

EMN
Europejska Sieć Migracyjna



Practical measures for reducing irregular migration in Poland

National Report for the period 2004 – 2010

Prepared by Polish National Contact to the European Migration
Network (PL EMN NCP)

*The EMN was established via Council Decision 2008/381/EC and is financially
supported by the European Union.*

OCTOBER 2011



The Ministry of the Interior and Administration,
acting as the coordinator of the Polish National Contact Point
to the European Migration Network (EMN)
acknowledges funding from the European Community
via the European Commission's
Directorate General for Justice, Freedom and Security
—Solidarity and Management of Migration Flows
programme. The EMN was established by
Council Decision 2008/381/EC in order to provide
up-to-date objective, reliable and comparable information
on migration and asylum to Community institutions,
Member States authorities and to general public,
with a view to supporting policy-making in the EU.

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Executive summary

Constituting one of the priorities of the European Union, prevention of illegal immigration is also an important element in a comprehensive approach towards managing immigration on the national level. For this reason, the Polish border is guarded along its entire length, with particular attention being paid to sea border and airspace protection, as well as to guarding strips of land borders with the Russian Federation, the Republic of Belarus and the Ukraine, since they form the external border of the European Union and the Schengen area. Operating as the main institution competent for preventing illegal immigration, Border Guard controls the border traffic in humans, transport equipment and goods at designated border crossing points. Some other Polish government agencies and institutions take keen interest in the issue of fighting the illegal immigration, defined as entering into/residing on the territory of a given country by foreigners who breach this country's regulations on receiving foreigners. The main agencies and institutions which are vividly interested in this issue include the Polish Office for Foreigners, the Police, and the Ministry of Foreign Affairs.

Estimating the size of illegal immigration is a very difficult task, because, on the one hand, we are dealing with an undocumented phenomenon, which it is impossible to measure precisely, and on the other hand, it is impossible to make full use of the classical methods of data collection in relation to illegal migrants. None of the ratings made by neither public administration nor any of the research centres can accurately estimate the true size of this phenomenon, also due to the fact that for the majority of illegal migrants, Poland still represents mainly a transit country en route to their target country. In most of the available analyses and studies, the size of illegal migration in Poland is estimated to be between 50 000 and 300 000¹ people. Such wide discrepancy in the evaluation of this phenomenon demonstrates the inability to determine the real number of foreigners having an irregular legal status. However, taking into account a number of factors and data (such as the scope of legal migration, the number of detected illegal border crossings, estimates of illegal stay of some well-documented and recognised migrant communities, as well as the size of amnesty permits granted), which have an indirect impact on assessing the extent of illegal migration, we can say that Poland is among the few European countries with a relatively small population of illegal migrants. According to the estimates by the Ministry of the Interior and Administration, the number of illegal migrants in Poland amounts to tens of thousands, including about 15 thousand people belonging to the Vietnamese and Armenian communities².

The most commonly reported risks of illegal migration include extending the stay of foreigners contrary to applicable regulations, the use of false and / or swindled documents, and giving false personal data hindering the identification of a foreigner.

During the last few years no significant rise in the number of migrants interested in an illegal stay in Poland has been reported. Generally, the immigration aims of foreigners have been fulfilled within the framework of the regularisation scheme, under which they could be granted a permission to stay for a defined period of time and a permission to reside. Migrants' stay and work could also be legalized by an employer's declaration about employing a foreigner for a period of six months within the next twelve months. Still, the most frequent problems connected with illegal immigration include using false documents or giving false personal information, which makes it difficult to identify a foreigner. One should also mention cases of foreigners applying for visas or a right to stay after entering into a fictional marriage with a Polish citizen, or foreigners declaring that the purpose of their stay is employment or studying on Polish universities, whereas their real intentions are different.

¹ Information according to the final report of the Clandestino Project.

² Own Reports of Migration Policy Department in the Ministry of the Interior and Administration

Findings on how to counteract this phenomenon suggest that there is a need to maintain and to effectively enforce the existing provisions ensuring the possibility to prevent abuses in the proceedings concerning entry and a subsequent stay in Poland. It seems necessary to implement the following measures:

- ✓ effective use of visa policy instruments for the prevention of clandestine immigration (evaluation of immigration risk, consultations and exchange of information with domestic institutions and with consular services, in particular of those of Schengen-area countries),
- ✓ limiting the number of illegal immigration channels (bogus students, marriages of convenience, foreigners using the simplified system of employment solely in order to obtain the right to enter the Schengen area) by reinforcing cooperation and enhancing information exchange between state institutions, as well as by a more effective detection and penalization of entities which open the way for illegal immigration,
- ✓ disseminating in the countries of origin the information on possibility of legal migration pointing to the consequences of breaching the provisions of immigration law,
- ✓ shortening the time span for executing an expulsion decision, especially in the case of minors staying in guarded detention centers, and creating for such minors the best possible conditions, first of all in terms of access to education and healthcare,
- ✓ concluding subsequent readmission agreements and streamlining their execution, as well as promoting voluntary returns of immigrants who are staying in Poland illegally.

The above mentioned and other elements of an efficiently and effectively implemented migration policy, combating illegal migration and reducing its scale, have been identified in a document adopted at a meeting of the inter-ministerial Team for Migration on 20 July 2011, entitled "Polish Migration Policy - current state and further actions". The implementation of measures proposed by the Polish government, including the development of a new act on foreigners and the adoption of a separate act on legalising the stay of certain foreigners in the Republic of Poland³ can strengthen even more the national border management system currently in operation.

³ Information available on the site of the Polish contact point of the European Migration Network http://www.emn.gov.pl/porta/esm/704/8953/Akcja_regularyzacyjna_w_Polsce.html as well as http://www.emn.gov.pl/porta/esm/704/8951/Zalozenia_do_projektu_ustawy_cudzoziemcach.html. The Act of 28 August 2011 on legalizing the sojourn of certain aliens within the territory of the Republic of Poland and amending the Act on granting protection to aliens within the territory of the Republic of Poland and the Act on aliens (Dz.U. [Journal of Laws] of 2011, No 191, item 1133).

Chapter 1 Aims of the report and the methodology adopted

1.1 Methodology employed in the report

The main aim of this Report is to provide an overview of knowledge on the state's policy towards illegal migration, as well as to outline the overall organizational structure of national border management system and of national legislation on migration. Information contained herein gives an overview of legal and organizational basis for controls aimed at establishing the legality of stay or employment, and for enforcing returns of foreigners who are staying in the territory of Poland illegally.

This report has been prepared by the Polish National Contact Point (NCP) to the European Migration Network (EMN)⁴ located at the Ministry of the Interior and Administration. The greatest contribution to this Report has been made by the Border Guard, statutorily responsible for tasks connected with the protection of the border of the Republic of Poland, and with fighting illegal migration. The Report is based chiefly on the data provided by the Border Guard and on the information obtained from the Migration Policy Department of the Ministry of the Interior and Administration. The authors have also made use of analyses provided by science centres researching the issue of illegal migration and keenly interested in working out suitable recommendations. The main source of data was the databases (i.e. reports on conducted researches and statistical data) of institutions responsible for conducting statistical analyses and for monitoring the situation on the state border (the Border Guard).

Polish Report is a part of the EMN Synthesis Report, summarizing the knowledge on the issue in each of the EMN countries. The Report is intended for National Contact Points of the European Migration Network and for the European Commission, as well as for national and EU legislators, national executive and the society, i.e. NGOs, research centers and other interested entities. The Report offers access to clear and easily searchable data to all those interested in the issue of illegal migration. However, having agreed on some restriction concerning the scope of this Report, certain legal and/or procedural nuances have been omitted in order to maintain clarity.

It is important for both National Reports and the Synthesis Report to be as up-to-date as possible - this Report includes the latest data on the number of foreigners crossing the Polish border illegally, on the main migration routes, and on the planned legislative measures to fight illegal migration. The data included in Polish National Report reflect the Polish legal framework as of 31 August 2011, in particular it refers to the Act of 13 June 2003 on foreigners⁵ and the Act of 14 July 2006 citizens of the EU Member States and their family members entering, staying and leaving the territory of the Republic of Poland⁶.

1.2 Key definitions

For the sake of clarity of the Report and its accessibility to a wide audience, the following section gives definitions of key concepts used herein: illegal migration, illegal employment of foreigners, irregular migrant.

⁴ Currently Polish NCP comprises of the representatives of the Ministry of the Interior and Administration (National Coordinator), Office for Foreigners, Ministry of Labour and Social Policy, National Border Guard Headquarters and Central Statistical Office.

⁵ Dz. U. [Journal of Laws] of 2006, No 234, item 1694.

⁶ Dz. U. [Journal of Laws] of 2006, No 144, item 1043.

According to the accepted definitions⁷, illegal migration is generally understood as an illegal entry or stay of a foreigner in the territory of a state, which involves breaching this state's legal provisions on admission of foreigners. In Polish legislation a more descriptive definition is employed: a foreigner who is staying without the required permit. Pursuant to Article 3(2) of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348/98, 24.12.2008.) the term "*illegal stay*" means "*the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.*" This definition covers the foreigners who entered a given state illegally and were subsequently staying there illegally as well as those whose entry was legal, but who later, due to their failing to apply for a residence permit or because such permit was refused, continued to stay in the territory of that state without a proper legal title.

In some publications Polish institutions use the term "*irregular migrant*" (although one should not use the term "*regular migrant*"), which is acceptable, but a more correct form is "*migrants with unregulated status.*" Frequently the term irregular migrant⁸ is used for foreigners who are legally entitled to stay in a given country, but whose purpose of stay is different than the declared one (e.g. foreigner with a tourist/student visa who is working or uses the visa to transfer to some other EU Member State, etc.).

In this context we should point to the fact that Polish regulations (i.e. Article 2(13) and 14 of the Act of 20 April 2004 on promotion of employment and labour market institutions)⁹ include definitions of "*illegal employment*", "*other illegal gainful employment*" and "*illegal rendering of work by a foreigner*". The said article stipulates that an illegal rendering of work by a foreigner takes place also if a migrant *does not hold a valid visa or some other document entitling him to stay in the territory of the Republic of Poland; or whose legal title for staying in the territory of the Republic of Poland does not authorize him to render work; or who renders work without a proper permit, if such permit is required, or if the terms of employment or the position occupied by the foreigner are different than those provided for in his/her work permit, subject to Article 88(i), or if a foreigner renders work without an employment agreement or a civil-law contract required by law.* The Act also lists elements which qualify migrant's employment as illegal:

- a) employer is hiring a person without notifying, within the required period, in writing on the type of contract concluded and of its conditions,
- b) employer's failure to register an employee or a person rendering some other work with the social insurance programme,
- c) taking up employment, other gainful work or activity without notifying the competent Poviats Labour Office.
- d) employing a foreigner who does not have a work permit, even though such permit is required by law, or employing a foreigner on conditions or at a position different from those specified in the work permit, subject to Article 88(i) of the Act of 2004, which lists cases where work permit remains valid.

In this Report the term illegal immigration, irregular migrant (migrant with unregulated status) is interpreted broadly and it encompasses all the above-mentioned definitions.

⁷ These definitions also comply with the definition of illegal migration included in the dictionary of migration terms and in the glossary drafted by the European Migration Network (EMN Glossary is accessible at: <http://emn.intrasoft-intl.com/Glossary/index.do>).

⁸ The term illegal migrant is still in common use. These terminological problems stem from the fact that the term *illegal migrant* is regarded as politically incorrect.

⁹Dz. U. of 2008 No 69, item 415, as amended

Chapter 2 Illegal immigration policy and its legal basis

2.1 National Policy and legislation on illegal migration

The issue of preventing illegal migration is regulated by the following national legal acts:

- ✓ Act of 13 June 2003 on foreigners (Dz. U. [Journal of Laws] of 2006, No 234, item 1694);
- ✓ Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland (Dz. U. [Journal of Laws] of 2006, No 234, item 1695, consolidated text);
- ✓ Act of 14 July 2006 on citizens of the EU Member States and their family members entering, staying and leaving the territory of the Republic of Poland (Dz. U. [Journal of Laws] of 2006, No 144, item 1043, as amended);
- ✓ Act of 20 April 2004 on promotion of employment and labour market institutions (Dz. U. [Journal of Laws] of 2008, No 69, item 415, as amended);
- ✓ Act of 20 May 1971 – the Code of Petty Offences (Dz. U. [Journal of Laws] of 2007, No 109, item 756, as amended);
- ✓ Act of 6 June 1997 – Penal Code (Dz. U. [Journal of Laws] of 1996, No 88, item 553, as amended);
- ✓ Act of 12 October 1990 on the Border Guard (Dz. U. [Journal of Laws] of 2005, No 234, item 1997, as amended);
- ✓ Act of 13 April 2007 on National Labour Inspectorate (Dz. U. [Journal of Laws] of 2007r, No 89, item 589, as amended);
- ✓ Act of 2 June 1994 on the freedom of economic activity (Dz. U. [Journal of Laws] of 2010, No 220, item 1447).

