



Intra-EU Mobility of Third-Country Nationals

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

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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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Executive summary



While EU citizens, in line with the Treaty on the European Union, have the right to move and reside freely on the territory of Member States, only certain categories of migrant workers may benefit from rights in terms of intra-EU mobility, on the basis of the EU *acquis*. These include **migrants granted long-term resident status by the EU country, highly qualified professionals** (so-called EU Blue Card holders), **students, researchers, and posted workers**.

Regardless of certain special principles facilitating the movement of the abovementioned groups of migrants within the EU, their legal status in another EU country never results in automatic granting of the analogous status in Poland. They have to once again undergo the entire administrative procedure related to legalising their stay in Poland.

These foreigners acquire the various rights, to which this group of migrants is entitled (inter alia in the field of family reunification, access to the labour market and benefits from the social assistance system) under EU Directives, only after obtaining appropriate residence permit legalising their stay in Poland.

Groups of third-country nationals who are not provided for the mobility right by the EU Directives are covered by the national legislation of Member States. In particular, these include **cross-border workers, seasonal workers and workers in regulated pro-**

fessions. In Poland, they have to meet the same requirements for obtaining entry and residence permits as foreigners applying for permits directly from their country of origin or from any third country. This means that if they decide to enter Poland from another EU country and they intend to stay longer than 90 days within six-month period, they have to apply for Polish visa or residence permits in line with general conditions.

Despite many constraints as regards the availability of data illustrating the actual volume of intra-EU movements and many reservations as regards its accuracy, one has to note that **number of mobile third country nationals who decide to come to Poland from another EU country is rather insignificant**. The overwhelming majority of foreigners arrive in Poland directly from their country of origin or other third country.

Aside from the conditions for entry and legalisation of stay, which a third-country national must fulfil when deciding to come to Poland from another EU Member State, there is a number of restrictions, mainly connected with the labour market (such as availability of jobs, salary levels), which can influence a foreigner's decision on coming to Poland. It should be noted that these factors, not only the rules regarding entry, are the most significant reason for low attractiveness of Poland to mobile third-country nationals.

Introduction and context for the EMN study



This study was produced by the National Contact Point to the European Migration Network in Poland (PL NCP EMN) and constitutes a national contribution to the EMN focused study whose objective is to evaluate the main issues and challenges relating to intra-EU mobility of third country nationals.⁶⁵

The EMN study will contribute to better understanding of current national regulations, policies, practices and challenges as well as obstacles to intra-EU mobility for third-country nationals, which will help the European Commission to decide whether further actions at EU level in this field are needed. The study should enable a critical analysis of certain assumptions which have so far shaped the development of EU acquis. These include the belief that only highly qualified third-country nationals are mobile and the perception that third-country nationals are more mobile than EU citizens.

The report follows the common specifications adopted by the European Migration Network. Along with them, the study looks at national legislation relating to intra-EU mobility of selected groups of third-coun-

try nationals and highlights the differences which exist between the categories of migrants provided for in European legal instruments and those covered by national regulations and procedures.

In order to identify scale and scope of the mobility of foreigners coming to Poland after having resided in another EU country, data was drawn from several sources, such as the population register PESEL,⁶⁶ Pobył⁶⁷ register, regular statistical survey

65. 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* (Source: EMN Glossary 2.0).

66. PESEL is an acronym of Powszechny Elektroniczny System Ewidencji Ludności (Universal Electronic System of Population Records), while the PESEL number is an 11-digit number with which a given individual is registered in the system, a unique identifier. At present, a PESEL number is the most important identifier of individuals in Poland. It is granted automatically to any Polish citizen and foreigner at the time of registering his/her address at a gmina office for permanent residence or temporary residence longer than three months. Other individuals are granted the number when they are first covered by the Polish social insurance system or health care system. In this situation, it is the payer of insurance contributions, usually the employer, who applies for the PESEL number for a given individual.

Not having a PESEL number may result in a situation where a person may have problems in settling the matters in all cases where the PESEL number is used for identification. It may result in not being able to exercise certain rights, such as health care benefits (e.g. medicine reimbursement – the PESEL number must be stated on prescriptions).

67. The “Pobył” system is a domestic ICT system gathering all data on proceedings linked to granting permits to foreigners. It allows to maintain registers and records of foreigners in the field of visas, invitations, residence for a specified *period of time*, settlement, international protection, expulsions and persons undesirable on the territory of the Republic of Poland. The system contains information about EU citizens and their family members, and also about

conducted by the Central Statistical Office (CSO), Visa-Consul system⁶⁸ and from statistics of the Ministry of Labour and Social Policy. Proxy sources of statistics have also been used that could provide indications of patterns and trends in intra-EU mobility among third-country nationals.

In the context of this study, 'intra-EU mobility' refers to movements from one EU Member State to another EU Member State normally to stay for more than three months and principally for the purpose of work.

The scope of the study includes third-country nationals who using the right to travel throughout the Schengen area they have gained through their residence in the first Member State, legally enter a second Member State where they decide to extend their residence permit. This group of migrants includes workers employed in high-skilled jobs (e.g. EU Blue Card holders), skilled jobs and low-skilled jobs, persons employed in regulated and unregulated professions, researchers, posted workers, cross-border workers and seasonal workers. The study also highlights students as a group that may be considered important from a labour market point of view.

Third-country nationals travelling as tourists, other kinds of visitors as well as irregular migrants are not included in the scope of the study.

Although the study does not focus on the intra-EU mobility of EU citizens, the mobility rights of EU citizens will form an important backdrop to the study since intra-EU movements of third-country nationals are affected in part by the flow of EU nationals.

Among the recipients of this report are the National Contact Points of the European Migration Network, the European Commission, national as well as European policy-makers, national executive institutions and the society – non-governmental organizations, research institutes and other stakeholders.

• Methodology applied

The report is mainly based on the desktop research method, in particular on the analysis of the legal provisions and statistics from public institutions.

The information included in the national report relate to the Polish legal framework as at 30 April 2013, in particular the *Act of 13 June 2003 on foreigners*,⁶⁹ the *Act of 20 April 2004 on employment promotion and labour market institutions*⁷⁰ and the draft Act on foreigners, which is planned to be adopted in the second half of 2013.

The main contribution to this report was provided by the Migration Policy Department in the Ministry of the Interior, in cooperation with the Department of Consular Affairs in the Ministry of Foreign Affairs, the Office for Foreigners, the Department of Labour Market in the Ministry of Labour and Social Policy and the Demographic Surveys and Labour Market Department in the Central Statistical Office.

Information on national rules and procedures regulating the validation of foreign educational certificates and on related practical problems was developed on the basis of materials provided by education boards, i.e. some of the institutions responsible for matters related to the validation of certificates and diplomas in Poland.

third-country nationals. The system is administered by the Head of the Office for Foreigners.

68. The "Wiza-Konsul" system was launched in 2011 in order to provide IT support to the work of Polish consular offices around the world. It is integrated, inter alia, with the e-konsulat system, the Schengen Information System (SIS) and, through an integrated local border traffic subsystem, with the Office for Foreigners' registers.

69. Dz. U. [Journal of Laws] of 2011, No 264, item 1573, as amended.

70. Dz. U. [Journal of Laws] of 2008, No 69, item 415, as amended.

1

The national legislative framework: visas and residence permits



1.1. General rules of entry and stay in Poland

Determining the requirements to be met by third country nationals wishing to come to Poland after they stayed in another EU Member State, it is necessary to distinguish between the legal situation of the people coming from a country which is a member of the Schengen area or a country which is not.

According to the EU regulations, if a foreigner is staying in a Schengen country, he/she can enter Poland pursuant to the provisions of Article 21 of the *Convention implementing the Schengen Agreement*,⁷¹ i.e. if he/she has a (Schengen or national) visa or a residence document issued by another country of the Schengen area.⁷²

Pursuant to the principle of free movement in the territories of the Schengen area countries, the holder of a national visa issued by another EU Member State may stay in Poland for up to 90 days

during a half-year period if the general conditions of entry and residence within the Schengen area are satisfied.⁷³ For a foreigner who holds a residence permit issued by another Schengen area country, the stay cannot exceed 90 days during the next 180 days. Thus, if a third-country national intends to stay in Poland for longer than three months, it is appropriate to obtain a national visa (valid for 1 year) issued by a Polish consul or a residence permit for a specified period of time issued by a competent voivode (an application for a residence permit for the a specified period of time can be submitted through a consul or directly to the voivode competent for the foreigner's place of residence if the foreigner is staying in Poland legally on the basis of other stay documents; a residence card issued in connection with granting of the said permit must be, however, picked up in person). In order to obtain the permit referred to above, the foreigner must prove, that the aim of his/her stay in Poland justifies residence on its territory for longer than 3 months.

71. OJ L.00.239.19.

72. Foreigners who are exempt from the obligation to hold a visa (in the framework of visa-free movement) can stay in Poland for up to 90 days (if they stayed in another EU country under visa-free regime, the period of stay in that country should be deducted from that period). After the elapse of this period, they can stay in Poland on the condition that they had obtained a permit for residence for a specified period of time.

73. I.e.: a foreigner holds a valid travel document, is able to justify the purpose and conditions of the planned stay, has sufficient funds for maintenance or a possibility to obtain such funds legally, is not considered a threat to public order, internal security, public health and international relations of any of the Member States, and in particular he/she had not been entered into the national database of any Member States for the purpose of entry refusal on such grounds.

If a third country national is to enter Poland from the EU country outside the Schengen area, general rules on entry and stay for all foreigners are applicable. Thus, in order to enter Poland a foreigner staying in a non-Schengen country should obtain a relevant visa (a national visa or a Schengen visa) authorising him/her to stay in Poland during its validity period, or he/she should legalise his/her stay on the basis of a *residence permit for a specified period of time*. Foreigners who are citizens of a country covered by a visa-free regime may enter Poland without visa, most often for a period up to 90 days and then they should legalize their stay on the basis of the *residence permit for a specified period of time*.

At the moment, regardless of the country from which the foreigner plans to enter Poland, the application for granting *residence permit for a specific period of time* may be submitted upon arrival to Poland as well as abroad - through a Polish consul. This situation will change slightly when the new Act on foreigners is adopted which provides for eliminating the possibility for foreigners to apply for a residence permit when staying abroad. Eliminating this option will result in a situation where foreigners arriving to Poland from a third country will be able to apply for a residence permit once they enter Poland on the basis of a visa (if required), whereas mobile third country nationals will enter Poland on the basis of the residence permit issued by another EU country – a member of Schengen area – and be able to reside on its territory up to 90 days during which they may submit the said application to the voivode.

In connection with the specific nature of the above regulations, this part of the study will present the Polish rules of entry that concern only the foreigners who move from one Member State to Poland with an intent to remain in Poland for a period longer than 3 months. For the

needs of this report, the group of foreigners will be called mobile third country nationals.

In order to portray the rules and procedures regulating intra-EU mobility of third country nationals, they were collated with the provisions on exercising the right to free movement within the EU by EU and EFTA country citizens, which form the background of this study.

Polish regulations provide for a very simplified procedure of **acquiring Polish residence documents by EU and EFTA country citizens**. In the case of a stay up to three months long, they can enter into and stay in Poland solely on the basis of a valid travel document or another valid document that confirms their identity and citizenship. If their stay in Poland lasts longer than three months, they acquire the right to stay in the Republic of Poland by virtue of law if they meet one of the following conditions:

- They are employees or self-employed persons working in Poland,
- They are covered by public health insurance or are persons entitled to health care benefits under the provisions on the coordination of such benefits, and have sufficient funds to support themselves and their family members in Poland so as not to become a burden on social assistance,
- They study or attend vocational courses in Poland and are covered by public health insurance or are persons entitled to health care benefits under the provisions on the coordination of these benefits, and have sufficient funds to support themselves and their family members in Poland so as not to become a burden on social assistance,
- Are spouses of Polish citizens.

In such a situation, they only have an obligation to register their stay at an Office of the Voivode.

After 5 years of continuous residence in Poland,⁷⁴ every citizen of the European Union/EFTA country acquires the *right of permanent residence*. In special cases, such as entering into retirement age, early retirement, permanent incapacity to work, this period is reduced.

In addition, all citizens of the EU/EFTA countries have free access to the labour

In order to enter Poland a foreigner staying in a non-Schengen country should obtain a relevant visa or residence permit

market in Poland (without the need to obtain work permits), regardless of the type and duration of work, and they have the ability to conduct economic activity on the same terms as Polish citizens.

