production of domestic appliances (in particular production of computers, radio equipment and apparatuses, television

and telecommunication, systems and subassemblies), air (in particular production of aircrafts, parts and accessories to aircrafts and their engines, service activity in the scope of repair, maintenance and repairs of aircrafts and air engines), biotechnological (in particular production in the scope of white biotechnology being used in the industrial processes, red one connected with medicine and healthcare and green dealing with aspects connected with agriculture), agriculture and food (in particular food production and activity connected with innovative methods of its processing, packing and storing); included in 19 national intelligent specialisations.



of actions (among others promotional ones, creating of the system of incentives<sup>110</sup> etc.) which are to encourage investors to invest their capital in Poland.

At the same time, from strategic perspective towards foreign investments, the following investments are preferred:

- in the priority sectors<sup>111</sup> and/or included in 19 national intelligent specialisations with regard to research and innovation policy<sup>112</sup>,
- in the modern services sectors (in areas such as: business processes services, joint service centres and advanced services based on the expert knowledge)<sup>113</sup> and in research and development sector (green-field type),
- production investments generating new workplaces with high productivity (so-called significant investments).

What is important is the fact that business migrants, according to provisions in the "Migration Policy of Poland – the current state of play and further actions", constitute a significant group of foreigners who should be covered by preferential legal regulations concerning the entry, stay and work in Poland.

In this context, it has to be highlighted that consents may currently facilitate the entrance of persons declaring the willingness to engage in the business activity in Poland (including by means of procedural facilitations). It however takes place in individual cases and is conditioned by the circumstances in individual case. Moreover, in 2014 important changes with regard to strict criteria for granting temporary residence permit for the purpose of running business activity were introduced. They consisted in precisifying and objectifying the criteria of verifying the

prerequisite of running the business activity which is beneficial to Poland (which is the basis to grant temporary residence permit).

In the same year, in response to postulates of nongovernmental organisations, within the government administration, the important discussion on the possibility to further facilitate regulations in the future took place. It revolved around the possibility to introduce other non-economic prerequisite<sup>114</sup> for issuing residence permit for the purpose of running business activity, such as e.g. supplying new products, infrastructure improvement, increased availability of services. As a result of the discussion a conclusion was reached that the current legal basis in this area seems to be satisfactory and allows having an individual approach to each case. There is therefore no possibility to precisely define non-economic criteria and any normative construction which is not based on objective economic factors may increase the risk of misuse in this area. It was however agreed that the real assessment of current provisions should take place after 2 year-long application of provisions.

It seems that the proper moment to evaluate and to make decisions about the possible review of the law will be the upcoming evaluation of the assumptions of the Polish migration policy, which was included in the document: "Migration Policy of Poland – Current State of Play and Further Actions" and is planned for the first half of 2016<sup>115</sup>.

Taking into consideration the fact that, in the opinion of the Border Guards, the latest liberalisation of the migration law with regard to legalisation of the stay on the basis of conducting business activity in Poland has not affected yet (during the first couple of months of the new act being in force) the scale of

misuse nor the new undesirable phenomena in this area has occurred and the current scale of irregularities is relatively low, further modifications of legal provisions (further facilities) cannot be excluded.

The separate issue are regulations with regard to forms in which individual groups of third-country nationals can carry out business activity. The foreigner staying abroad and intending to come to Poland for the business purposes for the first time (not having migration experience in Poland so not possessing the basis of residence in Poland, i.e. visa, residence permit) may run business activity only in specific (4 out of 7) forms of commercial companies (i.e. in a form of limited partnership, limited-stock partnership, joint stock company, limited liability company) or has the right to join such companies or purchase or take over shares or stocks in them.

In this case, a foreigner may encounter a barrier at the very beginning of the process of establishing business activity, which is related to the necessity to gather much bigger capital (in particular types of the aforementioned companies, the minimum initial capital required for establishing a company amounts to 5, 50 or 100 thousand PLN), to fulfil the majority of the formal requirements as well as to a greater number of obligations connected with its management. Even though the problems do not affect all the migrants equally, for some of them can significantly hamper their economic initiatives.