On a statutory level, migration related issues are regulated by implementing acts (i.e. ordinances), issued usually by the Minister of the Interior and Administration and by the Minister of Foreign Affairs.

The said legislation comprehensively regulates the enter of foreigners into Poland (i.e. specifies the requirements for a lawful crossing of the border, including the compulsory documents such as visas, as well as the authorities competent for issuing visas, and the procedures for obtaining them), their stay in Poland (i.e. types of residence permits, the authorities competent for issuing such permits, and the procedures for obtaining them), as well as enforced return of foreigners - expulsion (i.e. circumstances which indicate that the rules for stay have been breached, legal consequences of expulsion, and the bodies competent for conducting expulsion proceedings).

From the abovementioned provisions stems that several state institutions influence the actions taken in this area, the Border Guard being, next to the Ministry of the Interior and Administration, the Office for Foreigners, National Labour Inspectorate, voivodes and the Police, one of the key elements of Polish migration management system. Pursuant to the provisions in force, the competent authorities entitled to decide whether there was breaches of law related to the legality of stay include, first and foremost, the Border Guard, the Police, the Office for Foreigners, voivodes and the Customs Service – as regards the conducted proceedings.

Where the Border Guard finds that a foreigner is staying in Poland illegally, it launches a procedure which results in issuing a decision to expel the said foreigner from the territory of the Republic of Poland, or it files with a voivode a motion to expel the foreigner from the Polish

territory. The Border Guard also files a suitable motion, if necessary, to place a foreigner in a guarded detention centre or a remand centre until the date of his/hers expulsion. Such expulsions consist in deportation (or in the case of expulsion by aircraft or sea vessels, deportation to foreigner's home country). Next to the penalties set forth in administrative decisions, such as a ban to enter the territory of the Republic of Poland and Schengen Member States for a period of 1 year (in the case of issuing a decision obliging the foreigner to leave the country), and for a period of 3 or 5 years in the case of an expulsion decision, it is possible to impose fines on foreigners for the offences specified in the above-mentioned acts.

Between 2005 and 2007, Polish legislation regulating the entry and stay of foreigners in the territory of the Republic of Poland was amended, with a view to implement the body of EU law in this area. Additionally, starting from the 21 December 2007 Poland began to fully execute the Schengen acquis regarding the conditions of foreigners entry and stay in the territory of the Republic of Poland, also the provisions of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders began to be fully implemented as well as the provisions of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

The amendment of the Act of 13 June 2003 on foreigners and of the Act of 12 November on the Border Guard (which entered into force on 1 January 2009) introduced a number of changes in the scope of tasks and authorization of the Border Guard units in the scope of foreigners' entry and stay in the territory of the Republic of Poland (e.g. Border Guard was authorized to autonomously control foreigners employment and their business operation). Earlier, i.e. in July 2007, Polish National Labour Inspectorate was granted a right to control the legality of foreigner's employment in the territory of Poland. Presently, the tasks of this institution include supervising and controlling the observance of labour law, controlling the legality of employment or other gainful work, and of work rendered by foreigners. Pursuant to Article 14 of the act on the Polish National Labour Inspectorate, in pursuing its tasks the institution cooperates in particular with the supervisory and inspection bodies which oversee the quality of labour conditions, as well as with the Police, the Border Guard, tax offices, the Social Insurance Institution, as well as with the local government authorities¹⁰. On 8 November 2010, the Polish National Labour Inspectorate and the Social Insurance Institution signed an additional agreement on the joint action to counteract illegal employment. The agreement stipulates that when performing a check both institutions will exchange information on whether the employers are hiring employees in accordance with the law.

2.2. Institutional framework

In accordance with Article 85(1) of the Act 13 June 2003 on foreigners, the Border Guard and Police authorities control the legality of stay of foreigners in the territory of the Republic of Poland, whereas the Head of the Office for Foreigners and a voivode may control the legality of stay of foreigners in the territory of the Republic of Poland - within the scope necessary for conducting proceedings in matters related to foreigners (Article 85(1a) and (1b) of the said act). The framework of cooperation between these institutions was defined in the Ordinance of the

¹⁰ Article 10(1)(4) of the Act of 13 April 2007 on the Polish National Labour Inspectorate (Dz. U. [Journal of Laws] No 89, item 589).

Minister of the Interior and Administration of 19 November 2009 on the mode of conducting checks on the legality of stay of foreigners in the territory of the Republic of Poland¹¹, authorizing the supervising personnel to demand that foreigners present documents and permits allowing them to stay in the territory of the Republic of Poland (Article 85(2) of the said act)¹².

Nevertheless, the Border Guard is the main institution responsible for preventing and counteracting illegal migration in Poland¹³. The abovementioned stems from tasks and powers of the Border Guard that were defined in the Act on the Border Guard and in specific normative acts on the functioning of this formation and on migration related issues, describing inter alia main goals of the Border Guard for the period 2009-2015, indicated in the document entitled "The concept of the functioning of the Border Guard in the years 2009 - 2015". The concept is also reflected in the documents adopted at the ministerial level (the Integrated Border Management Programme 2007 - 2013).

Organizational structure of the Border Guard

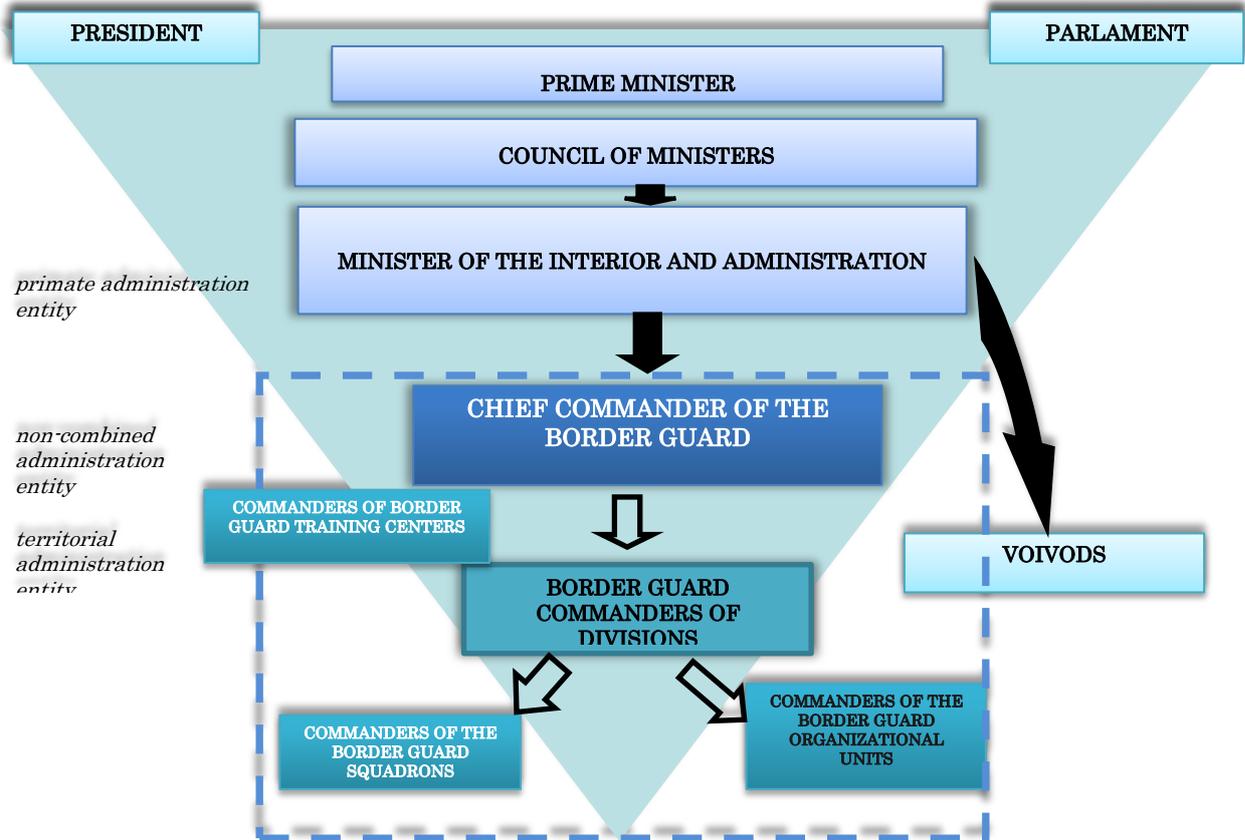
The Border Guard is an armed and uniformed unit created with the purpose of protecting the land and sea border, and to organize and manage the border traffic (article 1 (1) of the Act on the Border Guard), where the Chief of the Border Guard acts as a central government authority, competent for state border protection and for border traffic control. He reports to the Minister of the Interior and Administration and is appointed and dismissed by the Prime Minister upon a motion of the Minister of the Interior and Administration. He also performs his tasks through the office directly subordinate to him, namely the Headquarters of the Border Guard.

¹¹ Dz.U. z 2009 roku Nr 207, poz.1600.

¹² A non-national undergoing control is obliged to show his/hers work permit (Article 85(23) and Article 85(1) of the abovementioned act).

¹³ The Border Guard started its operations on 16 May 1991, based on the Act of 12 October 1990 on the Border Guard (Dz. U. [Journal of Laws] Of 2005 No 234, Item 1997, as amended). This formation was established in place of the disbanded Frontier Guards. Pursuant to the Act, the Border Guards is a homogenous, armed and uniformed unit, created with the purpose of protecting the land and sea border, and to organize and manage the border traffic. Due the rights vested in it, the Border Guard, in its nature, is a police-like unit. The act specifies not only the tasks, scope of competences and organizational structure of the Border Guard, but also its code of behavior. Since its creation, the unit's scope of tasks was systematically expanded, especially in the area of activities connected with fighting the broadly defined border crime and illegal migration.

Graph 1: Border Guard in the structure of the Polish migratory system



Source: Material prepared by the Polish Border Guard

The chiefs of Border Guard posts are authorized, among others, to issue permits for crossing the border of the Republic of Poland, including visas (only in well-grounded cases) and entry passes for sailors.

They are also authorized to issue administrative decisions related to the crossing of state border, such as:

- ✓ refusal of entry into the territory of the Republic of Poland;
- ✓ specifying a time limit for stay of a foreigner in the territory of the Republic of Poland, depending on the amount of funds in his/her possession.
- ✓ annulment/revocation of the validity of a visa;
- ✓ obliging a foreigner to leave the territory of the Republic of Poland;

Tasks of the Border Guard

The main tasks of the Border Guard include:

- ✓ protection of state borders along its so called “green” and “blue” sections, and at the border-crossing points. The aim of this protection is to eliminate cases of illegal border-crossing, to prevent smuggling (e.g. stolen cars, weapons, ammunition, hazardous materials, drugs and cultural works), as well as fiscal crimes and offences (smuggling of excise goods);
- ✓ organizing and conducting checks of border traffic (including inspection of documents entitling to cross the border) and issuing permits to cross the border (including visas);
- ✓ fighting crime – identifying, preventing and detecting criminal offences and petty offences as well as prosecuting the perpetrators;

- ✓ issuing refusal of entry decisions for foreigners (e.g. because of lacking documents entitling them to enter and stay in Poland, or the lack of sufficient funds to cover the costs of stay and transfer, or a discrepancy between the declared and the actual purpose of entry, or their appearing on the list of undesirable persons). The Border Guard is also responsible for conducting checks on the legality of foreigners' stay in Poland;
- ✓ preventing unauthorized border transfer of waste, hazardous chemical substances, nuclear and radioactive materials without an appropriate permit, as provided for by separate provisions; preventing the pollution of border waters;
- ✓ protection of major international communication routes against crime, conducting investigation into terrorist threats to identify and prevent them;
- ✓ overseeing Polish maritime areas and air traffic at low altitude (in cooperation with Polish Air Force);
- ✓ controlling the legality of work rendered by foreigners, as well as of their business operation, and of commissioning work to foreigners.