The most important procedural differences concerning the legalisation of stay in Poland by EU/EFTA citizens and mobile third country nationals are as follows:

- **Waiting time for registering/legalising of stay** - residence registration and issuing a certificate of registration of the residence of an EU/EFTA country citizen is made immediately (this is a formal and technical activity); granting

74. Residence in the Republic of Poland is considered continuous if the breaks do not exceed a total of 6 months in a year.

a *residence permit for a specified period of time* to a third country national takes place under the procedure of an administrative decision, and the application processing time is one month (in the case of particularly complex cases – two months from the date of initiation of proceedings);

- **Presence when submitting the application** - citizens of an EU/EFTA countries (except for minors) submit an application for the registration of their stay personally, as opposed to third country nationals who may file the application for a *residence permit for a specified period of time* by proxy; the situation is the reverse in the case of collecting the documents issued by the voivode;
- **Date of submitting the application** - citizens of an EU/EFTA country submit an application for the registration of their stay not later than the day following the elapse of three months from the date of entry into Poland, while third country nationals applies for a *residence permit for a specified period* at least 45 days before the expiry of the period of their legal stay in Poland⁷⁵ (revoking the obligation is provided for in the new Act on foreigners, whose adoption is scheduled at the second half of 2013);
- **Requirements as regards documents** - a list of documents required to be presented is broader in the case of the legalisation of their stay in Poland by non-EU country nationals (as opposed to mobile third country nationals, citizens of EU/EFTA do not need to append the application submitted at the voivode with e.g. the legal ti-

75. The exception is a situation where a foreign national applies for a *residence permit for a specified period of time* in order to work in a profession that requires high qualifications. In this case, the period for submitting the relevant application is up to one month from the arrival in Poland.

tle to the residential premises, proof of having sufficient funds to cover the cost of return),⁷⁶

- **Fees to be paid for issuing a permit** - citizens of EU/EFTA countries are exempt from stamp duties, whereas third country nationals have to pay a fee for issuing residence permit (340 zł – approx. 85 euro) as well as for issuing residence card (50 zł – approx. 12 euro);
- **Documents' layout** - the documents legalising the stay of an EU/EFTA country citizen in Poland are different from the documents issued to third country nationals in terms of their format, types of security features and the scope of information contained therein;
- **Obligation to register** - the obligation to register one's address⁷⁷ for up to three months concerns only third country nationals.

Although both categories of persons are entitled to family reunification, the terms of exercising the right are different.⁷⁸ The definition of a family member is, moreover, broader in the case of EU/EFTA country citizens.⁷⁹

76. Citizens of non-EU countries must attach a photograph to the application and are required to present a valid travel document. EU citizens are exempt from appending the application for registration of their residence with a photo and can present a valid travel document or another valid proof of identity and citizenship.

77. The address registration requirement is the requirement to inform the competent authority about the stay in Poland and its intended duration.

78. Citizens of non-EU countries may apply for family reunification after two years of staying in Poland, pursuant to a *residence permit for a specified period of time*. There are no such restrictions for EU citizens.

79. A family member of an EU citizen is (according to Article 2(4) of the Act of 14 July 2006 on entry into, residence in and departure from the Republic of Poland of nationals of the European Union Member States and their family members):

- a spouse,
- a child of an EU citizen or of his/her spouse,

1.2. Groups of third-country nationals who enjoy mobility rights under the EU's migration Directives

1.2.1. Long-term residents in another EU country

When planning a stay in Poland for longer than three months, a foreigner holding a residence permit for an EU long-term resident granted by another EU country must apply for a national visa or a specific dedicated *residence permit for a specified period of time* (the permits are granted pursuant to Article 53(1)(13) of the Act of 13 June 2003 on foreigners⁸⁰). The condition for granting such a permit, however, is that the foreigner must prove he/she intends to work or conduct economic activity in Poland, to take up or continue studies/vocational training, or that there are other circumstances justifying his/her residence in Poland if the circumstance that is the basis for applying for the permit justifies his/her residence in Poland for a period longer than three months.

aged up to 21 or dependent on the EU citizen or his/her spouse,

- father, mother of an EU citizen or of his/her spouse dependent on the EU citizen or his/her spouse.

A family member of a third country national is (according to Article 53 (2) of Act of 13 June 2003 on Foreigners):

- a spouse;
 - a minor child of the foreigner or of his/her spouse, also a foster child;
 - the foreigner's child, also a foster child, who is a minor being the foreigner's dependant over whom the foreigner exercises actual parental authority;
 - the child of a foreigner's spouse, also a foster child, who is a minor being the foreigner spouse's dependant over whom the spouse exercises actual parental authority.
80. Article 53 (1) (13) - "*Residence permit for a specified period of time is granted to a foreigner who ... hold a long-term EU residence permit granted by another European Union Member State and intends to work or conduct economic activity based on the regulations in force in the Republic of Poland, or takes up or continues studies or professional training, or s/he proves that there are other circumstances justifying his/her residence in the Republic of Poland...*" (Dz. U. [Journal of Laws] of 2011, No 264, item 1573, as amended).

Having a long-term EU resident status granted by another EU country does not give any privileges to foreigners in Poland – the holder must comply with all the general terms while applying for a Polish residence permit.

„EU Blue Card” holders who were granted the residence permit in Poland benefit from preferential rules on family reunification

Foreigners who stay in Poland on the basis of the above *residence permit for a specified period of time* have free access to the labour market because they are exempt from the obligation to obtain a work permit. They can also take up and conduct economic activity in Poland on the same terms as Poles.

EU citizens are not eligible to obtain the status of a UE long-term resident status in another EU country explicitly. In the case of arrival of an EU citizen to Poland after he/she had spent a long time in another EU country, the general rules of entry and residence of EU citizens in Poland apply, i.e. the need to register his/her residence with the voivode when the foreigner's stay in Poland is longer than three months. The foreigners have the opportunity to stay in Poland if they meet one of the conditions specified in the subsection 1.1.

1.2.2. EU Blue Card holders

Third country nationals holding the “EU Blue Card” issued in another Member State who intend to work in Poland in a profession that requires high qualifications for a period longer than three months must apply for a national visa or a specific dedicated single permit for stay and employment (a *residence permit for a specified period of time in order to work in a profession that requires high qualifications*, or the Polish Blue Card⁸¹). However, the basic requirement is to reside in an EU country that issued the “EU Blue Card” for a minimum of 18 months and to submit an application for a permit not later than within one month from arrival in Poland to the voivode. Holding a Blue Card in another country does not give any privileges to foreigners in Poland – the holder applying for the card in Poland must comply with all the terms for such a residence permit (under *Directive 2009/50/EC*), which are the same as in the case of applying for the first time directly from the country of origin of the foreigner.

Holders of the “EU Blue Card” who were granted the *residence permit for a specified period of time* in order to work in a profession that requires high qualifications in Poland benefit from preferential rules on family reunification. They can submit a relevant application even on the first day of their stay on the basis of the above permit.

If the holder of the “EU Blue Card” applies from another EU country for a Polish residence permit under other circumstances than working in a profession that requires high qualifications, he/she must meet all the standard conditions required for a particular type of a permit. If a foreigner who holds the “EU Blue Card” applies in Poland for the residence permit for an

81. Article 63a of the Act of 13 June 2003 on foreigners.

EU long-term resident, the period of legal stay in the European Union is included in the periods of residence required for granting the above permit.⁸²

EU citizens are not eligible to the “EU Blue Card” or any other equivalent facility. In the case of EU citizens who declare to have taken up employment in Poland in a profession that requires high qualifications, the general rules of entry and residence of EU citizens in Poland apply, i.e. the need to register their residence with the voivode when the foreigners’ stay in Poland exceeds three months. When registering, the foreigners must present documents to confirm they meet one of the conditions specified in the subsection 1.1.

Assuming that they would wish to register their stay in Poland due to the performance of work (including work in a profession that requires high qualifications), they are only required to prove that they actually work in Poland.

They must provide proof of employment or a written statement by the employer or the entity authorised to delegate work on the intention of entrusting work in the foreigners, while the holders of the “EU Blue Card” who are nationals of a third country must meet additional requirements, such as have health insurance and document their high qualifications. In addition, they must receive an annual gross salary of an appropriate amount.

EU citizens don’t have to inform the voivode of changes in the terms of employment. After the registration of resi-

dence, they can change employers, type of their job and salary depending on their needs. During first two years of their residence in Poland, based on the Blue Card, third country nationals are, in turn, required to report any changes in their working terms that are included in the permit. In addition, in the event of a change of employer or change in the conditions of employment set out in the permit, they must change the current permit. After two years of their stay in Poland, they still need to report any changes mainly in their position and salary.

1.2.3. Researchers

Third country nationals who are residing in another EU country and want to work in Poland as a researcher (according to the *Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research*⁸³) for a period longer than three months must apply for a national visa or a *residence permit for a specified period of time*. Polish legislation provides for several circumstances for granting such a permit. The first one is the case when such person holds the stay document referred to in Article 1(2)(a) of *Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals*⁸⁴ with a note “researcher” issued by another Member State of the European Union (on the basis of *Directive 2005/71/EC*).⁸⁵ In such a situation, however, a *residence permit for a specified period of time* is granted only if the agreement for the implementation of the research project concluded with the appropriate research institution of the Member

82. This refers to a situation where the foreigner resided in the EU for at least five years, including in Poland for at least two years immediately before submitting the application for a residence permit for an EU long-term resident on the basis of a *residence permit for a specified period of time* in order to work in a profession that requires high qualifications.

83. OJ L 289 z 3.11.2005.

84. OJ L 157, 15.6.2002, p. 1–7.

85. These circumstances do not apply to foreigners who intend to carry out research in the framework of PhD studies or delegated by a scientific establishment based in another Member State of the European Union to a research institute based in Poland.

State provides for conducting research in Poland.⁸⁶ Foreigners granted the permit are exempt from the obligation to obtain a work permit and are eligible to preferential policies for family reunification (they can submit an application even on the first day of their stay on the basis of the above permit).

If in the agreement there is no provision on possibility of conducting research in Poland, the foreigners must conclude

permit for the first time directly from the country of origin of the foreigner.

As to EU citizens in Poland declaring to take up work as a researcher, there is no separate procedure in the area of verification provisions and general rules of entering into and stay in Poland for EU citizens are applied, i.e. the need to register their stay with the voivode when the foreigner's stay in Poland exceeds three months. To register their stay, they can indicate they work in Poland.

While the purpose of a stay in Poland of a researcher who is a national of a non-EU country is to participate in a specific research project (on the basis of an agreement with a given scientific institution), EU citizens can get involved in several different projects at the same time. In addition, the research institution cooperating with a non-EU country national is additionally required to bear the costs of residence and expulsion of the foreigner, covered from public funds, in specific situations.

Arrival of an international student to Poland from another EU country has no effect on the rules and procedures for the legalisation of his/her stay

a new contract for admission for implementation of a research project⁸⁷ with the appropriate scientific institution in Poland and apply for a stay permit⁸⁸ on this basis (the conditions of access to the labour market and family reunification are the same as for the above categories of persons). It is also possible to apply for an alternative residence permit, i.e. for taking up, continuing education in Poland or to work. The general terms of issuing all these permits, however, are the same as in the case of applying for a residence

1.2.4. Students

Third country nationals staying in another Member State who plan to stay in Poland for longer than three months in order to take up or continue studies started in another EU country must apply for a national visa or a special dedicated *residence permit for a specific period of time* (the circumstances of granting such a permit are laid down in Article 53(1)(16) of the *Act of 13 June 2003 on foreigners*. It is important that only **students of full-time studies or full-time PhD studies** may apply for such a permit.⁸⁹ Other cat-

86. Article 53(1)(18) of the *Act of 13 June 2003 on foreigners*.

87. The institution must be approved by the minister competent for science on the basis of a decision issued for a period of 5 years. In particularly justified cases, the decision to approve the research institution may be issued for a period of less than 5 years.

88. Article 53(1)(17) of the *Act of 13 June 2003 on foreigners*.

89. As such, Polish provisions regulate the issues connected with student mobility more favourably than it has been foreseen by *Council Directive 2004/114/EC*. In the case of foreigners wishing to continue university studies in Poland, which they have started in another Member State, the re-

egories of students, including **post-graduate students**, as well as those **participating in year-long preparatory courses to study in Polish language**,⁹⁰ can apply for a *residence permit for a specific period of time* due to a different circumstance (as described in Article 53a(1)(1a) of the *Act of 13 June 2003 on foreigners*), i.e. to take up or continue education. The fact that the legislator made such as a clear distinction between these two categories of foreign students in the legalisation procedure has its legal consequences, such as a different set of documents that a foreign national is required to attach to the application and a different procedure of issuing decisions in these two situations.

The terms of issuing the permits in question are, however, the same as in the case of applying for them for the first time directly from the country of origin of the foreigner. Arrival of a third country national to Poland to study from another EU country has no effect on the rules and procedures for the legalisation of his/her stay – the foreigner must comply with the general terms of admitting foreigners to study in Poland.

As to EU citizens in Poland declaring to take up studies in Poland, the general rules of entering into and staying in Poland for EU citizens are applied, i.e. the need to register their stay with the voivode when the foreigner's residence in Poland exceeds three months. To register their stay, the foreigners can invoke the fact that they study in Poland.