Only selected groups of foreigners, mainly the persons residing in Poland for a long time or residing in Poland in connection with family reunification or the ones who have these obligations on the basis of international agreements or Union provisions (among others persons covered with the international protection, holders of EU long-term residence permit) as well as citizens of the United States (pursuant to the provisions of the bilateral agreement in this scope) may take advantage of the possibility to run business activity in the form of sole proprietorship (in a form of individual business

activity) being the most popular form of running business activity in Poland so far. The subjective scope of foreigners who may run business activity in all forms available in Poland (i.e. according to the same rules as Polish citizens) is relatively narrow (even though it was extended in 2014<sup>116</sup>).

The limitations described above influence the scale of the so-called „self-employment” among the foreigners. Despite the fact that the number of foreigners performing sole proprietorship activity grows systematically, on average, only slightly more than 1 thousand foreigners set up this type of company every year.

As for foreigners conducting business activity in other form, so in the form of commercial companies, the number of companies with the foreign capital from outside the EU/EOG countries at the end of 2014 amounted to almost 5,500. What is interesting, micro- and small companies dominate among them (67% of the total number of companies) employing respectively 9 to 49 people (especially in the case of companies managed by migrants coming from Vietnam, Belarus, Turkey, Russia, Armenia and China). Undertakings on much larger scale concern business migrants from Japan, South Korea and the USA.

At this point it must be noted that while in developed OECD countries the relative rate of entrepreneurial activity among immigrants is slightly higher than among citizens of the hosting country, in Poland, the ratio is still the opposite (although the number of foreigners willing to set up and carry out business activity is increasing).

What is however interesting, in the case of some nationalities (mostly the Vietnamese, the Chinese, Armenians and, to a lesser extent, the citizens of Middle East and North Africa countries<sup>117</sup>) business activity is a very important form of professional activity, definitely preferred over an employed activity. Moreover, among certain groups a specialisation is visible which can indicate that in Poland we are witnessing the beginning of ethnic enclave<sup>118</sup> which

**112.** The specialisations were identified within the following areas: healthy society, agriculture and food and environmental bio-economy, sustained energy production, raw materials and waste economy and innovative technologies and industrial processes.

**113.** Poland (to a lesser extent than other countries of East-Central Europe) has become in recent years an important place for offshoring of business services, not only on an European, but also a global scale. As it stems from the professional literature, even though India remains the world leader in this area (with approximately 40% share in the market), the latest projections indicate that in the years to come the share of this country will decrease for the benefit of other, developing localizations, including East-Central Europe (see: Association of Business Services Leaders "Sektor nowoczesnych usług biznesowych w Polsce" ["Sector of Modern Business Services in Poland"], Warsaw 2012). The sector of modern services is one of the fastest growing branches of economy in Poland (generally there is more service invest-

ments than capital investments flowing to Poland); the current growth dynamics of this sector in terms of market value as well as the growth of employment remains at the high level and amounts to approximately 20% per year). According to experts, in the future quality changes within the industry can be expected. The companies show growing willingness to introduce in Poland an increasing number of advanced types of services offered to the clients from all over the world

**114.** At present, during the legalisation procedure the following factors are verified: economic factors (financial aspect of the run activity) and economic and social ones (creating the workplaces/ employing workers).

**115.** According to the provisions of „The Migration Policy of Poland”, also non-governmental organisations and research centres will take part in the evaluation of the assumptions, in the form of public consultations.

**116.** The scope was extended to include foreigners who continue running business activity registered previous on the basis of the entry to CEIDG (in a form of individual business activity) and these are the persons who stayed in Poland on the basis of temporary residence permit during studies (who started running individual business activity while studying and intend to stay in Poland after graduation from full-time studies) or who joining families who continue the stay on the basis of a new purpose, i.e. continuation of business activity).

**117.** E. Pindel (ed.), *Imigranci w Małopolsce* [Immigrants in Małopolska...], op. cit., p. 150.

**118.** According to Waldinger, the term ethnic enclave means the concentration of immigrants in the context of developed intragroup economic cooperation, also covering the employment of people within the same ethnic group - R. Waldinger (ed.) *Strangers at the Gates. New Immigrants in Urban America*. Berkeley, Los Angeles, London: University of California Press 2001.

is characterised by the frequent use of the cultural specificity proper for the context of origin. The group concerned are the Vietnamese (the group concentrating its' activity in the gastronomic area – ethnic cuisine – and in clothing trade), Armenians (trade at the markets) and the Arab society (gastronomic activity – ethnic cuisine).