The Border Guard is also responsible for the following:

- ✓ fulfilling the obligations resulting from Polish membership in the EU/Schengen (admission and transfer of persons, exchange of information) and from bilateral agreements (joint patrols, cross-border cooperation);
- ✓ international cooperation with authorities and institutions competent for border protection issues;
- ✓ management of the state border of the Republic of Poland,
- ✓ ability to re-introduce temporary border checks within the EU/Schengen area.

In the years 1991 - 2010, the Border Guard underwent transformation from a border control unit, in its nature similar to military units, into a border-immigration agency with police-like powers. The effectiveness of Border Guard's activities was assessed during observation missions carried out by the EU institutions; it was also controlled twice: for the first time after Poland's EU accession (1 May 2004), and for the second time after Poland began to fully implement the Schengen Agreement (on 21 December 2007).

After Poland began to fully implement the provisions of Schengen Agreement, the manner of performing its task by the Board Guard at the border of the Republic of Poland underwent substantial changes. Currently, its priority is to protect the external EU/Schengen border and to control border traffic. As regards the inner border and the territory of Poland, the Border Guard undertakes actions aimed at fighting illegal migration by controlling the legality of stay and foreigners' employment, and by checking if foreigners meet the conditions of stay in the territory of the Republic of Poland. The Border Guard also undertakes actions to prevent illegal border crossing, using mobile patrols rather than direct border checks.

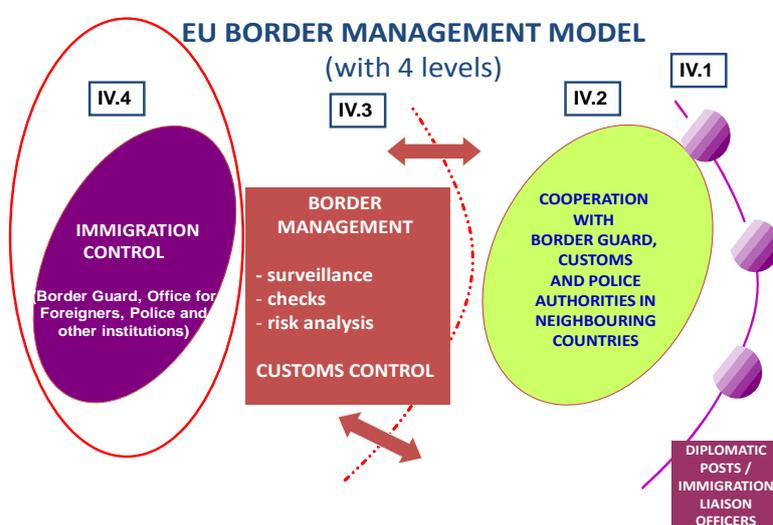
On 1 May 2004, the border between Poland and Russia, Poland and Belarus, and Poland and the Ukraine, as well as the sea border and international airports became the external borders of the European Union. After Poland has become a part the Schengen area, the crossing of the Polish border makes it possible to travel into all Schengen states without any further border controls.

Polish border is guarded along its entire length, with particular attention being paid to the sea border and to land sections of border with the Russian Federation, the Republic of Belarus, and the Ukraine, since this is the external border of the European Union and the Schengen area. Consequently, Poland is responsible for ensuring safety of all Member States and for protecting

them against threats that may be posed by undesirable persons and goods entering the EU territory. At the same time, Poland has to cultivate good relationships with its neighbouring countries which do not belong to the EU. At designated border-crossing points at the external border of EU/Schengen area, the Border Guard also controls border traffic of humans, means of transportation and goods.

Due to the Polish membership in the European Union (as of 1 May 2004) and in the Schengen area (as of 21 December 2007), the effectiveness of Polish border protection system¹⁴, which is based on cooperation between all public order institutions and in particular on the activity of Border Guard, has direct impact on the safety not only of Poland, but also of all other EU Member States. Due to the complexity of the above-mentioned situation, **the system of border protection is adapted to the 4-level external EU border security management system**, used also in other EU Member States. In this model, devised in 2002 for the purposes of external EU border management system, four complementary border protection zones have been distinguished, as shown on the attached picture.

Graph 2: Polish Order Guard and the UE border management model (4 levels)



Source: Material prepared by the Polish Border Guard

Directions (goals) of the Border Guard within each of the four levels of the external EU border management system (IV.1-IV.4) are aimed at improving the security of Poland and at a more effective realization of Polish obligations stemming from the EU membership and signing the Schengen Agreement.

LEVEL IV.1

The Border Guard cooperates within the framework of the Visa Information System with Polish consular offices in the area of consultations concerning visa applications. It also participates in the work of the network of immigration liaison officers.

¹⁴ Road, railway and river border-crossing points and types of traffic permitted on these points are agreed upon in international agreements. The Republic of Poland signed agreements on border-crossing points with all neighbouring states. In force since December 2007, the provisions of the agreements on border-crossing points concluded with the EU Member States have not been repealed. However, pursuant to Article 20 of the Schengen Border Code, crossing of the internal border is allowed on every location, without any customs clearance, and irrespective of one's nationality. Lifting the internal border control and expanding the communication infrastructure near the EU countries borders contributed to an easier crossing of the internal border. On the other hand, road, railway, sea and air border-crossing points are located on the external border. Sea and air border-crossing points are also used in internal Schengen border traffic.

More information on national consultations and consultations between EU Member States on granting visas can be found in Chapter 3.

LEVEL IV.2

The Border Guards cooperates with border services, as well as police and immigration agencies of the neighbouring countries which are non-members of the EU. This improves the effectiveness of state border protection and of the border checks performed by the Border Guard, thus contributing to a better protection of the EU/Schengen external border and, consequently, to the security of Poland.

Such cooperation creates an opportunity to conduct training and promotion activities which propagate the EU solutions for border protection.

LEVEL IV.3

The system of guarding the sections of land border with the Russian Federation, the Republic of Belarus and the Ukraine, and of the sea and air border, is a part of the external border protection system of the European Union and the Schengen area.

The aim of this system is to protect the state and its territory as well as other EU Member States against crimes connected with unlawful border crossing of persons, means of transport and goods (the so-called “cross-border crime”). In a situation when the Schengen acquis is implemented completely, the effective protection of Polish external border has an impact not only on the security of Poland, but also on the security of other EU Member States, including those countries which have abolished border control with Poland (Germany, the Czech Republic, Slovakia, Lithuania).

The protection of Polish border, which is also the EU external border, and control of the human movement, means of transport (within the scope of responsibilities of the Border Guard) and goods is comprehensive in character and compliant with the 4-level EU model. An essential prerequisite for effective realization of the priority task of the Border Guard is its cooperation with other border control and public security agencies. In order to strengthen the effectiveness of border activities (border protection and border checks), in line with the adopted action strategy, certain supplementary (compensatory) measures are being implemented outside the frontier zone by Border Guard units which operate at a distance from the border.

In this context, one should also mention the close cooperation between the Border Guard and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), which started to operate in 2005 in Warsaw. The Agency acts as an instrument increasing the effectiveness of measures to protect those sections of Polish border which are also the external border of the EU/Schengen area. The Border Guard protects one of the longest sections of external land border, and therefore efficient cooperation with the Agency is a vital factor supporting the operation of the Guard. The activeness of the Border Guard in its cooperation with the Agency, as well as the effective execution of its tasks, has a positive impact on the image of Poland as a country which successfully fulfils its obligations in terms of protection of the external EU border, implementing effectively the EU immigration policy, and helping to protect other, more endangered sections of the external EU border¹⁵.

¹⁵ More information in point 4.3 of this Report

LEVEL IV.4

Preventing illegal migration is a strategic task for the Border Guard, which, as provided for in "The concept of the functioning of the Border Guard in the years 2009 - 2015", a document accepted by the Minister of the Interior and Administration and by the Chief of the Border Guard of Poland on 24 September 2009, will, by the year 2015, be transformed into the leading Polish immigration agency, specializing in fighting illegal migration, in particular by controlling the legality of stay, employment and business operations of foreigners.

The Border Guard fulfils its tasks in the territory of the Republic of Poland in cooperation with other public order authorities and state security institutions (i.e. the Police, the Polish Internal Security Agency, the Polish Central Anticorruption Bureau, the Customs Service) and institutions comprising the Polish immigration agencies system (the Office for Foreigners, voivodship offices).

The activities in the territory of Poland include:

I. Controlling the legality of stay, employment and businesses operations of foreigners in the territory of the Republic of Poland

Controlling the legality of foreigners employment and business operations makes it possible to effectively and comprehensively control the legality of foreigners stay in Poland; it is also a tool in preventing illegal immigration under the appearance of running a business.

Effective control of the legality of foreigners stay, employment and business operations is based on the reconnaissance, up-to-date information and on the results of risk assessment analysis. It also takes into account regular, ongoing cooperation with other competent authorities and institutions of the Polish immigration system.

The Border Guard performs also other actions commissioned by competent authorities (mainly by the voivodes), including:

- ✓ community interviews,
- ✓ establishing the place of residence of a spouse or some other family member of a foreigner, or of a person who has family-like relationship with the foreigner,
- ✓ checking the premises which a foreigner indicated as his/her place of residence.

Such actions are usually a part of administrative procedure in the process of legalization of a foreigner's stay, and are intended to prevent cases of obtaining a residence permit under false pretences. In 2009 and 2010, officers of the Border Guard performed approx. 60 000 such checks a year (throughout Poland, including places located at a considerable distance from Border Guard organisational units). In 2009, they issued 45,830 opinions on applications for residence permits, and they carried out 11 201 community interviews. In 2010, the corresponding figures were 44,803 and 16,168 respectively.

II. Ensuring the performance of proceedings aimed at foreigners subject to expulsion from the territory of the Republic of Poland

Activities aimed at ensuring the return of foreigners who have been served with an administrative decision ordering them to leave the territory of the Republic of Poland are a key element in the system of preventing and fighting the illegal migration. These activities are designed to ensure the fastest possible return of foreigners to their country of origin or of permanent residence. Towards this aim certain instruments are used, supporting and facilitating a foreigner's own return (issuing a document obliging the foreigner to leave the territory of Poland or enlisting the foreigner on a voluntary return programme) and, should this be impossible, providing certain organizational and technical measures to effectively execute the

force return procedure (consisting mainly in placing a foreigner in jail or in a remand centre in order to expel him/her from Poland).

III. Transferring/receiving persons to/from other Schengen area countries

Transferring and receiving of persons in designated places at the border between Schengen area countries is an element ensuring the proper human flow after abolishing the border control. Appropriate legal instruments have been created for this purpose, including agreements on receiving and transferring of persons. Such agreements are also referred to as readmission agreements. At the same time, in order to prevent the practice of abusing the institution of a refugee in the EU territory, a community instrument was established in the form of Regulation of the Parliament and of the Council of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. In order to accomplish these aims, proper facilities, in the form of points for transfer of persons, have to be established.

IV. Activities on major international communication routes

In accordance with “The concept of the functioning of the Border Guard in the years 2009 – 2015”, the actions performed by the Border Guard on major international communication routes are directed at fulfilling the tasks specified in the Act on the Border Guard. The priority here is to prevent and counteract cross-border crime and illegal migration.

The Border Guard completes its tasks in cooperation with other public services (the Police, the Road Transport Inspectorate) within the framework of national system of security, and in accordance with the adopted strategies and programmes. The Border Guard’s presence on the major international routes is connected with the actions carried out within level 4 of the external EU/Schengen border security management system. This has an indirect impact on the state security.

Apart from controls carried out by Border Guard along major international communication routes, certain techniques of investigating crimes the prevention of which falls within competencies of the Guard were developed, while prevention of illegal migration was improved. The information acquired by investigation is used to plan the patrol and control activities on the routes.

Controlling foreigners travelling along communication routes (roads, railway, rivers and airports) in the territory of the Republic of Poland, which is a part of the Schengen area, is one of key compensatory measures for abolishing border control within the internal borders of the EU/Schengen area. A better management of these actions enables a more effective prevention of crimes and petty offences specified in the act on foreigners and other legislation that comprise the phenomenon of illegal migration.

V. Police cooperation and information exchange

Starting from the day when Poland began to fully implement the provisions of Schengen Agreement, the effectiveness of Border Guard’s protection of the EU/Schengen external border, as well as of recognizing and fighting the cross-border crime, and of preventing illegal immigration depends on the effectiveness of cooperation (which entails the exchange of information) with national services (the Police, the Customs Service, the Polish Internal Security Agency, etc.). It is also dependant on cooperation with customs, immigration and police services from other EU countries and from neighbouring third countries. Such cooperation takes various forms, and its main aim is to increase the security of Poland by effective prevention and fighting against threats.