Unlike students who are EU citizens, not

all students who are third country nationals have unrestricted access to the Polish labour market. Persons residing in Poland on the basis of a *residence permit for a specified period of time* issued in connection with the circumstance referred to in Article (53)(1)(16) of the *Act of 13 June 2003 on foreigners* as well as selected groups of interns and trainees have unrestricted access to the Polish labour market, whereas other categories of persons, with the exception of the summer months (July-September), must have the required work permit.

In addition, some restrictions on the admissible working time apply to third-country nationals. Although the Polish legislation does not define the maximum number of hours that a foreigner may work (on a weekly/monthly basis) during his/her studies, excessive gainful activity may result in revoking a residence permit, if public authorities recognise that the purpose of their stay in Poland was other than the declared one (work instead of studies).

The criterion of funds sufficient for maintenance, required when legalising one's stay in Poland, is higher in the case of non-EU nationals. In addition, they must demonstrate that they have funds sufficient to cover the cost of return and the cost of studies.

1.2.5. Posted workers

Third-country nationals who, while staying legally in another EU Member State, are temporarily delegated by their employer to Poland for the purpose of cross-border provision of services for the period exceeding three months, have to apply for a national visa or for a *residence permit for a specified period of time* for the purposes of employment.⁹¹

quirement laid down in Article 8(1)(c) of the above-mentioned Directive is applied, i.e. participation in a Community or bilateral exchange programme or being admitted as a student for no less than 2 years.

90. The draft new Act on foreigners provides that foreigners attending a preparatory course can apply for the same type of permit as full-time students.

91. Article 53(1)(1) of the *Act of 13 June 2003 on foreigners*.

If a foreigner is delegated by an employer with a seat in a Member State of the European Union, a non-EU state of the European Economic Area (Iceland, Liechtenstein, Norway) or Switzerland, the residence permit cannot be refused if the sole basis for such refusal would be an illegal stay in Poland. Furthermore, if a foreigner is delegated to Poland by an employer that acts under the law of the Swiss Confederation and whose seat, head office or principal place of business is located on that territory, such a foreigner is exempted from numerous requirements when applying for a *residence permit for a specified period of time*, for example from the requirement to prove a stable and regular source of income, health insurance and a legal title to a dwelling, where s/he intends to stay.

Otherwise and in cases where the employer delegating a foreigner is located in a non-EU country, a non-EU state of the European Economic Area (Iceland, Liechtenstein, Norway) or Switzerland, general requirements for a foreigner to obtain the abovementioned type of *residence permit for a specified period of time* apply. A mobile third-country national who applies for this permit has to meet all the general conditions for granting a residence permit, which are the same as those applicable to foreigners applying for such permits directly from their countries of origin.

Depending on the type of delegation, different rules of the access to the labour market apply to foreigners. If a foreigner is delegated to Poland to provide services by an employer with a seat on the territory of a Member State of the European Union, a non-EU state of the European Economic Area (Iceland, Liechtenstein, Norway) or Switzerland, he/she can work in Poland without the need to obtain a work permit.

However, a work permit is required if a foreigner:

- works for foreign employer and is delegated to Poland for a period exceeding 30 days within a calendar year to a branch or an establishment of a foreign entity or an entity bound by a long-term cooperation agreement with his/her employer,
- is delegated to Poland by his/her foreign employer that does not have a branch, an establishment or other form of organised activity in Poland, in order to provide a service on a temporary and occasional basis (export service),
- is delegated to Poland for a period exceeding 3 months in consecutive 6 months for other purposes that those indicated above.

In terms of legalisation provisions, there is no separate way of treating EU citizens delegated to Poland to provide services. General rules on entering into and staying in Poland by EU citizens apply, i.e. their stay must be registered by the Voivode if it exceeds the period of 3 months. People intending to register their stay may invoke the fact of working in Poland. During registration they need to present documents confirming that they fulfil one of the conditions listed in the subsection 1.1.

In addition, they are exempted from the obligation to have a work permit, irrespective of the type of delegation.

1.3. Groups of third-country nationals who are not provided with the right to mobility by the EU acquis

1.3.1. Cross-border workers

As for third-country nationals residing in a neighbouring Member State who are employed as cross-border workers in Poland, special national policies and procedures governing the possibility to get a visa and to a residence permit do not apply. Such foreigners legalise their stay according to general rules, which means that, if their total stay in Poland exceeds 3 months during a half-year period, they are required to obtain a relevant national visa or a *residence permit for a specified period of time*.

The fact that a cross-border worker has been granted a residence permit in another EU country does not facilitate in any way the legalisation procedure.

The Polish legislation for the access to the labour market does not foresee any special regulations dedicated only to cross-border workers; such persons as a specific category of labour migrants are not included in the catalogue of foreigners entitled to work in Poland without the need to have a work permit. Therefore, as a rule, cross-border workers must have work permits. In Poland it is possible to conduct a cross-border work (i.e. where a foreigner has to frequently return to the EU country where he/she obtained a work permit) without the need to have a work permit only for people who carry out a specific kind of work listed in specific provisions, such as for example:

- a foreign language teacher at educational institutions,
- a permanent correspondent of foreign mass media accredited by the minister relevant for foreign affairs,

- a clergyman, a member of a religious order or other persons whose work is related to the religious function they fulfil, in churches and religious associations, national inter-church organisations,
- people carrying out trainings, fulfilling advisory or supervisory functions or functions requiring special qualifications and skills under programmes implemented in the framework of EU activities or other international aid programmes,
- people working for Members of the European Parliament in relation to the function fulfilled,
- people performing work in relation to sports events of international importance, delegated by relevant international sports organisation,
- university teachers, including persons delivering classes, speeches, presentations on an occasional basis (up to 30 days per year) which are of exceptional scientific or artistic value, if they reside permanently outside Poland.⁹²

In the case of a stay in Poland for a period exceeding 3 months, an EU citizen is required to have his/her stay registered by the Voivode – there is no separate way of treating EU citizens in terms of legalisation provisions, and general rules on entering into and staying in Poland by EU citizens apply.

People intending to register their stay may invoke the fact of working in Poland. During registration they need to present

92. The Regulation of the Minister of Labour and Social Policy of 20 July 2011 on cases when work can be commissioned to a foreigner in the territory of the Republic of Poland without the need to obtain a work permit (Dz. U. [Journal of Laws] No. 155, item 919).

documents confirming that they fulfil one of the conditions listed in the “Introduction”.

EU citizens may work in Poland without the need to have a work permit even if they reside outside its territory. They have free access to the labour market on the territory of the Republic of Poland, regardless of the type and period of the work they conduct.

1.3.2. Seasonal workers

In Poland, there are no special rules or procedures on issuing residence permits to third country nationals who live in an-

No special rules on issuing residence permits apply if a foreigner who lives in another EU country and wishes to perform seasonal work in Poland for longer than three months

other EU country and wish to perform seasonal work in Poland for longer than three months.

These foreigners must legalise their stay in Poland on general terms, i.e. on the basis of a national visa or a residence permit.

While the citizens of Belarus, Georgia, Moldova, Russia and Ukraine can take advantage of the so-called simplified procedure for taking up short-term legal employment for the purpose of performing short-term work, including seasonal

work⁹³ (without the necessity to hold a work permit, on the basis of a written declaration of the employer on the intention to employ a foreigner for a period not exceeding six months over the next 12 months, registered in a poviata labour office), other foreigners must obtain a work permit.⁹⁴

EU citizens carrying out work in Poland as seasonal workers for a period of more than 3 months are subject to the general rules of entry into and stay in Poland for EU citizens. Therefore, they are only obliged to register their stay at the voivode and present documents confirming that they meet one of the conditions listed in the subchapter 1.1.

1.3.3. Workers in regulated professions

There are no preferential legal regulations concerning the issuance of visas or residence permits to third-country nationals who apply for work in one of the 380 regulated occupations in Poland⁹⁵ while living in a given Member State. While planning a stay in Poland of more than 3 months during a 6-month period, these foreigners legalise their stay in Poland according to general rules, i.e., on the basis of a national visa or a residence permit. The procedure of issuing this permit is the same as in the case of third-country nationals who plan to come to Poland from a non-EU country.

93. Polish provisions regarding the access of third-country nationals to the labour market do not define this category of workers as separate and do not provide for specific rules of their taking up employment in Poland.

94. Although foreigners often perform seasonal work under this system, the solution is not dedicated to performing seasonal work as such.

95. At present, deregulation measures are being undertaken with reference to a significant number of occupations; as a result, access to ca. 230 professions is to be facilitated.

Moreover, in order to take up employment in Poland in a regulated occupation all foreigners – including also the discussed category of employees – first need to confirm the equivalence of their foreign education with the appropriate Polish education (foreign educational documents can be accepted on the basis of provisions of international agreements or national recognition rules) and obtain the consent of a specific institution (competent for the recognition of qualifications for a given regulated occupation) that consents to the performance of the given occupation. Regardless of that, a work permit is also necessary in this situation.

EU citizens applying for the performance of a regulated occupation and intending to stay in Poland for more than 3 months need only to register their stay at the voivode. They are exempted from the obligation to have a work permit, but they can be employed in the regulated occupation only after the official recognition of qualifications by a competent body (in the case of some occupations, automatic recognition of qualifications is possible).

2

Scale and scope of the intra-EU mobility of foreigners



2.1. Availability of statistical data

Information on intra-EU mobility of third country nationals who come to Poland can be drawn from a number of sources. Information on the overall scale of this phenomenon is provided primarily by the population register PESEL, which serves as the primary administrative source of data on international migration to/from Poland. Given the nature of the register, it is possible to generate data on mobile third country nationals⁹⁶ who registered their address in Poland (or checked out from Poland) for temporary stay longer than three months or permanent residence,⁹⁷ including the basic characteristics of this group such as citizenship, gender, age and marital status. It is important to note that the data do not allow determining the reason for coming to/leaving Poland, and thus to determine intra-EU mobility of third country nationals for the purpose of working or studying.

Analysing the data from the PESEL register, a number of reservations should be taken

into account. It should be noted that persons who come to/leave Poland are recognised by statistics only after completion of the address registration formalities, regardless of the time elapsed from arrival in Poland. In addition, not all foreigners (similarly to Polish citizens) inform the competent gmina office of their arrival in/departure from Poland. The fact that they do not comply with the obligation to register their address causes that the data obtained from the PESEL register only illustrate the formal and legal status and thus do not reflect the true scale of the mobility of third country nationals to/from Poland.

Another source of data on intra-EU mobility of third country nationals is a regular statistical survey conducted by the Central Statistical Office (CSO) of the population whose address was registered/deregistered for temporary residence of more than three months.⁹⁸ Due to the relatively good quality of the data collected by the survey (compared to the data contained in the PESEL register), the data were used to describe the scale of temporary stays of mobile third country nationals.

96. The register collects data on the country of previous stay/destination and citizenship of migrants. Thus, it is possible to extract data on mobile third country nationals arriving in/departing to/from Poland from/to another EU country.

97. Under Polish law, every person staying in Poland, including a foreigner, is required to register his/her address with a relevant gmina office for one of the two types of residence (the obligation does not concern foreigners whose stay in Poland does not exceed 14 days). Similarly, any person who leaves Poland should check out at the gmina office.

98. The main source of data contained in the study are records (address registration documents) kept by individual gminas, and the results reflect the status as at the date of the study (they describe stock rather than migration flows), i.e. on 31 December each year. In addition to the previous country of residence and the country of departure, the data collected by the CSO statistical survey include gender, age, marital status, education level and citizenship.

The data generated from the PESEL register will, in turn, present information about the streams of migration for permanent residence: to settle.

In both cases the data do not illustrate the actual scale of the phenomenon because, as already mentioned above, not all foreigners comply with the obligation to register/deregister their address.

What's important, the data on individuals who deregistered their address in Poland, obtained from administrative records (PESEL) and the CSO surveys, may not be the one and only point of reference in the context of estimating the scale of departures of mobile third country nationals from Poland.

Partial knowledge about the phenomenon of intra-EU mobility of third country nationals from the Polish perspective is provided by the data from the **Pobyt system**. While the system does not collect data on foreigners' country of previous residence (which is one of the basic information necessary to identify groups of people who are the subject of this study), it is possible to obtain information on the number of people in selected groups of mobile third country nationals who exercise the right to mobility guaranteed by certain EU directives, i.e. people granted the EU long-term resident status in other EU country and their family members, as well as foreign nationals who hold an EU document with a note "researcher".⁹⁹ The range of data entered to the Pobyt system covers the mandatory information on the demographic profile, such as nationality, gender and age, while the profile of skills, professional and family status are entered into the system non-obligatorily and do not provide comprehensive knowledge in this area.

99. Indication of these categories of mobile third country nationals was possible on the basis of the provisions contained in the *Act of 13 June 2003 on foreigners*, which provide for the possibility of these individuals to apply for a special type of a residence permit in the case of their arrival in Poland from another EU country.