Many challenges which business migrants face in Poland correspond with the challenges that the Polish citizens face and are related with particular elements of investment climate - the low quality (although noting improvements) of institutional and legal environment, in which entrepreneurs in Poland operate (e.g. labour costs, tax system, issues related to the specific stages of establishing a company, low efficiency of public institutions, i.e. courts acting slowly). What is interesting, the set of challenges faced by foreigners is not always the same for specific groups of foreign entrepreneurs. It depends on many factors, i.e. the scale of the business activity, sector in which it is conducted and the capital (financial, human and social) which the foreigner has at her/his disposal. Big international corporations face different challenges than other entities from the sector of small and medium enterprises which, due to their specific character, encounter many barriers impeding growth and operating of their companies, i.e. capital barrier, information and educational barriers.

For obvious reasons immigrants face additional challenges which stem from the sole fact of being a foreigner. In this context it is worth highlighting that the fundamental issues are: the conditions/criteria for legalising one's stay in Poland and the duration of the legalised stay which influences the size and quality of the investment, entrepreneur's engagement and the idea about his/her stay in Poland. The major obstacle is also undoubtedly the length of the proceedings legalization itself, which in the past two years has significantly increased (especially in the Mazowieckie voivodship, which is primarily due to the increased interest among foreigners to legalise their stay in Poland, which is linked to the entry into force - in 2015 - of the new act on foreigners and the unstable situation in Ukraine).

Taking into consideration the size of the business activity carried out by the foreigners, it remains a huge challenge to continue to remove barriers with regard to small and medium enterprises.

Moreover, according to experts, additional barriers not necessarily related to conducting business activity itself should not be created. As one of such barriers they list the impossibility of sole proprietorship (in the form of so-called "self-employment") to be performed by most of the foreigners coming to Poland. It limits entrepreneurship of many migrants, because of which they can only perform the role of an employee on the job market, not having many possibilities to develop as small entrepreneurs.

Carrying out business activity by immigrants, even though it is associated with many challenges, is an extremely important factor engaging the migrant communities into the socio-economic life of the receiving country, contributing, mainly, to shaping the Polish labour market and reducing unemployment (through creating for oneself and others, also other foreigners and Polish citizens, jobs<sup>119</sup>), to the economic development of the country, to the state budget (additional incomes from taxes), to the development of cross-border trade and economic ties, to increased accessibility to services and new products (including, inter alia, a certain cultural transfer – cultural aspect favourable for Poland and the Polish society), to the improvement of infrastructure and even to the growth of innovativeness. The role which entrepreneurship plays with regard to possible discrimination of specific groups of migrants on the labour market is crucial. Already right now the importance of carrying out business activity can be noticed with regard to the Arab community in Poland.<sup>120</sup>

Due to the fact that many skilled migrants, including migrant entrepreneurs come to the host country first in order to study, and later set up/carry out business activity, the direction set in the Polish migration policy, which consists in allowing foreigners to stay in Poland following their studies and facilitating youth entrepreneurship, seems appropriate. It can foster the development of entrepreneurship among migrants in the future.

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119. As the research demonstrates ethnic structure of employees shapes differently depending on the ethnic group - E. Pindel (ed.), *Imigranci w Małopolsce...* [Immigrants in Małopolska], op. cit., p. 153.

120. R. Stryjewski, *Integracja społeczna i gospodarcza imigrantów wyznania muzułmańskiego w Polsce* [Social and Economic Integration of Immigrants of the Muslim Origin in Poland], Warsaw 2012.





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The system of foreigners' admission to Poland does not currently provide any special migration channel/ special programme addressed to the foreigners coming to Poland for business purposes. Nevertheless, business migrants, according to provisions of the "Migration Policy of Poland – the current state of play and further actions", constitute a significant group of foreigners who should be covered by preferential legal regulations concerning the entry, stay and work in Poland.

This report was prepared in relation with Polish membership in the European Migration Network and constitutes contribution to the report synthesising the knowledge about admitting third-country citizens who arrive to the EU countries for business purposes.

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