The functioning of Cooperation Centres and permanent contact points allows for regular exchange of information, it fosters cooperation between border guard agencies, immigration agencies and the Police departments of neighbouring countries. It also facilitates Police information exchange on an operational and tactical level. The activity of local contact points supplements the information exchange through liaison officers and through international information exchange channels (Europol, Interpol).

VI. Joint patrols with border guard officers from the neighbouring EU/Schengen countries

The agreements signed between the Government of the Republic of Poland and the Governments of neighbouring EU countries allow the border guard officers of the parties to such agreements to perform the so-called joint patrols. The patrols are conducted in the vicinity of state border, on specified routes of the EU internal border, in the frontier zone and on major communication routes. Apart from their preventive and disciplinary character, joint patrols are an important element of cooperation between immigration and border agencies. This cooperation makes up a part of level 4 of the EU/Schengen external border protection system. Joint actions limit the possibility of illegal movement of migrants within the Schengen area.

VII. Recognizing and preventing the terrorist threat

As far as recognizing and preventing terrorist threats is concerned, the Border Guard cooperates closely with other services of the Republic of Poland, especially with the Internal Security Agency and with the Police).

VIII. Identification, prevention and detection of criminal offences

The membership of Poland in the EU and signing the Schengen Agreement, facilitating free movement of people and goods across internal borders, is also taken advantage of by organized criminal groups which reap profits from organizing illegal migration, smuggling people and human trafficking. This situation results in a need to conduct extensive operational and investigation activities aimed not only at criminal groups, but also on foreign communities, immigration diasporas, sources of criminal behaviour, etc.

Activities in the area of identification, prevention and detection of criminal offences constitute a part of competences of the Border Guard. Activities aimed at fighting groups which organize illegal migration do not exclude actions aimed at fighting other crime, such as illegal trade in goods, taking account of its organized and cross-border character.

IX. The readiness to re-introduce temporary border checks within the EU/Schengen area

The readiness to re-introduce temporary border checks within the EU/Schengen area is one of the tasks of the state, and the Border Guard is responsible for enforcing it. Because it is impossible to maintain fully operational border infrastructure on the sections of state border between Poland and Germany, the Czech Republic, Slovakia and Lithuania, in order to maintain the readiness to re-establish temporarily the border control on the EU/Schengen internal border, it is assumed that if border control on the EU/Schengen was to be temporarily re-established, the Border Guard would perform its duties by mobile methods, using its own staff as well as in cooperation with the Police and the Polish Fire Brigade.

The border controls on the internal borders will differ from those on the external ones. The main difference is that not all persons and means of transport will undergo control. Selecting

particular individuals for control will be based on the results of risk assessment which will be closely connected with the reasons for re-establishing the temporary border control. Poland has not implemented this measure so far. However, due to the fact that Poland and the Ukraine host the European Football Championships such possibility will be considered (the EURO 2012 begins on 9 June and ends on 1 July and will be held both in Poland and in the Ukraine).

X. Management of the state border of the Republic of Poland on the sections which constitute the internal EU/Schengen area border

Management of the state border involves several undertakings carried out in order to guarantee that the border remains unchanged, thus ensuring territorial integrity of the state. Such undertakings are carried out in cooperation with neighbouring countries, based on international agreements on common state border. The key actions include: maintaining of an unambiguous borderline, clearly marked by geodetic procedure, as well as drafting and updating the technical geodetic and cartographic documentation as regards the position of the border. Activities aimed at ensuring a stable sea border are of particular importance. The abovementioned undertakings are implemented by the bilateral Border Commissions, formed in accordance with the provisions of international agreements and with the consent of the competent border plenipotentiaries.

Adjusting Polish services to operate within the framework of this system entails not only transposing legal and organizational regulations. It also requires efficient cooperation and adequate operational capacity of all Polish border agencies, and especially of the Border Guard. Apart from the Border Guard, the Police and Polish consular offices (the Ministry of Foreign Affairs) also play an important role in this 4-level system of border protection.

* * *

Taking into consideration the abovementioned (I-X) directions, it should be stated that the strategy employed by the Border Guard is compatible with the 4-level system of EU/Schengen border protection. After Poland's accession to Schengen area, the Border Guard's priority is to ensure effective protection of Polish state border, which is also the external border of the European Union and the Schengen area. The second priority consists in actions implemented on the territory of Poland, aimed at controlling immigration (also at recognizing, preventing and fighting crime, including the organized crime).

The external border of Poland, i.e. the border with the Russian Federation, the Republic of Belarus and the Ukraine, as well as Poland's sea and air border, constitute the external border of the customs territory of the Community and the border of the Schengen area. Since crossing the external Polish border by people or goods involves the right of free movement within the EU area, border controls must ensure the highest possible security level and prevent entry of people or goods that are undesirable or dangerous. At the same time the Border Guard must not disrupt the legal border crossing of persons or legal international trade.

In order to ensure the accomplishment of these tasks, the following services authorized to perform checks are present on the external border of Poland:

- ✓ the Border Guard, which performs its tasks within the framework of a widely defined border protection system, in cooperation with other Polish services and institutions, as well as with border guard services from the neighbouring third countries (Ukraine, the Russian Federation and the Republic of Belarus) and with border, immigration and police officers from other EU Member States. The cooperation between the Border Guard and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) is also very important.

- ✓ Police. Although the Police does not directly participate in the physical protection of the border and in border control, its actions also involve fighting the cross-border crime and organized crime, in cooperation with other services: the Border Guard and services subordinated to the Minister of Finance, including the Customs Service and fiscal authorities as well as foreign partners. The cooperation is in accordance with the internal regulations and the relevant international agreements. The poviats Police headquarters, which operate directly in the border zone, are organized according to different rules, so that their activities take account of the special character of cross-border crimes. The violation of national border and the accompanying crimes open the list of major threats:
 - ✓ the Customs Service;
 - ✓ General Veterinary Inspectorate;
 - ✓ Plant Protection and Seeds Service;
 - ✓ Agricultural and Food Quality Inspection;
 - ✓ Chief Sanitary Inspectorate.

It should be stated that the Border Guard, in preventing illegal migration, actively cooperates with other public administration institutions, in particular with the Police, the National Labour Inspectorate, the Customs Service, Social Insurance Institution, fiscal authorities as well as trade unions and employer's organizations. In performing its tasks the Border Guard also closely cooperates with a number of NGOs, which focus their activity on the protection of human rights. Organizations cooperating with the Border Guard and engaging in the activities for protecting the rights of foreigners staying in Poland are the following:

- ✓ Office of the United Nations High Commissioner for Refugees (UNHCR), whose activities for the benefit of refugees in Poland include granting access to international aid in Poland, providing persons applying for a refugee status with adequate reception conditions, as well as with reliable and effective procedure for refugees. The Office also seeks permanent solutions for problems that concern persons covered by international protection (source: <http://www.unhcr-centraleurope.org>);
- ✓ International Organization for Migration, whose activities cover 4 key areas of migration management: migration and development, supporting migration, regulating migration, and measures undertaken in the case of forced migration. Among the cross-sectional tasks the following should be mentioned: promotion of international migration law, conducting debates, working out recommendations on migration policy, protecting the rights of migrants, health-related measures, and actions aimed at preventing sex discrimination in the migration context (source: <http://www.iom.pl>);
- ✓ The Helsinki Foundation for Human Rights, acting for the protection of human rights, and offering professional counsel in the area of personal and political rights violation. It also implements educational programmes for numerous NGOs and state institutions. Beneficiaries of the trainings organized by the Foundations include members of several dozen of Polish NGOs and over one hundred foreign NGOs (source: <http://hfhrpol.waw.pl>);
- ✓ Association for Legal Interventions, whose aims include actions for discriminated people and persons threatened by marginalization, who are granted legal and social assistance. The Association provides legal counsel and represents its clients in front of state authorities. The Association also takes up actions aimed at changing the systemic legal and civic policies, among others by participating in conferences, consultations on drafting legal acts, commenting the legislation, and drafting expert opinions. The

Association is also engaged in information and research activities (source: <http://www.interwencjaprawna.pl>)

- ✓ Halina Nieć Legal Help Centre acts for the protection of human rights by providing complimentary legal counsel to people who are under threat of social exclusion and discrimination, including the poor, victims of domestic violence, foreigners and refugees. The Centre also monitors the observance of human rights, it undertakes legal interventions and implements educational and research projects. The actions taken by the Centre include also preventing the human trafficking and child trafficking by organizing social campaigns and providing legal assistance (source: <http://www.pomocprawna.org>).

Chapter 3 Practical mechanisms to limit illegal migration

3.1 Pre-entry: practical measures to limit illegal migration

The most important mechanisms providing the possibility to reduce the risk of illegal migration primarily consist in the responsible use of guidelines of the Polish visa policy¹⁶, and cooperation of the Border Guard with the competent border-immigration services of the countries of origin of the migrants.

A crucial element in cooperation, which is an important factor in combating illegal immigration into Poland and other EU / Schengen countries, consists in ongoing consultations prior to granting visas to citizens of third countries. The right visa decisions taken in the consulates of the Republic of Poland and consulates of other EU Member States contribute to preventing the influx of illegal immigrants and to the increase in the security of the states. Checks and controls to be performed on a foreigner by the consul in relation to issuing a visa include first of all the appropriate proceedings which consist of relevant visa policy, agreed on and implemented in cooperation by the EU Member States, and the so-called visa consultations between Schengen states. In Poland, in accordance with the provisions of the Act of 13 June 2003 on Foreigners (art. 33, 34, 34a and art. 46), the Head of the Office for Foreigners playing the role of the Central Visa Authority organizes visa consultations. However, important tasks during the process of visa consultations are performed by the Border Guard. The targeted activity of the Border Guard on the territory of the Republic of Poland, the exchange of information and its analysis, as well as effective implementation of tasks in the border traffic control, directly contribute to the speed and efficiency of visa consultation. It is necessary that the Border Guard should develop and maintain cooperation with the consulates of the Republic of Poland, consisting in informing each other about detected cases of abuse or fraudulently obtaining visas, falsification of visas and documents submitted in the visa procedure. Effective cooperation enables early identification of threats and of the ways of operation of immigrants and people (or gangs) arranging visa fraud.

As a result of cooperation carried out in 2010, the Consuls refused to grant visas in 27,193 cases (about 2.9 percent of all visa applications submitted). It is worth noting that the percentage of denials issued in high immigration risk countries is much higher than that mentioned above; for example at the Embassy in Abuja (Nigeria) there were 815 denials which accounted for 56% of visa applications submitted (of 1,452 applications submitted 637 were successfully accepted), in Algiers - 45 percent (482 applications submitted and 266 visas granted), in Rabat (Morocco) - 43 percent (2,603 applications were examined and 1,471 visas were issued), and in New Delhi - 23 percent (in response to 4,426 applications 3,677 were granted).

The important instruments in the visa policy which prevent illegal migration include the use by Polish consulates of standards and requirements set out in the Community Code on Visas. A special role in these activities is played by the process of cooperation and by the computerised system of consultations (the so-called VISION) with central authorities of other Schengen states as well as with competent institutions of our country - through the Head of the Office for Foreigners acting as the Central Visa Authority; in future the use of tools provided by the Visa Information System will also play an important role in this context.

¹⁶ In the Act of 13 June 2003 (see Articles 34 and 35) on aliens, the factors that prevent the alien from obtaining a uniform and/or national visa were enumerated. More information on Polish visa policy can be found in a national report entitled "Polityka wizowa jako forma promocji legalnej migracji w Polsce" [Visa policy as a means of promoting legal migration in Poland].

3.2 Entry: practical measures taken to identify and detect illegal migration at the state border

Border control still exists at the sections of state border forming the outer border of the European Union/Schengen area (i.e. along the border with the Ukraine, Belarus, and the Russian Federation - Kaliningrad Oblast), as well as at air and sea border crossings - for cruises and flights outside the Schengen area; such control results in decisions refusing entry to the territory of the Republic of Poland for persons failing to meet entry requirements. The thorough control to disclose attempts at violating the entry requirements, and consequently, turning back persons attempting to illegally cross the border, is an important instrument for preventing illegal migration to Poland and to other Member States, which also allows to effectively reduce the level of migration risk. The key cooperation areas of the border services toward diminution of illegal migration include:

I. Border Plenipotentiary System

It is a proven tool for border cooperation in sections of state border of the Republic of Poland constituting the outer border of the EU/ Schengen (Russia, Belarus, Ukraine). The cooperation implemented within the border plenipotentiary system enables and facilitates effective border cooperation.