With regard to intra-EU mobility of third country nationals for economic purposes, the only available statistics in this area (based on administrative records) are the **data of the Ministry of Labour and Social Policy**, which concern the number of work permits issued to foreigners. However, these data are largely incomplete as they were aggregated by country of former residence of a foreigner only until 2009.

In addition, the data do not cover all foreigners working in Poland, but only those who are covered by the requirement to hold a work permit. The Polish law provides for a number of exceptions exempting certain categories of foreigners from the obligation to apply for a work permit in Poland, regardless of whether they come directly from the country of origin or from another EU country.

Therefore, on the basis of the data from the Ministry of Labour and Social Policy, it will not be possible to portray the scale of employing third country nationals in Poland in a comprehensive way. In principle, data on the number of work permits issued do not cover the following categories of employees who come to Poland from another EU country:

- Foreigners granted the status of EU long-term resident in Poland,
- Holders of a Polish Blue Card (*residence permit for a specified period of time in order to work in a profession that requires high qualifications*);
- Some categories of students, researchers and delegated employees;
- Foreigners working in certain professions (see page 81 - cross-border workers);
- Foreigners who are citizens of selected countries (Ukraine, Belarus, Russia, Moldova and Georgia) if their migration to Poland is temporary.

It should be noted that the **results of the 2011 National Census (2011 NC)** provide extensive demographic, social and economic characteristics of immigrants, including the mobility of third country nationals who have lived in Poland at the time of the census. The data collected during the census are now being processed and making the data on temporary immigration and migration of resources available is planned for the first and fourth quarter of 2013, respectively.

Overwhelming majority of foreigners who register in gminas, arrive in Poland directly from their country of origin

2.2. Estimated total number of third-country nationals

Taking into account the domestic needs up to date, the data on the number of persons who register their stay in Poland, in terms of a variable denoting the citizenship of those persons, are collected only broken down by the following categories:

- Polish citizenship;
- citizenship of the country of previous residence, and
- citizenship of the country other than the country of previous residence.

Therefore, the group consisting only of mobile third-country nationals could not be isolated from such aggregate statistics.

Nevertheless, the data which could be generated based on available statistics are presented below. They show that an overwhelming majority of persons with other than Polish citizenship (including the citizens of the EU, EFTA and third countries), who register in gminas, arrive in Poland directly from their country of origin. From among 46 561 of third country nationals, who registered their stay in Poland in 2011 as a temporary residence longer than 3 months, as many as 99% came to Poland from the country of their citizenship. The proportions are similar for the EU and EFTA citizens (in 2011 approximately 98% of all EU and EFTA citizens registering their temporary residence in Poland (13 415) declared that their country of origin was their country of previous residence).

The available data reveal that intra-EU mobility of third-country nationals is rather insignificant for Poland, since, based on the available data, fewer than 200 such persons come to Poland from other EU countries annually for a stay of up to one year (it should be noted that the figure includes also citizens of the EU Member States who come from other EU country than their country of citizenship, which means that the actual number of mobile third-country nationals coming to Poland is significantly lower), which constitutes almost 3% of all persons of non-Polish origin, who, upon registering their stay in Poland, declared that their country of previous residence was one of the EU Member States. Within this group of persons, men seem to be more mobile.

The persons who most often come to Poland from within the EU include the EU citizens (97% of all registered intra-EU movements of persons), mainly the citizens of Germany, Bulgaria, Italy, United Kingdom and France.

Table 1. Number of foreigners who registered their address for a temporary stay longer than 3 months in Poland, by particular groups of foreigners and the year of registration (flows between the EU countries and Poland)

	2008	2009	2010 ³	2011
Staying in a gmina for up to 1 year				
EU citizens arriving in Poland directly from the country of their citizenship	5 516	5 420	n/a	5 846
Third country nationals arriving in Poland from another EU country + EU citizens coming from a different EU country than their country of citizenship	176	170	n/a	235
Total	5 692	5 590	n/a	6 081
Total - persons with other citizenship than Polish	39 300	38 582	34 725	42 539
Staying in a gmina for a year or longer				
EU citizens arriving in Poland directly from the country of their citizenship	7 189	6 967	n/a	7 372
Third country nationals arriving in Poland from another EU country + EU citizens coming from a different EU country than their country of citizenship	152	116	n/a	178
Total	7 341	7 083	n/a	7 550
Total - persons with other citizenship than Polish	13 504	14 970	12 000	17 555

3. The data come from the PESEL register, since the CSO in 2010 did not carry out a statistical survey based on gminas' records of the population whose address was registered/deregistered for temporary residence of more than three months.

Table 2. Number of foreigners who registered their address for a temporary stay longer than 3 months in Poland, by particular groups of foreigners and the year of registration (flows between the EFTA countries and Poland)

	2008	2009	2010 ⁴	2011
Staying in a gmina for up to 1 year				
EFTA citizens arriving in Poland directly from the country of their citizenship	78	84	n/a	88
Third country nationals arriving in Poland from another EFTA country + EFTA citizens coming from a different EFTA country than their country of citizenship	12	14	n/a	9
Total	90	98	n/a	97
Total - persons with other citizenship than Polish	39 300	38 582	34 725	42 539
Staying in a gmina for a year or longer				
EFTA citizens arriving in Poland directly from the country of their citizenship	111	116	n/a	109
Third country nationals arriving in Poland from another EFTA country + EFTA citizens coming from a different EFTA country than their country of citizenship	13	14	n/a	17
Total	124	130	n/a	126
Total - persons with other citizenship than Polish	13 504	14 970	12 000	17 555

4. The data come from the PESEL register, since the CSO in 2010 did not carry out a statistical survey based on gminas' records of the population whose address was registered/deregistered for temporary residence of more than three months.

Source: Own study based on a CSO survey on persons who registered their address in Poland for a temporary stay longer than three months

Similar regularities can be observed on the basis of settlement migration statistics. In the context of intra-EU flows, among persons who do not hold Polish citizenship and who have registered their permanent stay in Poland between 2008 and 2011, the vast majority are EU citizens who have entered into Poland directly from their country of origin. In the analogous period, only 18 third-country nationals (mainly from Vietnam, US and Serbia) who have identified an EU/EFTA country as their previous country of residence (mainly Germany, Spain, the Czech Republic and Greece) have registered their permanent stay in Poland.

The statistics presented below and concerning the number of work permits issued to mobile third-country nationals in the years 2008-2009 show that these permits account only for a small percentage (less than 1%) of the total number of permits issued to foreigners who take up employment in Poland. In the analysed period, the largest number of permits was submitted by foreigners who work as managers, advisors and experts in Poland. Despite the relatively large diversification of immigrants in terms of their origin (they represented 36 countries in the analysed period), over half of them were the citizens of three Asian countries, namely, Vietnam, China and Japan.

Table 3. Number of work permits granted to mobile third-country nationals in the years 2008-2009, by work groups

	2008	2009	2009/2008
Number of all work permits	18 022	29 340	63%
Number of work permits granted to TCN	133	185	39%
Skilled workers	6	28	367%
Elementary workers	2	3	33%
Managers, advisors, experts	94	89	-3%
including			
Functions in management boards of legal persons	33	30	-10%

Source: Own study based on statistical data of the Ministry of Labour and Social Policy

Table 4. Top 5 citizenships among mobile third-country nationals who were granted work permits in the years 2008-2009

2008		2009	
Total	18 022	Total	29 340
Vietnam	50	Vietnam	72
China (excluding Taiwan)	18	China (excluding Taiwan)	22
Japan	17	India	9
South Korea	6	Japan	9
Belarus	5	USA	9
USA	5		

Source: Own study based on statistical data of the Ministry of Labour and Social Policy

The EU countries from which the largest number of mobile third-country nationals came to Poland included the Czech Republic, Germany and the United Kingdom. Such a high position of the Czech Republic in the ranking is mainly due to citizens of Vietnam whose high mobility between the

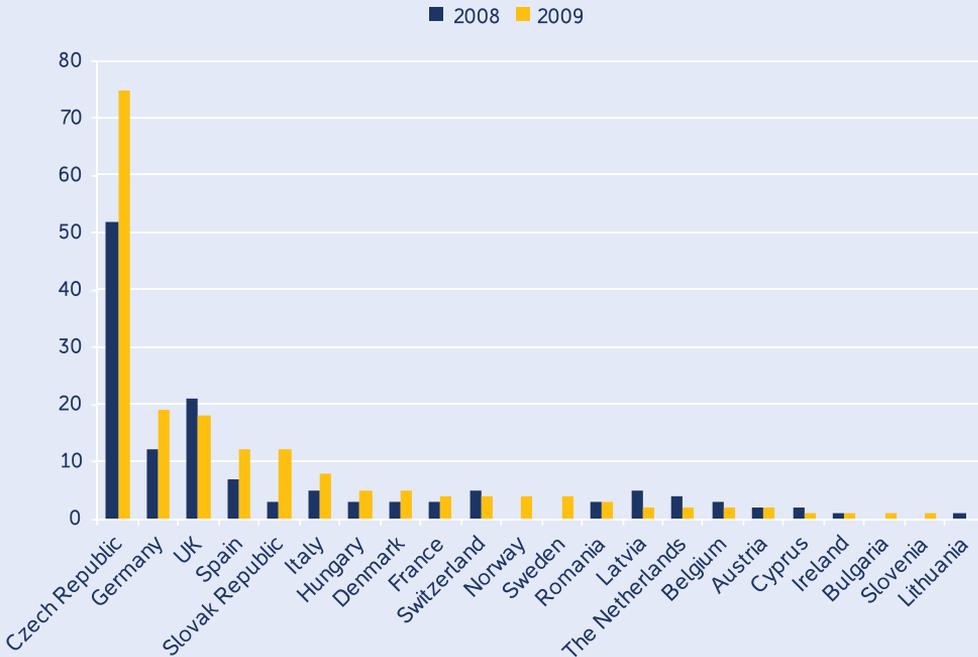
two countries (in 2008, 49 of 50 Vietnamese citizens arriving in Poland from another EU country were those coming from the Czech Republic, while in 2009 it was 69 out of 71) is related to their various cross-border businesses. This in turn results from the fact that this population has resided in the



Central and Eastern Europe¹⁰⁰ for a long time and thus managed to create a well-developed network of social contacts and business relations with the representatives of local communities.

A similar phenomenon, though on a slightly lower scale, is also recorded in the case of Chinese citizens who come to Poland from, inter alia, Slovakia, Hungary and the Czech Republic.¹⁰¹

Figure 1. Work permits granted to third country nationals between 2008-2009, by country of previous residence



Source: Own study based on statistical data of the Ministry of Labour and Social Policy

2.2.1. Long-term residents coming from another EU country

The data from the Pobył system show that long-term residents coming to Poland from another EU country constitute a very small group. From 2005, when the possibility was introduced in the Polish legislation for this category of foreigners to apply for a specified residence permit, until the end of 2012 only 37 applications for 39 persons were

received. The largest group of applicants consisted of the citizens of Vietnam, China and Ukraine. The overwhelming majority of foreigners declared their wish to work in Poland.

Proportions between women and men were relatively similar with the largest percentage of them (almost 80%) being the productive age population – [25-54]. As regards the education of migrants, over

100. Economic migration of Vietnamese citizens to Central and Eastern Europe began on a large scale in the 1980s. They were organised by the authorities and covered mainly the market of the former Soviet Union, Bulgaria, former Czechoslovakia and former GDR. In 1989, over 167 000 of citizens of Vietnam resided in Eastern Europe.

101. A. Piłat, K. Wysieńska, *Spoleczności wschodnio-azjatyckie w Polsce oraz w wybranych krajach regionu i świata [East-Asian communities in Poland and in selected countries of the region and the world]*, Institute of Public Affairs.

half of them (approximately 63%) declared that they completed secondary education, around 30% higher education and almost 7% primary education. According to information provided by foreigners, almost 60% of them were married.

What is important, an overwhelming majority of applications (concerning 30 persons)

was successful. The analysis of individual entries in the Pobyty system revealed that 16 persons, who were granted the said permits between 2006 and 2012, still resided legally in Poland at the end of 2012. Furthermore, 3 persons, whose applications were initially rejected, legalised their stay in Poland based on other grounds, related to taking up employment.

Table 5. Number of applications submitted in the years 2008-2012 for a residence permit for a specified period of time in connection with the circumstance referred to in Article (53)(1)(13) of the Act of 13 June 2003 on foreigners (arrival of a long-term EU resident to Poland from another EU country), by citizenship

Citizenship	2006	2007	2008	2009	2010	2011	2012	Total
Armenia							1	1
China					2	1	4	7
Canada				1				1
South Korea				2	2			4
Nigeria				1				1
Russia						1		1
Turkey					1			1
Ukraine		1	1	2	1		1	6
Vietnam	1	5		3	2	1	3	15
Total	1	6	1	9	8	3	9	37

Source: The Office for Foreigners based on data available in the Pobyty system

Between 2007 and 2012, another 27 persons applied for a residence permit in Poland. They were family members of the abovementioned foreigners who resided with them in the territory of another European Union Member State, accompanied them or wanted to be reunited with them. Vietnamese and Ukrainian citizens accounted for a half of all applicants. All proceedings (except for one which was discontinued) finished with positive decisions.