II. The development of cooperation with border and immigration services of third countries

Cooperation with border and immigration services of neighbouring third countries on the exchange of statistics, information, experience (best practices) and training, as well as implementation of other joint ventures provides opportunities to strengthen cooperation in protecting the common sections of the border and to cooperate in combating illegal migration.

III. Cooperation with the authorities of third countries in order to effectively expel foreigners from the territory of the Republic of Poland (readmission agreements.)

Cooperation with third countries to ensure the successful expulsion of foreigners is one of the basic objectives of the Border Guard. It is essential to maintain and continue to develop this cooperation, particularly in relation to the neighbouring countries. This cooperation is implemented on a bilateral and the EU level, including the readmission agreements concluded by the EU with third countries, and the opportunities created in this regard by the Frontex Agency. Cooperation at the EU level cannot replace cooperation on the bilateral level, particularly in relation to those third countries with which Poland has concluded bilateral readmission agreements. This mechanism allows to quickly transfer persons detained by the Border Guard at the time of their crossing state border illegally (especially outside the crossing points, at the sections of so-called green border) to the territories of the cooperating countries (e.g. on the basis of readmission agreements).

The Border Guard is responsible for border traffic control and security control on the basis of national legislation and the Schengen Borders Code. State border protection involves the cooperation of third (especially neighbouring) countries in preventing illegal immigration, including cooperation with making use of the network of liaison officers (from the police and immigration services.) Immigration liaison officers (ILO), who are Border Guard officers delegated to third countries (Russia, Ukraine), support the activities of not only this formation but also of other public safety agencies of the Republic of Poland (including the Police and Customs Service.) The presence of immigration liaison officers encourages cooperation with services of host countries, it facilitates the monitoring of migration (illegal migration flows) in these countries as well as in the region of Central and Eastern Europe. Immigration liaison

officers also provide support for consular services of the Republic of Poland, especially in the verification of documents attached to visa applications for entry on the territory of Poland.

Immigration liaison officers delegated by the Border Guard are part of the European network of Immigration Liaison Officers. The ongoing cooperation with liaison officers delegated from other EU countries makes it possible to obtain information relevant to: the Border Guard, consular services of the Republic of Poland, the Office for Foreigners, and other Polish public security services.

The control of documents, carried out at the border crossing, is meant to verify the intended purpose and circumstances of the stay and it may result in denial to a foreigner of entry into the territory of the Republic of Poland. In 2010, 23,521 foreigners were refused entry to Poland (in 2009 - 26,889), of which nearly 42 percent were foreigners who were turned back due to the lack of a valid visa or residence permit, and 38% were foreigners who did not show the Border Guard officers the relevant documents clarifying the purpose and conditions of the intended stay. In addition, during the same period 2,170 foreigners were detained for illegally crossing or attempting to cross the state border (in 2009 – 3,422.)

3.3 Residence: practical measures taken to control illegal migration to the territory of the state

Poland's accession to the Schengen area was associated not only with the abolition of internal border controls, but also with a change in the concept of the functioning of the Border Guard, among whose key tasks until the accession to the Schengen area was to protect the borders, including the borders with the Member States of the European Union. The abolition of internal border control resulted primarily in an increased activity of the Border Guard within the country within the framework of activities making up the so-called compensatory measures aimed at minimising adverse effects of the abolition of controls, including primarily those related to the illegal migration of third country nationals. In the new situation an important role is played by physical and technical systems securing access to the territory of the country (Border Guard patrols, mobile units, the Integrated Automated Radar Surveillance System (ZSRN), means of communication, transport, etc.) and operational activities aimed at combating organised crime at the border. This situation required certain changes in the manner of executing the existing tasks, acquiring new rights and adapting regular structures in the country and at the external border.

The process of transformation consists of the following issues:

- ✓ legal (new powers placed in the generally applicable regulations),
- ✓ organisational (adapting the regular structure to the undertaken tasks, mainly in the territory of the country),
- ✓ and technical (adapting infrastructure for effective implementation of new powers).

In 2006, the Board for Foreigners was formed within the structure of the Border Guard Headquarters, and in early 2007 organisational units was established within field organisational units of the Border Guard. The tasks of the units competent for foreigner's issues, in principle, focus on the issues set out in the three previously mentioned acts, and also in the issued implementing regulations.

The catalogue of national legislation is supplemented by regulations contained in directly applicable EU law (regulations, decisions) and in other international provisions (bilateral and multilateral / visa, readmission agreements).

After the accession of Poland to the Schengen Agreement, on 21 December 2007, the activities related to the legality of residence and resulting in issuing applications for a decision to expel or

issuing decisions obliging to leave the territory of the Republic of Poland are still performed within the country, especially near the internal borders and large urban areas. The tasks of the aforementioned units for foreigners also include activities related to:

- ✓ making entries to the list of foreigners undesirable on the territory of Poland by the Head of the Office for Foreigners,
- ✓ providing information on applications, processed by voivodes, for various types permits to stay on territory of the Republic of Poland,
- ✓ running detention centres for foreigners detained to be expelled (guarded detention centres, detention for the purpose of expulsion),
- ✓ accepting applications for refugee status (if a foreigner residing in such facility expresses desire to apply for this type of protection).

Despite the abolition of checks at internal borders and thereby stopping the execution of the border activities in the field of administrative proceedings, there are still points at the internal borders used for handing over people. These points carry out tasks related to:

- ✓ handing over and receiving persons on the basis of readmission agreements,
- ✓ handing over and receiving persons on the basis of Dublin II regulation,
- ✓ receiving people on the basis of Polish-German agreement on transit transportation.

As mentioned earlier, in order to extend the range of activities aimed at combating illegal migration, certain legislative action was taken resulting in the Border Guard receiving new powers, such as:

- ✓ conducting community interview in the course of proceedings executed under the provisions of the Act of 13 June 2003 on foreigners,
- ✓ determining the place of residence of the spouse or another family member of a foreigner, and a person with whom the foreigner has family ties, in the course of proceedings conducted under the provisions of the Act of 13 June 2003 on foreigners,
- ✓ checking the premises at a place of residence specified by a foreigner,
- ✓ issuing a decision to invalidate the permit to cross the border under the local border traffic as a result of finding justifiable circumstances,
- ✓ issuing a decision to invalidate or revoke a visa,
- ✓ implementing the obligation to bring a foreigner to the border for whom was issued the decision on expulsion from the territory of the Republic of Poland, or a decision to refuse a refugee status on the territory of the Republic of Poland with a ruling to expel a foreigner from that territory, or a decision to expel issued by the authority of another Member State,
- ✓ providing information to competent voivodes on the infeasibility of expulsion of a foreigner for reasons beyond control of the authority executing the decision on expulsion from the territory of the Republic of Poland (in connection with proceedings for a permit for tolerated stay),
- ✓ checking the legality of work rendered by foreigners, their business operations, and commissioning work to foreigners¹⁷,

¹⁷ Activities mentioned are also fulfilled by the National Labour Inspectorate.

- ✓ submitting applications to the appropriate district court to punish those responsible for breaches of the Act of 20 April 2004 on promotion of employment and labour market institutions.

It should also be noted that in recent years efforts continued to create a suitable base of facilities for foreigners awaiting expulsion from the territory of the Republic of Poland. As a result of these activities, currently in the organisational structure of the Border Guard there operate six guarded detention centres for foreigners, located in:

- ✓ Przemyśl - within the organisational structure of the Bieszczady Border Guard Department,
- ✓ Kętrzyn - within the organisational structure of Warmia and Mazury Border Guard Department,
- ✓ Biała Podlaska - within the organisational structure of Nadbużański Border Guard Department,
- ✓ Białystok - within the organisational structure of Podlaski Border Guard Department,
- ✓ Krosno Odrzańskie - within the organisational structure of Nadodrzańskie Border Guard Department,
- ✓ Lesznowola - within the organisational structure of Nadwiślański Border Guard Department (taken over from the Police in 2008).

Map 1: Location of Polish Border Guard entities



Source: Border Guard

The Border Guard also has arrests for the purpose of expulsion located in:

- ✓ Przemyśl - within the organisational structure of the Bieszczady Border Guard Department,
- ✓ Kętrzyn - within the organisational structure of Warmia and Mazury Border Guard Department,
- ✓ Biała Podlaska - within the organisational structure of Nadbużański Border Guard Department,
- ✓ Białystok - within the organisational structure of Podlaski Border Guard Department,

- ✓ Warsaw - within the organisational structure of Nadwiślański Border Guard Department,
- ✓ Kłodzko - within the organisational structure of the Sudecki Border Guard Department.

The actions above described that were taken in order to equip the Border Guard with new statutory entitlements necessary for the effective counteract against illegal migration have been supplemented by an additional task of conducting reconnaissance on immigration issues.

The first step in introducing this solution was to establish the institution of so-called liaison officer. The activities of the liaison officer of the Border Guard essentially consists in keeping cyclical contacts with representatives of the units established in voivodeship offices or their branch offices responsible for receiving and processing applications of foreigners for permit to reside on territory of the Republic of Poland. The liaison officer reviews and analyses files on foreigners, and in cooperation with the staff of voivodeship offices picks matter that may involve violations of the residence procedure by foreigners applying for residence permit for a fixed time, permit to settle on the territory of the Republic of Poland, and the EC resident's residence long-term permit. Then the cases selected by the liaison officer are reviewed, i.a. based on the new powers under Article 11(c) of the Act of 2003 on foreigners.

Immigration reconnaissance consists of actions taken by the Border Guards organisational units competent for foreigners issues, carried out in order to reveal, prevent and counteract phenomena associated with violation of the provisions on entry and stay of foreigners on the territory of the Republic of Poland, as defined in the Act of 13 June 2003 on foreigners, the Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland, the Act of 14 July 2006 on citizens of the EU Member States and their family members entering, staying and leaving the territory of the Republic of Poland, the Act of 20 April 2004 on promotion of employment and labour market institutions, and the Act of 2 July 2004 on freedom of economic activity.

The implementation of immigration reconnaissance consists in: performing the tasks of the liaison officer, obtaining and storing information containing no personal data and concerning the specific area of responsibility in relation to foreigners, analysing materials and documents obtained from cooperating entities, talks with individuals having access to information on violations of the rules of entry and stay of foreigners on the territory of the Republic of Poland, as well as monitoring of selected sites. Based on the collected data, the so-called map of foreigners is updated every six months.

It is in the interest of Poland to ensure that the borders with neighbouring non-EU countries do not pose a barrier to trade, social and cultural interchange, or regional cooperation. Thus, the intended increase in the openness of state border is aimed at facilitating the legitimate movement of people and goods, and expanding its scope. However, greater openness should not adversely affect the level of protection against threats to national security, national economy and public health, and unauthorised border-crossing.

The Border Guard is gradually becoming an immigration service, responsible for combating illegal migration. This is accomplished primarily through controls on the legality of stay of foreigners on the territory of the Republic of Poland, and through controls on the legality of work rendered by foreigners, their economic operations, commissioning work to foreigners, and employing foreigners.

The activities carried out within the framework of protection of communication routes are aimed at combating illegal migration and at migration prevention, whereas equipping the Border Guard in legal instruments facilitating an effective execution of the duties of the immigration service is ongoing.

The activities of the Border Guard aimed to intensify its cooperation with other institutions and entities in disclosing cases of illegal stay of foreigners are also developed and continued. From the viewpoint of the tasks of the Border Guard, rectors of universities as well as headmasters of schools which foreigners attend should be regarded as particularly important institutions and bodies. The ongoing cooperation with directors of detention centres and of arrests for foreigners is equally important.

The policy to promote returns in the form of voluntary returns of foreigners to their countries of origin is continued (as an alternative to forced returns), based on the Agreement between the Minister of the Interior and Administration of the Republic of Poland and the International Organization for Migration (IOM) on cooperation in the field of voluntary returns of foreigners leaving the territory of the Republic of Poland, which came into force on 7 November 2005, and the Immigrant Return Fund. For this purpose, further cooperation is being developed with international aid organisations and NGOs.