2.2.2. EU Blue Card holders

Poland adopted EU Blue Card regulations in June 2012. Since then until February 2013 only four foreigners – two citizens of Ukraine, one citizen of India and one citizen of Costa Rica – applied for a residence permit for the purposes of highly

qualified employment. The analysis of data gathered in the Pobyty system shows that two of them had stayed in Poland long before that time. In the case of the other two foreigners it is impossible to establish whether they came to Poland from another EU country or from a third country.

It should be noted that, according to estimates by the Polish authorities, the number of foreigners intending to obtain the abovementioned permit will in general be rather low (no more than several persons per year).



Table 6. Number of applications submitted in the years 2008–2012 for a *residence permit for a specified period of time* in connection with the circumstance referred to in Article (53)(1)(13) of the Act of 13 June 2003 on foreigners (arrival of a family member of a long-term EU resident to Poland from another EU country), by citizenship

Citizenship	2007	2008	2009	2010	2012	Total
Armenia		1				1
India		3				3
Israel			1			1
Russia		1	1	1		3
Sri Lanka				1		1
USA	2		1			1
Taiwan				1		1
Ukraine		4	1	1		6
Vietnam	2		1	3	2	6
Total	4	9	5	7	2	27

Source: The Office for Foreigners based on data available in the Pobyt system

2.2.3. Researchers

In 2007–2012 only four foreigners holding a residence document with “researcher” annotation issued by another EU Member State applied in Poland for a residence

permit for the purpose of implementing part of a research project on the territory of Poland. All the applicants received positive decisions, and three of them remained in Poland for longer (one was granted Polish citizenship).

Table 7. The breakdown of applications submitted in 2008–2012 for a *residence permit for a specified period of time* for purposes indicated in Article 53(1)(18) of the Act of 13 June 2003 on foreigners (arrival in Poland of holders of the residence documents with “researcher” annotation), by citizenship

Citizenship	2008	2010	2012	Total
Russia			1	1
Serbia		1		1
Taiwan	1			1
Ukraine	1			1
Total	2	1	1	4

Source: The Office for Foreigners based on data available in the Pobyt system

2.3. Proxy sources of statistics

Given the absence of credible statistical data on total intra-EU mobility of third-country nationals, alternative sources of statistical data which can serve as estimated indicators for the scale of mobility among third-country nationals are presented below.

2.3.1. Number of applications for the recognition of diplomas/certificates acquired in another Member State

The Polish system used for the recognition of school reports, secondary school leaving certificates and university diplomas obtained abroad does not allow for collecting reliable data in this respect. The reason behind this is that Poland is a party to several bilateral agreements with non-EU countries, which

govern the recognition of documents for the purposes of further education, excluding the necessity for their validation (unless they are used for employment purposes).

Where no such agreement exists, the person applying for recognition is not obliged to provide information on his/her nationality and the country where s/he resided before coming to Poland. The key information for the authority examining an application is the name and the head office of the institution which issued the certificate/diploma abroad and the country of the education system where the institution issuing the document operates.

Therefore, only selected education offices have access to a wider range of information on the applicants (the boards of education responsible for carrying out the recognition of school reports and secondary school leaving certificates). Thus, among eight education offices¹⁰² (out of 16 that exist) which had more detailed data in this area, in the period 2008–2012 as many as six did not record any case of an application for recognition of certificates submitted by a non-EU foreigner who would provide certificates obtained in another EU country or one of EFTA countries. In the case of the remaining two

education offices (in Wrocław and in Łódź) only 9 people submitted such applications.

The information provided by education offices indicates that most foreigners applying for a declaration on recognition of certificates graduated in their country of origin.

2.3.2. Number of visa applications submitted by third-country nationals who are resident in another EU Member State

In the light of the fact that the implementation of the Wiza–Konsul electronic program (enabling to generate data on visas) by all consular posts was completed only in December 2010, the data below covers only 2011–2012. Moreover, considering the fact that this study focuses on the mobility of third-country nationals for economic purposes, and other groups that can be recognised as major from the point of view of the labour market, the table no. 10 covers only selected types of visas relevant to the subjects covered by the study (i.e. visas types 4–14, 17–19, 23 and business visa). For comprehensive data on visas issued by Polish consulates on the territory of the EU Member State, see the annex.

Table 8. The breakdown of visa applications submitted in 2011–2012 to Polish consular and diplomatic posts on the territories of the other EU Member States by mobile third-country nationals, by selected visa types

Visa types	2011	2012	2011-2012
Total of visa applications	7 046	5 853	0
Total of refused visa applications	299	293	0
4 (carrying out economic activity)	424	386	424
5 (carrying out work on the basis of an employer's declaration of the intention to commission work to a foreigner)	63	33	63
6 (working as a driver in international road transport)	2	0	2
7 (carrying out work)	496	331	496
8 (carrying out cultural activity or participating in conferences)	179	191	179
9 (performing statutory functions by representatives of a foreign state authority or an international organisation)	20	23	20

102. Education offices in Gorzów, Opole, Kielce, Lublin, Olsztyn and Katowice.

Table 8. The breakdown of visa applications submitted in 2011–2012 to Polish consular and diplomatic posts on the territories of the other EU Member States by mobile third-country nationals, by selected visa types (continued)

Visa types	2011	2012	2011-2012
10 (studies (first, second or third level degree) or uniform Master's degree studies)	216	188	216
11 (vocational training)	73	70	73
12 (education or training other than that defined under visa type 10, 11)	89	64	89
13 (teaching purposes)	19	24	19
14 (scientific research)	13	7	13
17 (executing a residence permit)	9	0	9
18 (reunification with a family member who is an EU/EFTA citizen)	5	3	5
19 (participating in cultural or educational exchange, humanitarian aid programmes or student summer employment programmes)	0	0	0
23 (enjoying the rights conferred upon holders of the Card of the Pole)	6	9	6
Business visa	10	4	10
Total	1624	1333	1624

Source: Own elaboration based on data from the Visa-Consul System

Over the last two years, a total of 13,000 visa applications were submitted by mobile third-country nationals to Polish consulates in EU countries, out of which only 3,000 applications concerned visas for employment, study, research and family purposes¹⁰³. In 2012, the number of applications for the issue of the abovementioned visas visibly decreased (by about 18%) compared to the previous year.

The analysis of the reasons behind the issuance of selected types of visas applied for by foreigners in 2011–2012 clearly shows that most often the purpose of stay in Poland related to the intention to find employment or conduct an economic activity (about 60% of visa applications submitted in 2011–2012).

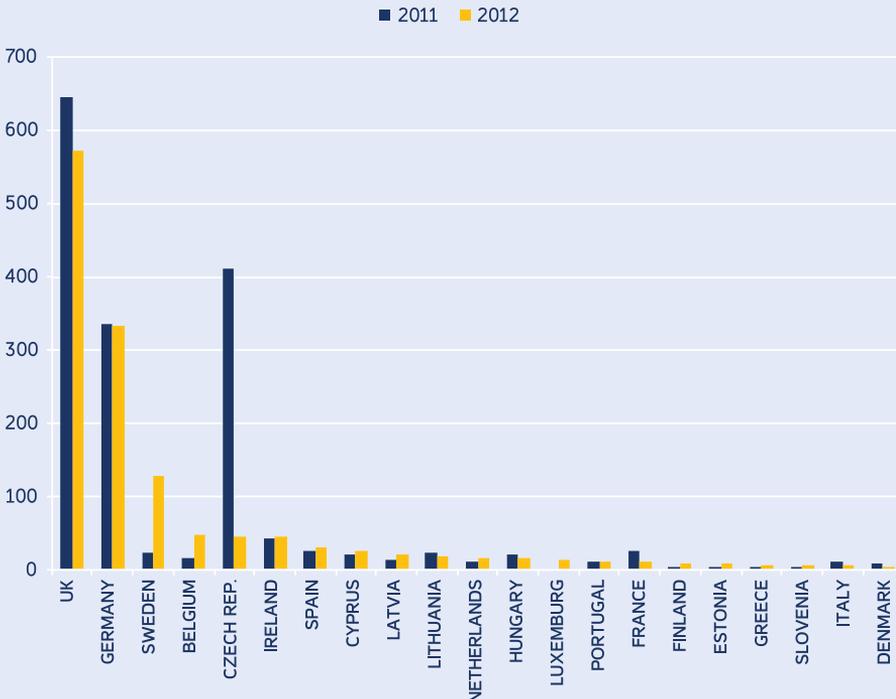
Out of 21 EU Member States where mobile third-country nationals submitted visa applications in the period under consideration, four Union countries account for over

80% of the applications – the UK, Germany, the Czech Republic and Sweden. Whereas the number of applications in 2012 compared to the previous year dropped in the case of the first three countries (most significantly in the Czech Republic – a decrease of about 89%), a sixfold increase was observed in Sweden (from 21 applications in 2011 to 126 in 2012).

Citizens of India, China, Vietnam, Russia and Ukraine (together accounting for half of all the applicants – 49%) were the foreigners who in 2011–2012 submitted the largest number of visa applications. It should be noted that the number of applications submitted by the citizens of North Korea increased significantly, as in 2012 they amounted to 57 applications (all of which were submitted to consulates in Germany), whereas in the previous year no application in this respect was submitted. On the other hand, 2012 saw a clear decrease in the number of applicants from Vietnam (from 227 applications in 2011 to 21 in 2012), while in the same year the citizens of Russia submitted twice as many applications as in the previous year.

¹⁰³ The visa applications for the visiting purposes accounted for the largest share of all visa applications – about 49% of the total of applications registered in 2011–2012.

Figure 2. Visa applications (concerning selected types of visas) submitted in 2011–2012 to Polish consular and diplomatic posts by mobile third-country nationals, by country of submission



Source: Own elaboration based on data from the Visa-Consul System

Table 9. Visa applications (concerning selected types of visas) submitted in 2011–2012 to Polish consular and diplomatic posts by mobile third-country nationals, by citizenship

2011		2012	
Total	1 624	Total	1 333
India	265	India	224
Vietnam	227	Russia	148
China	144	China	121
Ukraine	115	Ukraine	86
Russia	86	North Korea	57
Others	787	Others	697

Source: Own elaboration based on data from the Visa-Consul System

2.4. Flows of EU nationals within Poland

Partial statistical data on intra-EU mobility of EU/EFTA citizens, were presented in section 2.1 (based on data provided by the Central Statistical Office). Due to a relatively limited possibility for a more detailed

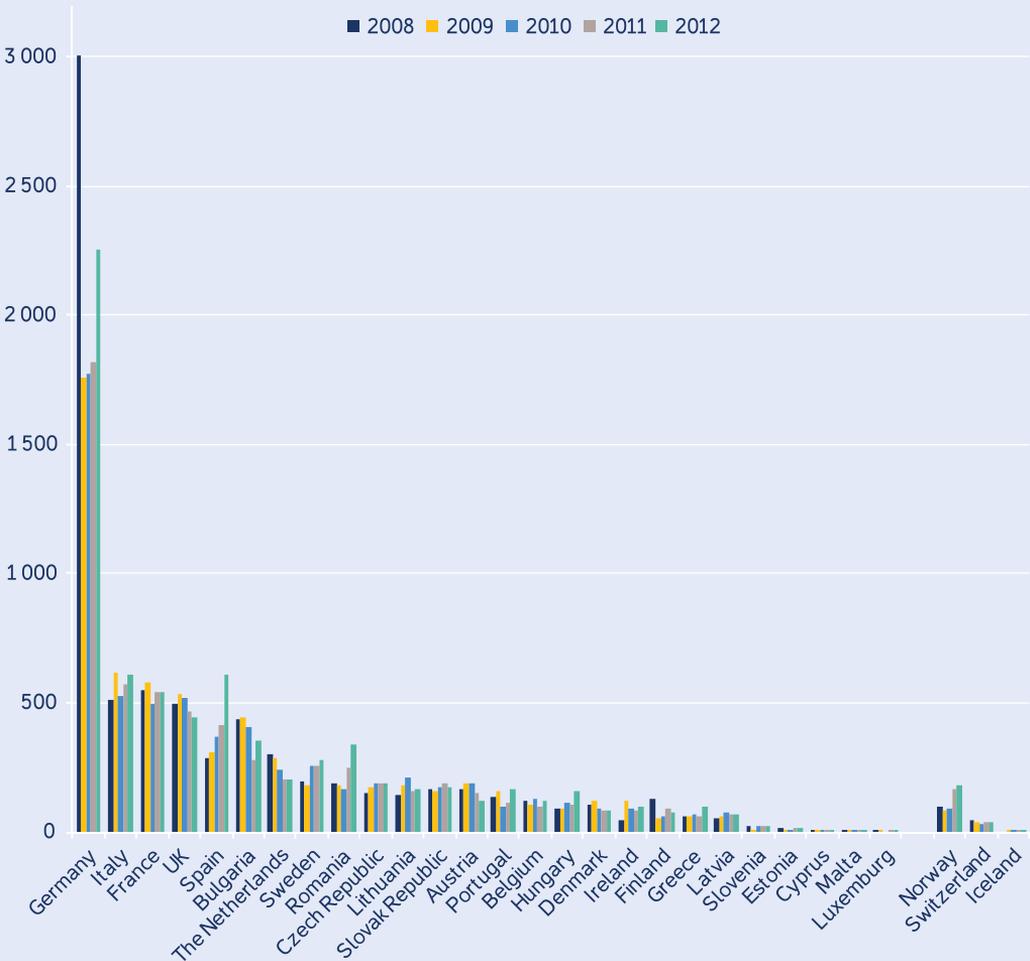
description of the abovementioned population on the basis of the data, statistical data generated from the Pobyty system recording applications for the issue of a certificate of registering the residence and for the issue of the document confirming the permanent residence right submitted by citizens of EU Member States and their family members, are presented below.

In 2008–2012, each year an average of 6.8 thousand of EU or EFTA citizens submitted applications for the issue of a certificate of registering the residence. In 2008, the largest number of applications were registered (7,537). In the subsequent year the number dropped by 14% (particularly due to a significant drop in the number of applications submitted by the citizens of Germany) and, in fact, it remained unchanged until 2012 when it reached a level comparable to that obtained in 2008 (7,433). A great majority of mobile citizens of EU/EFTA countries are men – they accounted for as much as 72% of all the people applying in Poland

for the registration of residence over the last five years.

The breakdown of the applications according to citizenship shows that Germans submit the largest number of applications (ca. 31% of all the applications recorded in 2008–2012), followed by Italian (8%), French (8%) and British (7%) citizens. A consistent increase in the number of applications submitted by the citizens of Spain (over 5 years the number more than doubled), Romania and Norway (an increase of 80% for each country) should also be noted.

Figure 3. Number of EU citizens who submitted applications for the issue of a certificate of registering the residence in 2008–2012, by citizenships



Source: Own elaboration based on data from the Office for Foreigners

A great majority of people (ca. 38% of applicants) indicate economic purposes as the reason behind coming to Poland (paid employment or self-employment). Spouses of Polish citizens accounted for just under 15% of people applying for registration of residence in 2008–2012, while 12% of the applicants came to Poland to study or receive vocational training. However, in the case of about 37% of EU/EFTA citizens the specific purpose of stay is impossible to define.

Moreover, in the period under consideration nearly 600 foreigners who were family members of EU/EFTA citizens (including twice as many women as men) applied for residence card of a family member of a Union citizen. The largest group consisted of the citizens of Ukraine (13.2%), the US (13%), Russia (9.4%) and China (6.7%).

In the case of applications for documents confirming the right to a permanent stay, their number amounted to 5,869 between 2008 and 2012. The largest number of applications has been submitted by the citizens of Germany (ca. 27% of all applications submitted between 2008 and 2012), Italy (9%) and Great Britain (ca. 8%), followed by France (ca. 6.5%), the Netherlands and Lithuania (both countries: 6%).

The largest number of applications was noted in 2010 (1,752, 31% of which were submitted by German citizens). From that year on (after a period of dynamic increase), there was a significant decrease in the number of applications. In 2011, the number was 1,062, and in 2012 — 844, i.e. lower by more than half than in 2010.

In recent years, a dynamic increase in the number of applications from Bulgarian and Romanian citizens has been observed.



3

Identified restrictions to intra-EU mobility



This part of the report contains examples of possible restrictions, resulting from national legal provisions which are introduced for reasons of the labour market policy, but can often influence the decisions of third-country nationals on moving to Poland, even if they meet all the necessary (formal and administrative) criteria for receiving a visa or a residence permit.

3.1. Access to the labour market

As a general rule, **foreign nationals** who wish to work for a Polish employer (including mobile third country nationals), **are required to obtain a work permit**. In order to be granted the permit, the necessary condition is to obtain:

- information from a starost¹⁰⁴ on the inability to meet the employer's staffing needs based on Polish citizens (as well as EU/EFTA citizens) in the register of the unemployed and jobseekers or on a negative result of a recruitment process organised by the employer, and
- confirmation that the remuneration for the foreigner would not be lower than the remuneration of local staff holding a similar position (in the case of posted workers, the remuneration cannot be

lower by more than 30% than the average remuneration in the voivodeship) – the principle of comparable remuneration that is supposed to counteract social dumping.

A work permit is, therefore, an important instrument protecting the access to the Polish labour market and results from the assumption of the Polish migration policy that employment of the foreigners should be complementary to Polish workers, EU/EFTA citizens and their family members.¹⁰⁵ In the context of access to the Polish labour market, citizens of the EU/EFTA countries are entitled to preferential employment compared to third country nationals, including foreign nationals who enter Poland from another EU country. It should be noted that in addition to the above restrictive system (the need to obtain a work permit), Poland does not apply any additional barriers to access of foreigners to the national labour market, such as the quota system in admission of economic migrants.

Polish regulations, however, allow several categories of foreigners, divided for their status of residence, occupation and country of citizenship, to work without the need to obtain a work permit. Taking into account

104. A starost is a representative of local administration at the level of a powiat, a territorial division unit.

105. In accordance with the principle of free movement of persons in the European Union, citizens of all EU/EFTA countries and their family members taking up legal work in Poland have the same rights and obligations as Poles.

the context of this study, these categories of persons include:

- persons who were granted the status of an EU long-term resident in another EU country who have obtained a *residence permit for a specified period of time* in Poland in relation to the intention to take up work or economic activity, as well as their family members;
- holders of a Blue Card issued by another EU country, who will obtain a *residence permit for a specified period of time* in Poland and members of their families;
- workers posted for the purpose of providing services by an employer established in an EU/EFTA country;
- persons continuing their studies in Poland, which they took up in another EU country, (for those staying in Poland based on a visa – only in summer months, for those who have obtained a *residence permit for a specific period of time* in relation to taking up studies – throughout the year);
- researchers arriving to Poland from another EU country who obtain a *residence permit for a specified period of time* in Poland for research on the basis of a relevant agreement;
- mobile third country nationals who perform a specific type of work (see section 1.7).

Citizens of the countries neighbouring Poland (Belarus, Russia, Ukraine) and the citizens of Moldova and Georgia, regardless of the country from which they enter Poland (EU or the country of origin), may also benefit from the simplified system of access to the labour market (this applies to a situation where they work for 6 months during 12 subsequent months on the basis of declarations of employers registered in poviats labour offices).

At the same time, when registering the declaration, the employer declares being unable to fulfil his/her staff requirements using the local labour market.

In addition, it is possible to issue work permits under the simplified procedure, i.e. without the need for the labour test; this applies to the five exhaustively listed categories of foreign workers.¹⁰⁶

Given the scope of the exemptions described above, it can therefore be concluded that the system facilitating the access of foreigners to the Polish labour market allows for the provision of work outside the restriction system to a relatively large group of mobile third country nationals.

3.2. Minimum wages

The minimum salary set out in relevant regulations guarantees a foreigner (similar to a Polish citizen) employed full-time a salary in each month of 2013 of not less than PLN 1,600¹⁰⁷ (approx. EUR 400). However, the right to at least the minimum salary is due only to persons employed under a contract of employment, thus not including foreigners who work on the basis of civil law contracts (mandate contracts and contracts for specific work). Considering that employment under a contract of em-

106. These are the persons authorised to represent a foreign entrepreneur at a branch or agency located in Poland; sports coaches and athletes, doctors and dentists, trainees and in the process of specialisation; citizens of Belarus, Georgia, Moldova, Russia and Ukraine performing work that consists in nursing care or as domestic help for individuals or households; people who, in the period immediately preceding submitting the application for a work permit, performed work for the same entity on the basis of a declaration of the intent to entrust work for a period of not less than three months – on the basis of the *Regulation of the Minister of Labour and Social Policy of 29 January 2009 on defining the circumstances in which a work permit is issued to a foreigner regardless of the detailed terms defined for the issuance of a work permit to a foreigner* (Dz. U. [Journal of Laws] No 16 item 85).

107. *Regulation of the Council of Ministers of 14 September 2012 on the amount of the minimum remuneration for work in 2013* (Dz. U. [Journal of Laws] item 1026).

Figure 5. Proportion of employees with a contract of limited duration, age group 15-64, 2011 (in relation to the total number of workers)



Source: Eurostat

ployment is becoming increasingly difficult to achieve for many Poles, it is expected that the percentage of people covered by this type of contract is even smaller in the case of foreign workers.

Although it is impossible to portray the overall scale of the phenomenon, data on the number of registered employers' declarations on the intention to employ a foreigner (this applies only to citizens of Ukraine, Belarus, Russia, Moldova or Georgia) may serve as a guideline in this respect. The data show that out of nearly 245,000 declarations registered in 2012, only 17% concerned work performed under the contract of employment.

In addition, the structure of Polish regulations on the issuance of work permits to foreigners excludes the possibility of the employer to apply social dumping because the employer must commit to paying migrants a salary comparable to the salary of other workers for similar work. The above solutions should not, therefore, be perceived as restrictions to taking up work in Poland by mobile third country nationals since they guarantee the same rights as in the case of domestic workers in terms of the conditions of employment, precluding the possibility of discrimination and exploitation of these people.

The amount of the minimum salary guaranteed by law is also an important factor con-

tributing to the decisions made by foreigners to come to Poland. In the European dimension, the minimum salary classifies Poland as a country with one of the lowest levels of the minimum salary (among 20 EU countries which have laws establishing minimum salaries, Poland ranks 12th, and taking into account the price level – the rank is 11th)

3.3. Appropriate funds required to exercise an economic activity

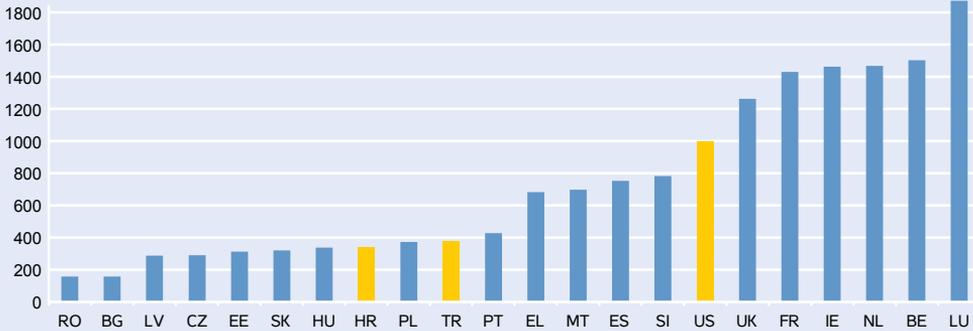
When applying for a *residence permit for a specified period of time*, a mobile third country national who enters Poland with the intention of self-employment must provide documents to evidence that:

- He/she is conducting economic activity under the relevant Polish regulations – primarily he/she must demonstrate the legal basis of this activity, its object and size,¹⁰⁸ income or possibly losses, confirmed by relevant documents filed to a tax office or a certificate issued by the tax office,¹⁰⁹

108. Such as a valid extract from the National Court Register, a notarial deed on the basis of which the company/partnership had been established, information on the entry in the Register of Economic Activity, tax identification number (NIP), REGON identification (number of the national economy entity).

109. Including, inter alia, a certificate of fulfilment of tax liabilities towards the State Treasury, a statement of the amount of income (loss) in the previous fiscal year.

Figure 6. Minimum wages in EU Member States, Croatia, Turkey and USA, January 2013, in EUR



Source: Eurostat

- His/her economic activity is beneficial to the national economy, and in particular it contributes to the growth of investments, technology transfer, introducing beneficial innovations or creating new jobs for Polish citizens.

As the notion of “activity beneficial to the national economy” has not been precisely defined, it is a broadly understood concept and requires the voivode who is examining the matter to perform a comprehensive assessment of the activity, i.e. the status of the activity, the condition of the company, its position and significance. An important factor in the process of granting residence permits is, among others, the amount of income generated from the foreigner’s economic activity, and thus the amount of income tax paid by the foreigner to the State budget (high income can contribute to a positive decision on the case; yet the regulations do not state any specific threshold), the important role played by the employer on a regional/local labour market (the number of employees and the amount of remuneration they receive).

In addition, as it is the case with the majority of foreigners applying for a residence permit in Poland, entrepreneurs who are mobile third country nationals must also have sufficient income to cover the costs of maintaining themselves and dependent

family members (the income, after deducting housing costs,¹¹⁰ attributable per month to each dependent family member must be currently higher than PLN 456 or exceed the amount of PLN 542 when the foreigner is single¹¹¹).