As part of forced returns, the Republic of Poland began organizing charter flights on the basis of Council Decision 2004/573/EC of 29 April 2004 on the organization of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders. constituting the Annex to the aforementioned Council Decision, apply in carrying out these activities. Cooperation in organizing and participation in joint charter flights with other EU Member States, in particular with Austria, Germany and France, and cooperation with the Frontex Agency, is continued and strengthened.

Readmission agreements are the legal instrument supporting the combat of illegal immigration in a meaningful way¹⁸. The aim is to conclude as many readmission agreements as possible, particularly with third countries, and the renegotiation of existing agreements so that they correspond to the Schengen standards (the so-called readmission agreements of new generation).

The task to develop instruments facilitating the transfer of persons (readmission agreements) has been largely taken over by the European Commission, which on the basis of mandates granted by the Council of the European Union is negotiating with third countries¹⁹.

The Border Guard continues to strengthen cooperation with third countries aimed at implementing the existing arrangements for the effective readmission of foreigners from the territory of Poland, as well as finding new ways to increase the effectiveness of the implementation of readmission agreements. The visits to Poland of representatives of the Office of Border Traffic Control of the Ministry of Public Security in Hanoi (Vietnam) are an example of such cooperation in the light of the readmission agreement concluded by Poland and Vietnam in 2004. Thanks to the abovementioned visits the effectiveness of the Polish Border Guard in the expulsion of citizens of Vietnam has significantly increased. Such actions will continue with financial support from the EU funds at the disposal of Frontex. There are plans to further develop such activities in cooperation with Frontex.

In order to enhance cooperation with other third countries, mainly from West Africa, the process of organising trainings for the immigration services of these countries will be continued. This action will be implemented using the resources at the disposal of the Ministry of Foreign Affairs as well as foreign resources, coming from the EU funds.

A catalogue of sanctions against foreigners in case of illegal entry or stay within the territory of Poland

¹⁸ More information is available on pages 32-33 of the report.

¹⁹ Listing of the readmission agreements concluded by Poland may be found in the Annex 1 to this report.

One of more important tools ensuring a decline in the scale of illegal migration can be check-and-control activities conducted by consular post employees and officers of the Border Guard before a foreigner enters the territory of a country, verification of legality of stay and/or employment of foreigners in the territory of Poland as well as a relevant catalogue of sanctions relating to particular forms of illegal immigration within the territory of our country. At this point we can differentiate both issues relating to liability of foreigners in the event of an illegal entry or stay and liability of other entities, e.g. a host, persons who facilitate illegal immigration, carriers and employers. In case when a foreigner illegally enters territory of Poland a catalogue of sanctions consists of several elements, e.g.:

- ✓ penal and administrative sanctions;
- ✓ entry in the list of foreigners whose stay within the territory of the Republic of Poland is unwelcome;
- ✓ placing in a guarded center or in custody for expulsion purposes or forceful escorting to the border;
- ✓ expulsion from the territory of Poland and bearing the cost of expulsion by a foreigner and the host inviting a given foreigner.

As for the liability of foreigners the following sanctions relating to illegal entry and stay within the territory of Poland are applicable.

Liability of foreigners - penal sanctions

The Act of 20 May 1971 - Misdemeanour Code²⁰ in Article 49a. § 1 provides that any person who against the rules crosses the border of the Republic of Poland is liable to a fine whereby attempting and also aiding and abetting an illegal border crossing are punishable as well. While Article 264 § 2 of the Act of 6 June 1997 - the Criminal Code²¹ provides that any person, who, against the law, crosses the border of the Republic of Poland, using violence, threat, deceit or in concert with other persons, is liable to a penalty of deprivation of freedom of up to 3 years.

Foreigners who stay within the territory of Poland without a legal title, do not carry out an obligation to leave the country as specified in an expulsion decision, do not leave the territory of the Republic of Poland within the time limit set in the decision: on refusal to grant or on withdrawal of a residence permit for a definite period, on withdrawal of a settlement permit, on withdrawal of a permit for a long-time EU resident or on an obligation to leave the territory of the Republic of Poland are liable to a fine. Foreigners who among others enter the territory of the Republic of Poland based on a local border traffic permit and stay outside the border area within which the permit holder is allowed to stay or do not leave the territory of the Republic of Poland within the period of stay specified in the permit are also liable to a fine (Article 148(1) of the Act on foreigners).

Foreigners who illegally perform work within the territory of Poland are liable to a fine not lower than PLN 1 000 (Article 120(2) of the Act of 20 April 2004 on employment promotion and labour market institutions).

Liability of foreigners - administrative sanctions

Article 14 section 1 of the Act of 13 June 2003 on foreigners specifies that a foreigner stopped in a border area directly after having crossed the border involuntarily and contrary to the binding laws may be immediately escorted to the state border. An expulsion decision from the territory of the Republic of Poland is among others issued if a foreigner stays within the territory without a

²⁰ Journal of Laws 2010, No.46, item 275 with further amendments.

²¹ Journal of Laws 1997, No.88, item 553 with further amendments.

valid visa or other valid document that entitles to enter and stay within the territory; does not leave the territory of the Republic of Poland within the permissible period of stay within the territory of Schengen countries for 3 months within a 6-month period calculated from the day of the first entry; performs work in violation of the Act of 20 April 2004 on employment promotion and labour market institutions or undertakes a business activity in breach of the relevant provisions applicable in the Republic of Poland; illegally crosses or attempts to cross the border; stays outside the border area, within which a foreigner is allowed to stay under a local border traffic permit; stays within the territory of the Republic of Poland following the expiry of a local border traffic permit or does not have financial means needed to cover the cost of stay within the territory of the Republic of Poland and cannot indicate any credible sources of obtaining such means. If facts of the case allow to conclude that a foreigner will voluntarily comply with the obligation to leave the territory of Poland, a foreigner may be obliged to leave the territory of the Republic of Poland within from 7 to 30 days (Article 97 section 1 of the Act on foreigners). In addition, it must be noted that a decision obliging a foreigner to leave the territory of the Republic of Poland contains a ban on re-entry to the territory of the Republic of Poland or the territory of the Republic of Poland and the Schengen area and specifies a period during which this ban is in force. If such an obligation is issued a local border traffic permit shall expire by virtue of the law.

Liability of foreigners: bearing the cost of expulsion

Pursuant to Article 96 section 1 cost of expulsion from the territory of Poland is as a rule borne by foreigners. Except in situations where an entry by a foreigner takes place on the basis of an invitation (type A, B or C) registered with a voivod competent with respect to the place of residence of the host inviting a given foreigner (then the cost of foreigner's expulsion is borne by the host). Such cost shall be also covered by an employer or a person who entrusted a foreigner with performance of gainful work or of a function other than those indicated in the work permit or an employer's statement of the intention to entrust the performance of work to a foreigner.

Liability of foreigners: Entry in the list of foreigners whose stay within the territory of the Republic of Poland is unwelcome, connected with a refusal of entry/stay within the territory of the Republic of Poland during the list entry validity period

In Article 128 section 1 of the Act on foreigners there is a list of situations, in which foreigner's data are included in the list of persons whose stay within the territory of Poland is unwelcome. Such circumstances include for example cases when in relation to a foreigner a decision imposing a ban on re-entry to the territory of the Republic of Poland and/or the Schengen area is issued; a foreigner is sentenced under a final and valid judgment in the Republic of Poland for intentional or fiscal offence to a penalty of fine or deprivation of freedom for up to one year; a foreigner is convicted under a final and valid judgment in a non-Schengen country for a common crime also within the meaning of the Polish law or is convicted under a final and valid judgment within the Schengen area for a crime to a penalty of deprivation of freedom for a term of over one year. Other reasons for entering the foreigner's data in the list include failure to fulfill tax liabilities towards the State Treasury; declaration that the foreigner's entry or stay is unwelcome due to obligations resulting from the provisions of international agreements ratified by the Republic of Poland and binding thereupon or pose a threat to defense, national security or security and public order or could infringe upon the interest of the Republic of Poland.

Foreigner's data are included in the list for a period specified in a decision preventing re-entry to the territory of the Republic of Poland or the territory of the Republic of Poland and the Schengen area, whereby a maximum period that the foreigner's data can be included in the said list is 5 years (in certain situations this period may be extended by subsequent periods).

Entering foreigner's data in the list constitutes - during the list entry validity period - a reason for a refusal of entry (Article 21 section 1 point 2 of the Act on foreigners), refusal of a national visa

(Article 42 point 2 of the Act on foreigners), refusal to issue a uniform visa for the purpose of stay (Article 42a of the Act on foreigners), a reason for invalidation of national visa (Article 48 section 1 point 1 of the Act on foreigners), refusal to grant a residence permit for a fixed period (Article 57 section 1 point 2 of the Act on foreigners), refusal to grant a permit to settle (Article 66 section 1 point 2 of the Act on foreigners) and a reason for issuing decision on expulsion - if entry occurs during the list entry validity period (Article 88 section 1 point 4 of the Act on foreigners).

Liability of foreigners: Placing in a guarded center or in custody for expulsion purposes or forceful escorting to the border

Issues relating to expulsion of foreigners illegally staying within the territory of Poland, including placing such foreigners in guarded centers for the purpose of expulsion together with forceful escorting to the border are regulated in the Act of 13 June 2003 on foreigners. Article 95 section 1 of the abovementioned Act specifies that a decision on expulsion is carried out on a compulsory basis through escorting the foreigner to the border or to the border of the country to which the foreigner is to be expelled or to the airport or sea port of that country, if he stays in the guarded center or in custody for the purpose of expulsion; he has not left the territory of the Republic of Poland within the time limit set in the expulsion decision or in a decision including the order to leave; it is justified by the state security and defense or protection of security and public order or interest of the Republic of Poland; or an expulsion decision is issued because the foreigner has not voluntarily left the territory of Poland within the time limit set in the decision obliging to leave the territory, on refusal to grant a residence permit for a definite period, on withdrawal of the residence permit for a definite period. If there are circumstances justifying the issuance of an expulsion decision or if a foreigner shirks the obligations specified in the expulsion decision, he may be detained by the Border Guard or by the Police for a period not longer than 48 hours (Article 101 section 1 and 2 of the Act on foreigners).

Pursuant to Article 102 section 1 of the said Act a foreigner is placed in the guarded center if there is a risk that the foreigner will evade expulsion proceedings pending against him; a decision including an order to leave the territory of the Republic of Poland without a specified time limit has been issued; the foreigner has not left the territory of the Republic of Poland within the time limit set in the decision including an order to leave; a foreigner crosses or attempts to cross the border illegally. Section 2 specifies that a foreigner is taken into custody if any of the circumstances referred to above occur and it is feared that the foreigner will not observe the rules in force in the guarded center. A decision on placing a foreigner in the guarded center or on taking him into custody for the purpose of expulsion is not issued if it may pose a threat to his life or health (Article 103 of the Act on foreigners).

As for the liability of other entities, it is worthwhile to point out the following sanctions connected with illegal entry or stay of a foreigner within the territory of Poland.

Liability of other entities: the host

Pursuant to the provisions of Article 96 section 2. of the Act of 13 June 2003 on foreigners the host that invites a foreigner to the territory of Poland (i.e. a citizen of the Republic of Poland, a foreigner staying legally and directly within the territory of Poland for a period not shorter than 5 years, a legal person or an organisational unit without a legal personality having a seat in Poland) shall bear the cost of expulsion of a given foreigner if the invited foreigner enters the territory of the Republic of Poland during the period of the invitation and the circumstances giving grounds for his expulsion occur during the stay within this territory during the invitation validity period. The above shall also apply following the expiry of the invitation validity period if a foreigner is not granted the extension of visa, a residence permit for a definite period, a

settlement permit, a permit for a long-term EU resident or is not a beneficiary of protection within the territory of the Republic of Poland referred to in Article 3 of the Act of 13 June 2003 on the granting of protection to foreigners within the territory of the Republic of Poland but stays within the territory.

Liability of other entities: persons facilitating illegal entry and/or stay

The Act of 20 May 1971 – Misdemeanour Code in Article 49a §1 provides that any person who illegally crosses the border of the Republic of Poland is liable to a fine. Attempting as well as aiding and abetting are punishable too (Article 49a §2). Whereas pursuant to Article 264 § 3 of the Penal Code Act, any person who organises for other persons crossing the borders of the Republic of Poland against the law is liable to a penalty of deprivation of freedom ranging from 6 months to 8 years. Any person who makes possible or facilitates for another person his stay in the territory of the Republic of Poland against the law is liable to a penalty of deprivation of freedom ranging from 3 months to 5 years (Article 264a §1 of the Penal Code Act).