The real amount of funds that foreigners must have (regardless of country of previous residence) in order to conduct their own economic activity in Poland, however, also depends on the form of the activity, as each type is covered by specific regulations on the amount of financial contribution (e.g. the share capital of a limited liability company must be at least PLN 5,000; while the share capital of a joint stock company must be at least PLN 500,000). In this context, it should be noted that Polish law provides for different rules of setting up economic activity of individual groups of foreigners. Given the scope and the groups of the foreigners being the subject of this study, the greatest facilitations in this regard are available to persons having the status of a EC long-term resident in another country of the European Union, who obtain

110. Housing costs include at least the amount of fixed charges associated with using residential premises, divided into the number of people living there, as well as charges for electricity, gas, water and sewage disposal, waste and liquid waste.

111. The amounts are determined on the basis of the amount of income above which welfare benefits are granted.

a residence permit for a specified period of time in Poland due to their intention to take up work or set up economic activity, their family members, as well as students who continue their studies in Poland, which they started in another EU country, if they have legalised their stay in Poland on the basis of a relevant residence permit.¹¹²

In this context, it should be noted that current regulations in this field may limit the ability to pursue economic activity in a situation where a foreigner's residence status changes (e.g. he/she graduates, gets divorced) and with it, the form in which he/she may pursue the economic activity. This can lead to situations where a foreigner must cease further economic activity.¹¹³

3.4. National rules or procedures governing the recognition of degrees and diplomas

There is no evidence allowing for unequivocal conclusion that the Polish procedures governing the recognition of diplomas and degrees have an impact on the decisions of mobile third country nationals to come to Poland. In view of the fact that in the case of certificates the main aim of the recognition procedure is to have the opportunity to apply for admission to a higher education institution,

it seems that reputation, curriculum and recruitment procedures of the institution concerned play a decisive role in this respect.

If certificates/diplomas/titles are issued by EU countries, the rules which follow EU regulations in the area apply, common to all EU Member States.

It should also be added that Poland is a party to several bilateral agreements governing the recognition of documents for the purpose of continuing education (including six countries of the EU and Belarus, Ukraine and Libya), without the need for recognition of these documents (unless they are not used for professional purposes), which simplifies taking up studies in Poland to the citizens of these countries.¹¹⁴

Based on the practice of the institutions that deal with recognition of documents, several problems have been identified that may in some way restrict/hinder taking up work or studying in Poland:

- The requirement to legalise the certificate/diploma (this is related to the certification of the authenticity of documents) by a Polish consul in the country where the certificate/diploma was issued and submission of a complete set of required documents¹¹⁵ sometimes requires the foreigner to return to the country where the certificate/diploma was issued;¹¹⁶

112. They can conduct economic activity in Poland according to the same rules as Polish citizens (registration in the Register of Economic Activity). Other categories of mobile third country nationals have the right to take up and pursue economic activity solely in the form of a limited partnership, limited joint-stock partnership, limited liability company or a joint stock company, as well as to join such companies and take over or acquire shares, unless international agreements stipulate otherwise.

113. K. Naranovich (ed.), *Road map to a better integration of migrants and Polish society – practical guide for officials responsible for introducing changes* [Mapa drogowa do przyjaźniejszej integracji migrantów i polskiego społeczeństwa – praktyczny poradnik dla odpowiedzialnych za wprowadzenie zmian], Fundacja Rozwoju Oprócz Granic, Warsaw, p. 108.

114. Citizens of third countries (non-EU countries), including Belarus, Kazakhstan, Kyrgyzstan, South Korea, Cuba, Russia, Ukraine, Uzbekistan and Vietnam, also exercise the rights acquired under the *Prague Convention of 1972*, according to which all the documents confirming acquired qualifications that have been issued in these countries between 1975 and 2006 are not subject to recognition.

115. They are, inter alia, the documents presenting the course of education that include a list of courses and the scores for each course, the number of hours of educational activities, a certificate to confirm acquiring the right to apply for admission to all types of higher education institutions in the country of the university that issued the certificate.

116. Sometimes, in the country which issued the cer-

- As there are no court certified translators from some languages, such as Mongolian or Kazakh, having certificates translated is a problem;
- No possibility of formal recognition of certain certificates – it is due to the many changes introduced in foreign educational systems over the years, which are not covered by the current recognition regulations;¹¹⁷
- A long list of regulated professions¹¹⁸ – in Poland there are currently 380 regulated professions, the highest number in all EU/EFTA countries¹¹⁹ (work is currently advanced on facilitating access to some of the professions).

3.5. National rules or procedures governing access to social security and social services for third-country nationals and their family members

In Poland, a relatively small group of foreigners is entitled to welfare benefits,¹²⁰

mainly those who have lived in the Republic of Poland for a long time (i.e. foreigners with a permit to settle or a EU long-term residence permit issued by the Polish authorities). The only exceptions are third country nationals holding the status of a EU long-term resident in another country of the European Union, who are entitled to receive welfare benefits after they receive a *residence permit for a specific period of time* in Poland.

The amounts of welfare benefits paid in Poland are low compared to other EU countries. Therefore, taking into account the above conditions, access to social services may be an important factor influencing the decision of a mobile third country national to come to Poland.

As to regulating the access to the social security system, it should be noted that Polish legislation does not make insurance coverage dependent on nationality, place of residence, country of previous residence, the basis of residence, etc. All foreigners who are employed in Poland are subject to mandatory social insurance following the same principles as Poles.¹²¹

Poland signed agreements on the coordination of social security systems only with six third countries (Macedonia, Canada, Australia, US, South Korea, Ukraine), which results in restrictions on the transfer of benefits of the foreigner to the country of origin.

tificate/diploma there is no Polish consular representation, such as in Syria (Syrian citizens must therefore apply to the consulate in Beirut to have their documents legalised and translated).

117. The current classification of professions acquired after completing vocational education, in the group of professions under the name of „medium-level health care professionals,” does not include nurses or midwives. Therefore, on the basis of existing legislation there is no upper secondary school in Poland which would currently educate nurses or midwives. A chief education officer, therefore, does not hold competence to recognise a certificate of a nurse or a midwife as equivalent to the corresponding type of a school-leaving certificate in Poland.

118. If a given profession is regulated in Poland, a person who has obtained qualifications in another country needs their official recognition. In the case of non-regulated occupations, employing an employee having qualifications in another EU member state depends on the employer.

119. P. Wipler, M. Paczkowski, S. Tyszka, B. Troczyński, B. Walentyński, T. Warowny, *Zawody regulowane. Aktualny stan prawny i propozycje zmian [Regulated Professions. Current Legal Status and Proposals for Changes]*, September 2011, Fundacja Republikańska.

120. Social assistance is provided in particular for the

following reasons: poverty, orphanhood, homelessness, unemployment, disability, long-term or serious illness, domestic violence, the need to protect maternity or many children in a family, helplessness in matters of education, care and running a household, especially in single-parent families or with many children, difficulties in adapting to life after release from prison, alcoholism or drug addiction, random events and crisis situations, natural or environmental disaster.

121. Contribution rates are the same as for the insured Poles. Also, contribution financing takes place on the same basis as in the case of Polish workers.

3.6. Other restrictions

Other restrictions on intra-EU mobility of third country nationals are:

- Low salaries¹²² in Poland compared to many EU countries - due to this Poland is still perceived as a less attractive destination country for economic migrants¹²³ (especially for those whose stay is supposed to be long-term).
- A close connection between the ability of a foreigner to work with a particular employer requesting a work permit and limited access to labour market support instruments in the event of losing a job¹²⁴ - in the event of termination of employment, steps are taken to revoke a work permit, which, consequently, for the foreigner results in losing the right to stay in Poland. Absence of institutional support in finding a job¹²⁵ for most mobile third country nationals significantly reduces the chances of a foreigner to take up another legal job with a different Polish employer. The reason for this limitation is the assumption regarding the nature of employment of foreigners in Poland, complementary to domestic workers. Therefore, in a situation of relatively high unemployment in Poland, there are no instruments of an active economic immigration policy.
- Absence of programmes or an integration offer for third country nationals (with the exception of those covered by the international protection system) - currently, work is underway on the policy of social inclusion of foreigners targeted at different groups of migrants.
- When it comes to mobility in the labour market, citizens of Belarus, Russia, Ukraine, Moldova and Georgia taking up short-term employment in the framework of the so-called simplified procedure (with the possibility of performing work without a permit), who can work for various entities provided that the entities register their declaration in a labour office, are in a much more favourable position.

122. In 2012, the average salary in Poland amounted to PLN 3,521.67 gross (approx. EUR 900), while in the Netherlands and France it is at the level of approximately EUR 2,100.

123. National report of the National Contact Point of the European Migration Network in Poland, *Zaspokajanie potrzeb polskiego rynku pracy poprzez migracje [Meeting the Needs of the Polish Labour Market Through Migration]*, December 2010, p. 9.

124. The changes planned in connection with the implementation of *Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State* are to improve the situation.

125. In Poland, a relatively small group of foreigners is entitled to support from public employment services, mainly those who have lived in the Republic of Poland for a long time (i.e. foreigners with a settlement permit or a residence permit for a long-term resident of the European Communities issued by the Polish authorities). Among mobile third country nationals, these are the people holding the status of a long-term resident of the European Communities in another country of the European Union, who are entitled to receive welfare benefits after they receive a *residence permit for a specific period of time* in Poland. The planned amendments to regulations are to improve the situation.

Summary and conclusions



As a general rule, apart from the possibility of moving to the different countries of the Schengen area for up to 90 days in a six-month period, the residence title issued to foreigners in another EU country does not give them any facilitations when legalising their stay in Poland. Irrespective of their country of previous residence, all third country nationals who plan to stay in Poland for longer than three months must hold a national visa or a *residence permit for a specified period of time*.

Special attention should be paid to selected categories of foreigners to whom a number of intra-EU mobility rights are ensured by EU regulations implemented in Poland. These include third country nationals with the long-term resident status in another EU Member State and who have been issued the “Blue Card,” researchers and full-time students in another Member State of the European Union, as well as staff posted to Poland for the provision of services by an employer with the registered office in the EU/EFTA.

However, regardless of certain special principles facilitating the movement of the abovementioned groups of migrants within the EU, their legal status in another EU country never results in automatic granting of the analogous status in Poland. In order to retain the rights granted in the given Member State, they have to once again un-

dergo the entire administrative procedure related to legalising their stay in Poland. No additional procedural exemptions apply to those persons.

Nevertheless, rights concerning other areas, which those persons hold after legalising their stay in Poland, are important. This concerns the following:

- Access to labour market without the necessity to have a work permit - this concerns all five categories of persons;
- Preferential rules of family reunification for persons enjoying the status of an EU long-term resident in another European Union country or holding a Blue Card issued by another EU country, as well as researchers who will obtain a residence permit for a specified period of time on these grounds;
- Access to social welfare benefits and support of public employment services for persons holding the status of an EU long-term resident in another European Union country or will obtain a residence permit for a specified period of time on these grounds;
- Possibility to include the period of legal stay in the territory of the EU in the periods of stay required to obtain specific types of permits - this concerns the holders of a Blue Card issued by an-

other EU country who will obtain a *residence permit for a specified period of time* on these grounds.

In this context, it should also be noted that rights of foreign students of full-time studies are the same when they arrive in Poland from another EU country and when they decide to come to Poland from their country of origin or a third country.

Regardless of the rights granted to the abovementioned foreigners by the EU directives, in line with the principles in place in the European Union, the foreigners deciding to come to Poland must meet stricter requirements than the EU citizens. The EU citizens must only register their stay in Poland with the competent voivode. The registration does not have an impact on their right to stay in the territory of Poland.

In relation to the ongoing discussion at the Council of the EU and at the European Parliament on proposals for two directives on third-country nationals in the framework of an intra-corporate transfer and on seasonal migrants, the group of foreigners with the right to move within the EU may be expected to expand to include other groups of persons.

Other categories of foreigners covered by this study, who are not covered by the EU *acquis* (cross-border workers, seasonal workers and members of regulated professions), apply for Polish residence permits in line with general conditions, upon arriving in Poland from another EU country. This means that they have to meet the same requirements for obtaining such permits as foreigners applying for permits directly from their country of origin or from any third country.

Currently, Poland does not plan any significant changes to entry rules and procedures which would be aimed at making admission to Poland easier mainly for mobile third-country nationals. The new Act

on foreigners, which is planned for adoption in the second half of 2013, will introduce a package of facilitations for multiple categories of foreigners, including those working and studying and those who would just like to legalise their stay in Poland, regardless of their migration in the European Union. Undoubtedly, a significant change will consist in eliminating the current possibility for a foreigner to submit an application for residence for a specified *period of time* from abroad.