Liability of other entities: the carrier

The carrier that brought a foreigner to the border by land, air or sea (with the exception of border traffic) is obliged to undertake actions to make sure that the foreigner intending to enter the territory of the Republic of Poland is in possession of a valid travel document for crossing the border, a required visa or another valid document allowing an entry and stay within the territory, a permit to enter another country or a permit to stay in another country, if required (Article 135(1) of the Act on foreigners). If a foreigner does not have the abovementioned documents the carrier is obliged to immediately take him back to the country, from which he was transported to the Poland's border and, if this is not possible - to the country which issued the travel document on the basis of which the foreigner travels or to any other country that declares willingness to admit him. This happens when a foreigner is refused entry to the territory of the Republic of Poland; or when a foreigner transiting through the territory of the Republic of Poland is refused entry by the authorities of the country of destination or the authorities of the country bordering the territory of the Republic of Poland or if the carrier that was supposed to transport him to this country refuses to carry out the carriage (Article 136 of the Act). In such a situation, the cost of foreigner's stay within the territory of the Republic of Poland until the time of his departure is also borne by the carrier. The carrier shall pay an administrative penalty in the amount equivalent to EUR 3 000-5 000 for each transported foreigner without a valid travel document for crossing the border or a permit to enter and stay in Poland (or another country), whereby the total sum for one carriage of a group may not exceed the equivalent of EUR 500 000 (Article 138 of the Act on foreigners).

Liability of other entities: the employer

Any person who entrusts illegal work performance to a foreigner is subject to criminal and administrative liability within the territory of Poland. Article 120 section 1 of the Act of 20 April 2004 on employment promotion and labour market institutions specifies that any person who entrusts illegal work performance to a foreigner is liable to a fine in the amount not lower than PLN 3 000. The above provision was strengthened by Article 9 section 1 of the Act of 15 June 2012 on the consequences of entrusting the performance of work to foreigners who illegally stay within the territory of the Republic of Poland²². It provides that any person who entrusts the performance of work to many foreigners staying within the territory of the Republic of Poland without a valid document is liable to a fine or penalty of limitation of freedom. Any person who makes a foreigner perform illegal work by way of deception, exploiting error, exploiting

²² Journal of Laws of 6 July 2012, No. 679.

professional dependency or exploiting the inability to properly comprehend the undertaken action is liable to a fine of up to PLN 10 000 (Article 120 section 3 of the Act of 2004). Any person who demands from a foreigner financial benefit for undertaking actions aimed at obtaining work permit or another document that entitles to perform work in Poland is also liable to a fine (Article 120 section 4 of the Act of 2004). Any person who persistently entrusts the performance of work to a foreigner who stays within the territory of the Republic of Poland without a required valid document, if the work is not connected with the business activity conducted by the entrusting entity, is liable to a fine of PLN 10 000 (Article 11 section 1 of the Act of 2012).

Any person who entrusts a foreigner who stays within the territory of the Republic of Poland without a required valid document with the performance of work in particularly exploitative working conditions is liable to a penalty of deprivation of freedom of up to 3 years (Article 10 section 1 of the Act of 2012).

The cost of expulsion of a foreigner who illegally performs work within the territory of Poland if the expulsion takes place in connection with work performed by the foreigner in breach of the provisions of the Act of 20 April 2004 on employment promotion and labour market institutions shall be borne by an employer or a person who entrusts the foreigner with the performance of other gainful work or function. This is the wording of Article 96 section 3 of the Act of 13 June 2003 on foreigners. Whereas section 4 provides that a foreigner invited to the territory of the Republic of Poland is subject to expulsion in connection with work performed in breach of the Act of 20 April 2004 on employment promotion and labour market institutions, the cost of expulsion is borne by an employer or a person who entrusts the foreigner with the performance of other gainful work or function.

In the specific case defined in Article 96 section 5 of the Act on foreigners if a foreigner who stays within the territory of the Republic of Poland for the purpose of carrying out scientific research does not pay charges resulting from expulsion, the cost shall be borne by a research institution.

A summary description of illegal migration

An analysis of data provided by the Border Guard as well as the monitoring of border security and threats did not reveal any significant increase in migration related crime in 2010; for the majority of illegal migrants Poland was mainly a transit country on their way to more economically developed EU Member States which have significant migration diasporas. The citizens of Vietnam may be named as an exception, as their diaspora in Poland keeps growing.

The border section most endangered by migration crime, including organised crime, was the Polish-Ukrainian border (mostly crime related to documents) and the Polish-Lithuanian border (illegal border crossing.) The border with Lithuania (internal border of the EU / Schengen) is particularly noteworthy due to the high migratory pressure based on active smuggling routes, leading from Asia and Eastern Europe through Russia / Ukraine / Belarus to Lithuania, through Poland to other EU states. Accounting for the identified migration routes leading through the territory of Belarus and the incidents recorded by the Belarusian service near the Polish border, the “sensitivity” of the Polish-Belarusian section should also be emphasised. The section of the Polish-Russian border (Kaliningrad Oblast) also gained importance.

The main threat to the system of state border protection is the practice of obtaining visas for a purpose other than declared. The main perpetrators were citizens of Ukraine, Belarus and Russia, as well as of Asian and African countries. The reported cases of violation of visa procedures indicate the organised nature of the practice, and the participation of “intermediaries”. One cannot rule out that criminal groups interested in smuggling people to the EU are involved in obtaining visas.

An increase was recorded in the risk of smuggling illegal migrants in closed space of trucks

travelling to / from Poland through sections constituting the internal border of the EU / Schengen.

A migratory pressure remained of the citizens of Moldova. Foreigners came to the territory of Poland mainly from Ukraine, but also from Lithuania and Kaliningrad Oblast. The countries of final destinations were in general Italy, Germany and France.

The threat of residence and transit migration Vietnam citizens remained at a high level. There were divulged several cases where Vietnamese came to Poland legally or illegally aiming to migrate to other EU states or to stay on the territory of Poland.

Migratory pressures of citizens of Afghanistan intensified. The Border Guard has revealed cases of illegal entry of the said foreigners to Poland from Russia (Kaliningrad Oblast), Ukraine, Lithuania and the southern sections of the internal border of the EU / Schengen. Illegal immigration was of an organised nature, but it should be noted that Poland was not the final destination of the said immigration.

The risk has increased of illegal migration of Georgia nationals, trying to get across from the territory of Belarus or Ukraine to the countries of the Schengen area. Migrants most frequently illegally penetrated from Belarus to Lithuania, then headed through Latvia to Estonia, to travel by ferry to Scandinavian countries. Another route of illegal immigration was from the territory of Lithuania to Poland or from the Ukraine to Slovakia, less frequently to Poland, and then other EU states having a large Georgian diaspora. It should be noted that illegal migration of Georgia citizens organised. The vast majority of migrants arrived on the territory of Belarus with the intent to illegally cross the external border of the EU / Schengen.

Despite a decline in the number of cases of violation of the refugee procedure in Poland by the citizens of Russia of Chechen nationality and by the citizens of Georgia, for the purpose of illegal immigration to Western Europe, still the scale of the practice was significant. Having crossed the Polish border, the foreigners lodged applications for refugee status only to obtain the right to enter Poland. After undergoing the registration procedure and being referred to refugee centres, they did not make their way to designated accommodation or left the centre to migrate further to other EU states (i.e. France, Germany, Austria and Belgium). The assistance provided to them by members of diasporas (often their family members) with the EU residence permits or helpers / criminal groups was still an important element in their further migration.

Document forgeries continued to be the field of particular interest among criminal groups. An increase was also observed in the number of detected counterfeit border control stamps. Forgeries of documents (official documents, invitations, employment contracts, etc.) presented during border control to obtain a visa under false pretences and to make the purpose and character of entry to the Schengen area credible steadily gained importance.

The practice of the so-called "fictitious" marriages by citizens of third countries with citizens of Poland in exchange for financial benefits has continued. The aim of such marriages was to legalise the stay in the EU and to allow free movement between the EU / Schengen states (the citizens of Nigeria recently prevail among foreigners who abuse this procedure; in 2010 the greatest number of "fictitious" marriages was recorded in case of nationals of Egypt, Mongolia and Palestine, whereas in the first half of 2011, apart from the citizens of Nigeria, also nationals of India, Iran and Armenia frequently entered into "fictitious" marriages. The citizens of Vietnam and the Ukraine also often attempt to "fictitiously" marry a Polish citizen or a fellow citizen who has legalised their stay on the territory of Poland).

Illegal immigration assumed an increasingly organised character. The practice usually involved international criminal groups, skilfully adjusting their actions and their scope to the needs of migrants, the requirements of changing national legislation, and to the actions taken by the border guards / the police of the EU states. It is also worthy to note the variety of methods and

means of transport used, depending on the circumstances at a given stage of the journey.

3.4 Ways out of the illegality

Regularization measures in Poland

One of the possible measures aimed at limiting the number of migrants with an irregular status present on the territory of a given country is to legalise their stay as part of the regularisation measure. This measure allows an alien to legalise his/her temporary or (in a longer perspective) permanent stay, thereby allowing them to leave the shadow economy and gradually integrate into Polish society.

. It also refers to the). It restricts at least one of the non-cash benefits granted to foreigners applying for the refugee status by, *inter alia*, reducing the period of learning Polish, reducing the amount of money provided for buying materials necessary to learn Polish and aids for children instructed and cared for in public institutions, primary schools, lower or higher secondary schools. Although the Act (with minor derogations) formally entered into force on 1 January 2012, the above provisions entered into force on the date published.

In Poland with the basis on the Act of 13 June 2003 on foreigners a decision to legalize stay of foreigners with irregular legal status, accounting for several criteria, was taken already three times: in 2003, in 2007 and in 2011²³. In the case of two already completed regularisation actions (in 2003 and 2007), the condition to use this mechanism was:

- ✓ uninterrupted stay on the territory of Poland from 1 January 1997;
- ✓ indication of a dwelling where the foreigner intends to stay and presenting a legal title to its occupation;
- ✓ having a promise for a work permit on the territory of the Republic of Poland, or the employer's written statement of the intended employment;
- ✓ having income or property sufficient to cover the cost of living and medical treatment of the person concerned and his/her dependent family members, without the need of material support from the social services;
- ✓ lack of impediments to legalise the stay due to the threat to national defence or security or to protect public safety and order.

A number of formal conditions difficult to fulfil (such as problems with proving the uninterrupted stay in Poland), and whose meeting was a prerequisite for the legalisation of immigrants illegally residing in Poland, as well as fears of those foreigners as to the real intentions of the legislator, led to a situation where only some of them were covered by the regularization programme. Those formal requirements also did not contribute to an increase in knowledge on the scale of illegal migration.

The total number of 5,470 foreigners was covered by both regularization programmes. The citizens of Vietnam and Armenia comprised almost 85 percent of persons who submitted applications to voivodes for a residence permit for a fixed period. The number of citizens of Belarus, Ukraine and Russia who have received positive decisions was low, and amounted to less than 300 people. Regardless of the relatively stringent criteria regarding the regularization

²³ Starting from 1 January 2012 provisions of the Act of 28 July 2011 on legalising the stay of certain foreigners in the territory of the Republic of Poland and amending the Act on granting foreigners protection in the territory of the Republic of Poland and the Act on foreigners shall enter into force (Journal of Laws No 191, item 1133). Articles 1-13 of the abovementioned Act provides provisions leading irregular migrants to be able to submit an application for a residence permit for a fixed time as part of the regularisation programme and thus legalize its stay in Poland.

programme, it can be stated that the citizens of neighbouring countries of Poland did not show too much interest in this form of stay legalisation. To a large extent this is due to the nature of their migration which is often focused on seasonal work, while keeping the centre of life in their country of origin. However, an analysis of the effectiveness of existing regularisation measures, that was carried out recently (in 2010), indicated that nearly 75 percent of people who legalised their stay in 2003 or 2007, are still staying on the territory of Poland on the basis of long-term permits.