Eliminating this possibility will result in a situation where foreigners migrating to Poland from a third country will be able to apply for a stay permit only after entry into Poland on the basis of a visa (when it is required), while a mobile third-country national will still be able to use the possibility of a three-month stay in Poland on the basis of the residence permit issued by another EU Member State, during which he/she can submit the said application to the voivode.

It is extremely difficult to estimate the exact scale of intra-EU movements of both third-country nationals and the EU citizens. Available statistical data are incomplete and thus failing to illustrate their actual volume. Regardless of the above reservations, several general trends can be defined:

- An overwhelming majority of foreigners arrive in Poland directly from their country of origin or from another third country;
- The number of mobile foreigners who decide to come to Poland from another EU country is small (according to the data of the Central Statistical Office, less than 200 foreigners¹²⁶ from other EU countries register each year for

126. The number includes also the EU citizens who arrive from other EU country than their country of citizenship which means that the actual number of mobile third-country nationals arriving in Poland is significantly lower.

a stay of up to a year, whereas the data on visas show that Polish consulates in other EU countries issued approximately 1 400 visas¹²⁷ to third-country nationals);

- The largest national groups among mobile third-country nationals arriving in Poland include the nationals of Vietnam, China (they have been present in the Central and Eastern Europe for several decades), India, Ukraine and Russia;
- Favourable legalisation provisions for specific groups of mobile foreigners, introduced by Poland to transpose the EU legislation, have had only a slight impact on increasing the migration flows from other EU countries to Poland;
- The recent years saw a gradual increase in the number of the citizens of Spain, Romania and Norway arriving in Poland;
- The number of the EU citizens residing in Poland is not high compared to the number of Poles leaving for other EU countries (including in particular the United Kingdom, Germany, Ireland and the Netherlands);
- Men are the more mobile group among both third-country nationals and the EU citizens.

A number of factors have been identified in the report which may influence the decision to come to Poland of a foreigner residing in another EU country. The following should be particularly emphasised among the determinants which can serve as limitations to intra-EU mobility of third country-nationals:

- Economic factors — the Polish labour market (including the relatively low level of salaries in Poland) is still not as attractive as European labour markets (particularly when compared to Western Europe),
- Low mobility on the labour market — a foreigner's ability to perform work is linked to a specific employer applying for a work permit,
- Limited access to social assistance benefits, their low amounts and, in the case of losing a job, restricted access to the support instruments offered by public employment services,
- Absence of programmes and an integration offer from public administration entities for the majority of immigrants.

127. This number relates only to selected types of visas which correspond to the thematic scope of the report (i.e. visa types 4-14, 17-19, 23 and business visas) — see section 2.3.2.

Work permits issued to mobile third-country nationals between 2008-2009

Table 1. Work permits granted to foreigners in 2008, by citizenship, country of previous residence and work groups

Citizenship	Main countries of previous residence	Total work permits	Of total			
			by employee groups		qualified workers	unqualified workers
			Total	managers, advisors, experts of which: functions on the boards of legal persons		
TOTAL		18 022	4923	1 960	6 219	2 426
Vietnam	Czech Republic	50	40	12	2	2
China (excluding Taiwan)	Germany, Romania, Italy	18	11	8	2	0
Japan	The Netherlands, UK, Germany	17	16	3	0	0
North Korea	UK	6	6	6	0	0
Belarus	Cyprus	5	2	2	0	0
USA	Denmark, UK	5	2	0	0	0
Stateless	Latvia	4	4	0	0	0
Brasil	Lithuania, UK, Italy	3	0	0	0	0
Jordan	UK, Hungary	3	0	0	0	0
Morocco	France, Germany	3	1	0	1	0
Ukraine	Latvia, Germany, Czech Republic	3	2	0	1	0
Egypt	Slovak Republic	2	2	2	0	0
India	UK, Belgium	2	1	0	0	0
Russia	Spain	2	0	0	0	0
Australia	UK	1	0	0	0	0
Canada	Ireland	1	1	0	0	0

Table 1. Work permits granted to foreigners in 2008, by citizenship, country of previous residence and work groups (continued)

Citizenship	Main countries of previous residence	Total work permits	Of total			
			by employee groups		qualified workers	unqualified workers
			managers, advisors, experts	of which: functions on the boards of legal persons		
Total						
Malesia	Czech Republic	1	1	0	0	0
Mexico	UK	1	1	0	0	0
Republic of South Africa	UK	1	1	0	0	0
Zimbabwe	Denmark	1	0	0	0	0
	TOTAL	129	91	33	6	2
Mexico	Switzerland	1	0	0	0	0
Russia	Switzerland	1	1	0	0	0
Ukraine	Switzerland	2	1	0	0	0
Argentina	Switzerland	1	1	0	0	0

Table 2. Work permits granted to foreigners in 2008, by country of previous residence and selected work groups

Country of previous residence	Total work permits	Of total				
		by employee groups		by employee groups		
		managers, advisors, experts	qualified workers	unqualified workers	of which: functions on the boards of legal persons	
Total	4 923	1 960	6 219	2 426		
TOTAL	18 022	4 923	1 960	6 219	2 426	
Czech Republic	52	41	11	2	2	
UK	21	14	8	0	0	
Germany	12	8	2	1	0	
Spain	7	3	0	0	0	
Italy	5	2	2	1	0	
Latvia	5	5	0	0	0	
The Netherlands	4	4	1	0	0	
Slovak Republic	3	3	3	0	0	
Hungary	3	2	2	0	0	
Romania	3	1	1	1	0	
France	3	2	0	1	0	
Denmark	3	1	0	0	0	
Belgium	3	0	0	0	0	
Austria	2	2	1	0	0	
Cyprus	2	2	2	0	0	
Ireland	1	1	0	0	0	
Lithuania	1	0	0	0	0	
TOTAL	129	91	33	6	2	
Switzerland	5	3	0	0	0	

Table 3. Work permits granted to foreigners in 2009, by citizenship, country of previous residence and work groups

Citizenship	Country of previous residence	Total work permits	Of total			
			by employee groups		qualified workers	unqualified workers
			managers, advisors, experts	of which: functions on the boards of legal persons		
Total	5 700	2 068	9 143	4 829		
TOTAL	TOTAL	29 340	5 700	2 068	9 143	4 829
Vietnam	Czech Republic	72	36	11	22	0
China (excluding Taiwan)	Spain, Slovak Republic	22	13	11	0	3
India	UK	9	5	0	0	0
Japan	The Netherlands, Denmark	9	9	3	0	0
USA	Slovak Republic	9	4	1	0	0
Belarus	Germany, Slovak Republic	6	1	1	0	0
Stateless	Norway	4	4	0	0	0
Canada	Austria, France, Ireland, UK	4	2	1	1	0
North Korea	Germany	4	2	1	1	0
Russia	Spain	4	1	0	0	0
Turkey	Germany	4	4	0	0	0
Ukraine	Germany	4	0	0	0	0
South Korea	UK	3	1	0	0	0
Australia	UK	2	1	0	0	0
Brasil	Bulgaria, Italy	2	0	0	0	0
Croatia	Germany	2	0	0	0	0
Marocco	France, Germany	2	0	0	1	0
Pakistan	UK	2	1	0	0	0
Venezuela	UK	2	2	0	0	0

Table 3. Work permits granted to foreigners in 2009, by citizenship, country of previous residence and work groups (continued)

Citizenship	Country of previous residence	Total work permits	Of total			
			by employee groups			unqualified workers
			Total	managers, advisors, experts	qualified workers	
			of which: functions on the boards of legal persons			
Zimbabwe	Denmark	2	0	0	0	0
Bangladesh	Romania	1	1	1	0	0
Bosnia and Herzegovina	Germany	1	0	0	0	0
Montenegro	Italy	1	0	0	0	0
Egypt	Slovak Republic	1	0	0	0	0
Ghana	Czech Republic	1	0	0	0	0
Israel	Sweden	1	0	0	0	0
Jordan	UK	1	1	0	0	0
Kazakhstan	Sweden	1	0	0	1	0
Macedonia	Germany	1	0	0	0	0
Republic of South Africa	UK	1	0	0	0	0
Serbia	Italy	1	0	0	1	0
Singapore	UK	1	0	0	0	0
Sri Lanka	Italy	1	0	0	1	0
TOTAL		181	88	30	28	3
Ukraine	Switzerland	2	1	0	0	0
Russia	Szwajcaria	2	0	0	0	0

Table 4. Work permits granted to foreigners in 2009, by country of previous residence and selected work groups

Country of previous residence	Total work permits	Of total			
		by employee groups			
		managers, advisors, experts	qualified workers	unqualified workers	
Total	of which: functions on the boards of legal persons				
TOTAL	29 340	5 700	2 068	9 143	4 829
Czech Republic	75	39	13	19	1
Germany	19	9	2	1	0
UK	18	10	1	0	0
Slovak Republic	12	1	1	2	2
Spain	12	6	4	0	0
Italy	8	2	2	2	0
Hungary	5	5	2	0	0
Denmark	5	3	1	0	0
France	4	1	0	2	0
Norway	4	4	0	0	0
Sweden	4	1	0	1	0
Romania	3	1	1	0	0
The Netherlands	2	2	0	0	0
Latvia	2	1	0	0	0
Belgium	2	1	1	0	0
Austria	2	1	1	0	0
Bulgaria	1	0	0	0	0
Ireland	1	0	0	0	0

Table 4. Work permits granted to foreigners in 2009, by country of previous residence and selected work groups (continued)

Country of previous residence	Total work permits	Of total			
		by employee groups			
		managers, advisors, experts	qualified workers		unqualified workers
		Total	of which: functions on the boards of legal persons		
Cyprus	1	1	1	0	0
Slovenia	1	0	0	1	0
TOTAL	181	88	30	28	3
Switzerland	4	1	0	0	0

Visas issued to mobile third-country nationals by Polish consuls in different EU countries between 2008-2012

Table 5. Visas issued to mobile third-country nationals by Polish consuls in different EU countries between 2008-2012, by type of visa

Visa type/Year	2012	2011	2010	2009	2008	TOTAL
1	952	1116	884	300	3	3255
2	2849	3417	3404	636	10	10316
3	42	21	17	8	0	88
4	384	424	260	71	16	1155
5	29	63	115	56	0	263
6	0	2	4	12	0	18
7	324	496	103	1	0	924
8	190	179	115	76	19	579
9	25	20	55	65	19	184
10	181	216	107	19	0	523
11	68	73	6	0	0	147
12	62	89	14	0	0	165
13	24	19	14	3	0	60
14	7	13	4	16	0	40
15	21	18	36	0	1	76
16	21	45	13	0	0	79
17	0	9	0	0	0	9
18	1	5	0	0	0	4
19	0	0	8	17	1	26
20	56	60	13	1	0	130
23	8	6	0	0	0	14
24	0	4	1	0	0	5
DIPLOMATIC	20	6	14	4	2	46
COURIER	0	0	1	0	0	1
BUSINESS	4	10	8	0	1	23
TRANSIT	292	436	578	0	0	1306
NO DATA	0	0	0	1588	244	1832
TOTAL	5560	6747	5774	2873	316	21268
REFUSALS	293	299	187	83	30	892

Table 6. Visas issued to mobile third-country nationals by Polish consuls in different EU countries between 2008-2012, by country where visa application was submitted

Country of departure/Year	2012	2011	2010	2009	2008	TOTAL
Belgium	48	21	15	0	0	84
Cyprus	232	162	37	0	0	431
Czech Republic	94	498	167	1691	246	2696
Denmark	3	18	6	0	0	27
Estonia	7	3	4	0	0	14
Finland	8	4	1	0	0	13
France	9	28	5	0	0	42
Greece	66	69	68	0	0	203
Spain	33	24	9	0	0	66
The Netherlands	28	19	3	0	0	50
Sweden	187	32	21	12	9	261
Ireland	456	723	834	52	0	2065
Lithuania	31	29	5	0	0	65
Luxemburg	12	1		0	0	13
Latvia	19	13	2	0	0	34
Germany	442	429	304	183	91	1449
Portugal	11	12	6	0	0	29
Slovenia	5	2		0	0	7
Hungary	18	26	17	0	0	61
UK	4136	4921	4437	998	0	14492
Italy	8	12	20	20	0	60
TOTAL	5853	7046	5961	2956	346	22162

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While EU citizens, in line with the Treaty on the European Union, have the right to move and reside freely on the territory of Member States, only certain categories of migrant workers may benefit from rights in terms of intra-EU mobility, on the basis of the EU acquis.

Regardless of certain special principles facilitating the movement of the abovementioned groups of migrants within the EU, their legal status in another EU country never results in automatic granting of the analogous status in Poland.

These foreigners acquire the various rights, to which this group of migrants is entitled (inter alia in the field of family reunification, access to the labour market and benefits from the social assistance system) under EU Directives, only after obtaining appropriate residence permit legalising their stay in Poland.

Groups of third-country nationals who are not provided for the mobility right by the EU Directives are covered by the national legislation of Member States.

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