On 28 July 2011 the Act on legalising the stay of some foreigners within the territory of the Republic of Poland, and amending the Act on granting protection to foreigners within the territory of the Republic of Poland, and the Act on foreigners was accepted. The rationale for this measure would be that various groups voice their demands, with increasing frequency, for a next regularization programme, or even for a regularisation mechanism. The new regulations will enter into force on 1 January 2012. Thus foreigners who illegally reside in Poland will be able to legalise their stay. The applications for a permit to stay for a specified time in connection with the regularisation measure (i.e. amnesty) can be submitted for a period of six months. The basic requirement for authorising residence for a specified period of time will be an uninterrupted stay of a foreigner in Poland at least since 20 December 2007. The foreigners who were given the final decision refusing them the refugee status and for whom expulsion decisions were issued before 1 January 2010, will be able to apply for legalising their stay under the regularization programme. The condition for such foreigners to obtain such permits would be their uninterrupted stay in Poland at least since 1 January 2010. The so-called regularization programme will also legalise the stay of those foreigners for whom the proceedings to obtain the refugee status were in progress on 1 January 2010.

The permit for a temporary stay under the amnesty will be granted for 2 years, unlike in the case of previous regularization programme (one year). During those two years a foreigner will be able to take up employment without applying for relevant permits - under an employment contract. Some of the conditions required to legalise such a stay were also alleviated. For example, the requirement to have sufficient means of subsistence was abandoned. The application for permit to stay for a fixed period must be filed within 6 months from the date of entry into force of the Act, i.e. until 2 July 2012.

Return policy

Expulsion and readmission

The expulsion of foreigners from the territory of Poland is held under the administrative decision issued by the voivode ex officio or at the request of the competent authorities, on terms and conditions specified by law. A special case of expulsion is enforced expulsion/deportation (usually after placing a foreigner, by a court ruling, in a guarded detention centre or remand centre in order to expel such foreigner²⁴) under the convoy of the Border Guard to the border of the state to which the foreigner is expelled, or to the airport or the seaport of that state. In this context, attention should be paid to the problem of length of stay in a guarded detention centre of persons with special needs, such as families with children. Current regulations do not provide for special

²⁴ A foreigner is placed in a detention facility when:

- 1) it is necessary for the smooth conduct of the proceedings on expulsion or revocation of the permit to settle or EC long-term resident's residence permit;
- 2) there is a justified concern that they would evade the execution of the expulsion decision or the decision to revoke the permit to settle or EC long-term resident's residence permit;
- 3) they crossed or attempted to cross the border illegally, if they were not immediately escorted to the border.

Detention for the purpose of expulsion shall apply to a foreigner if any of the above circumstances holds true, and there is concern that the foreigner will not observe the rules which apply in the detention facility.

mode of execution of decisions on expulsion in relation to the above categories of foreigners, so as to maximally shorten the statutory period of their stay in these facilities.

Streamlining the process of expulsion of undesirable foreigners is made possible by readmission agreements permitting their repatriation to their countries of origin.²⁵ Poland is a party to twenty bilateral agreements on readmission of illegal residents²⁶ and of readmission agreements with third countries concluded at EU / EC level.²⁷

Poland is also a party to a multilateral agreement on receiving residents without authorisation, concluded between the Government of the Republic of Poland and the governments of the following countries of the Schengen group: the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, and the Kingdom of the Netherlands.

The main reasons for Poland to conclude readmission agreements include: the desire to enhance cooperation and effectiveness of undertaken interventions to control illegal immigration, as well as the desire to regulate procedures and to develop and harmonise the rules of procedure in cases of expulsion of illegal residents.

In the context of EU regulations concerning the issue of expulsions, it should also be mentioned that Poland is obliged to transpose Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals²⁸ into Polish law, which will change the approach to the expulsion of foreigners from the territory of Poland.²⁹ The two types of decisions issued so far, i.e. decision obliging to leave the territory of the Republic of Poland and the decision on expulsion, in accordance with the project objectives, will be replaced by a single decision, namely the decision on the obligation to return in which the deadline for voluntary return will be given.³⁰ The removal will therefore mean the implementation of the decision on the obligation to return. In accordance with the provisions of the directive, not every decision on the obligation to return will be accompanied by a re-entry ban.

²⁵ Another form of streamlining the process of expulsion of foreigners having an irregular status are i.e. projects co-financed from EU funds under the Annual Programme EFPIA, for example, "Strengthening the effectiveness of actions in the field of returns organised by the Border Guard, including cooperation with other institutions." This project, implemented based on the Annual Program 2008-2010, covers the organisation by the training centres and the Border Guard branches of training / workshops / seminars designed specifically for officers and employees involved in the assisted return operations in cooperation with representatives of other institutions, such as the Office for Foreigners, courts, voivodeship offices, the National Labour Inspectorate, the Social Insurance Institution, Police, NGOs and the institutions of other Member States competent for the return of foreigners. In addition, as part of the project a handbook of best practices in the field of returns was developed, intended in particular for the Border Guard officers who in the course of performing their duties are in contact with persons subject to the return procedures. The problems discussed in the quoted materials refer to situations which the Border Guard officers may encounter while executing the tasks associated with implementing the expulsion decisions of foreigners from the territory of Poland, as well as the nature of tasks and risks that may occur while Border Guard officers perform their tasks - from the moment of taking an alien to the convoy, until they are passed to other authorities. Between 1 January 2010 and 30 June 2011, we managed to organise and conduct 47 trainings, including 18 workshops, 13 professional courses and 16 training workshops.

²⁶ They are the following countries: Austria, Bulgaria, Croatia, the Czech Republic, Greece, Spain, Ireland, Lithuania, Latvia, Macedonia, Moldova, Germany, Romania, Slovakia, Slovenia, the Swiss Confederation, Vietnam, Sweden, Ukraine, and Hungary.

²⁷ These are: the Agreement with the Macao Special Administrative Region of the People's Republic of China, Hong Kong Special Administrative Region of the People's Republic of China, the Agreement with the Democratic Socialist Republic of Sri Lanka, the Agreement with the Republic of Albania, the Agreement with the Russian Federation, the Agreement with Ukraine, the Agreement with Bosnia and Herzegovina, the Agreement with the Republic of Serbia, the Agreement with the Republic of Montenegro, FYROM (Macedonia) and Georgia and Moldova.

²⁸ EU OJ No L 348/98 of 24.12.2008.

²⁹ The guidelines for the new Act on foreigners, adopted by the Council of Ministers on 16 August 2011, take into account the need to transpose all the provisions of the Directive of the European Parliament and the Council 2008/115/EC into the Polish law, however, due to parliamentary elections in Poland which are scheduled in the autumn, it is currently impossible to say precisely when the new Act on foreigners will enter into force.

³⁰ The failure to comply with this decision will result in its forced execution.

Voluntary return

Return policy is widely perceived as an important tool to combat illegal migration, limiting the undesirable state that is the illegal stay of foreigners, as well as fulfilling an important preventive role.

Providing assistance in Poland in voluntary return to the country of origin may be currently done in three ways. Firstly, the Head of the Office for Foreigners under Article 70(1) and 75 of the Act of 2003 on granting protection to foreigners on the territory of the Republic of Poland, has the opportunity to assist the voluntary return to his/her country of origin of any foreigner who is undergoing the refugee procedure, and who expresses such a wish. Such a return of a foreigner is completely organised and financed from the budgetary resources of the Office, intended for the care of foreigners.

Secondly, on the basis of the Agreement of 12 July 2005 between the Minister of the Internal Affairs and Administration and the International Organization for Migration on co-operation in the field of voluntary returns of foreigners leaving the territory of the Republic of Poland, a voluntary return programme is implemented under which foreigners leave Polish territory with the organizational support provided by the IOM, and financed by the Border Guard and the Office for Foreigners.

Thirdly, the IOM also implements projects of voluntary returns of foreigners co-financed by the European Union under the European Return Fund in which the Office for Foreigners and the Border Guard are partners of this organisation.

Table 1: Number of foreigners who participated in the voluntary return programme in Poland 2004-2011

| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|--|------------|------------|-------------|-------------|-------------|-------------|
| Number of persons who benefited from assistance in voluntary return (Articles 70 and 75 of the Act) | 138 | 48 | 514 | 256 | 25 | 15 |
| Number of participants who have been provided with support for voluntary return programmes (implementation of the Agreement of 2005) | 228 | 262 | 721 | 226 | 180 | 8 |
| Number of participants who have been provided with support for voluntary return programmes (implementation of IOM projects` co-financed under the financial support of European Funds, the Office for Foreigners and the Border Guard) | 184 | 481 | 241 | 1339 | 1442 | 1141 |
| TOTAL | 550 | 791 | 1476 | 1821 | 1647 | 1164 |

Source: Material based on IOM and the Office for Foreigners data was prepared by the Migration Policy Department of the Ministry of the Interior and Administration

In general, two categories of foreigners can apply to participate in the voluntary return programme. Firstly, foreigners who have submitted applications for international protection and the proceedings in their case is pending or they received a negative decision, and if proceedings to grant them the tolerated stay is pending or is dismissed, or they resigned from applying for the refugee status (but only if the procedure for expulsion from the territory of Poland in their case has not yet been implemented). Secondly, foreigners who have received the decision, which implies an obligation to leave the territory of the Republic of Poland (with the exception of the removal decision which was given order of immediate enforceability, except for a situation in which the decision was taken because of the legitimate interest of a foreigner), irrespective of the fact whether they previously filed applications for international protection.

The analysis of statistics on foreigners who have been granted assistance under the assisted voluntary return programme clearly demonstrates the growing interest in this form of departure from Poland of third-country nationals residing on the territory of the Republic of Poland contrary

to applicable regulations. In 2009, 1,821 people participated in the assisted voluntary return programme, which as compared to the previous year (1,476 people) was an increase in the number of beneficiaries by about 20 percent. In 2010, 1,647 foreigners participated in the assisted voluntary return programme.

On the other hand, foreigners who were granted subsidiary protection in Poland, introduced to the Act on granting protection to foreigners on the territory of the Republic of Poland by amendments made by Act of 18 March 2008, are not eligible to benefit from the assisted voluntary returns. This problem has also affected foreign nationals who were victims of human trafficking and have not expressed a desire to participate in the *Programme of Support and Protection for Victims/Witnesses of Human Trafficking*.³¹ Currently, talks are being held on the inclusion of this category of aliens (i.e. victims of human trafficking) as beneficiaries of the voluntary return programme on the basis of the Agreement of 2005.³²

A person returning voluntarily to their country of origin can be provided with further assistance in the form of financial reintegration assistance for the purpose of satisfying the basic needs upon return (money to buy food, clothing, hygiene products, etc.), or in the form of material aid, inter alia, intended to start and run a business, or for education, including vocational training. However, a lack of possibility is visible to grant reintegration aid to migrants, whose returns are fully organised and funded by the Office for Foreigners (based on Article 70 and 75 of the Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland.)

The advantage of voluntary returns is a more effective and humane system of returning foreigners to their country of origins, ensuring respect for human dignity.

In addition, voluntary return is, in principle, more durable than an organised return using coercion. This is, inter alia, due to the reintegration assistance for returning migrants as provided for under the assisted voluntary return programmes. Along with bringing about the foreigner's assisted voluntary return, the chances of permanent "anchoring" of immigrants in the society from which they emigrated greatly increase, thus limiting the re-immigration.

One shall also mention about the financial aspect of this mechanism. As it follows from the Border Guard the average cost of organising the voluntary return of a foreigner is in fact two times lower than the average cost of a forced return (see the Annex IV).

Implemented in Poland activities regarding the voluntary return are consistent with the settlement adopted within the European Union included in the so-called Return Directive - *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*. This document encourages EU states to use more widely the mechanism of voluntary return, and to use for its implementation appropriate EU financial instruments.

Policy on foreigners when the execution of the decision on expulsion may be difficult

Apart from the described above ways out for a foreigner from a situation in which his / her stay in Poland is illegal, there are other forms of temporary stay legalisation. A characteristic feature of solutions listed below, however, is the uniqueness of the situation of the foreigner.

³¹ The condition for participating in the programme is to establish contact with law enforcement authorities by the victim (but the victim is not obliged to immediately and formally notify about the offense), the existence of a reasonable supposition that the alien is a victim of human trafficking, and the victim breaking any contact with the perpetrators.

³² Based on the 2011 Annual Programme of the European Return Fund guidelines, it is now possible to finance the voluntary return of this category of aliens, but in practice the projects of the organization co-organising voluntary returns of foreigners from Poland, i.e. IOM Warsaw, are still based on the guidelines of the 2005 Agreement.

With respect to a foreigner having an irregular status in Poland for whom the decision on expulsion was made or who was obliged to leave the territory of Poland, a decision may be taken to grant him/her a permit for tolerated stay in Poland. The abovementioned decision is issued for up to 1 year, but only if he/she satisfied one of the conditions specified in the Act of 13 June 2003 on foreigners. In accordance to the Article 97(1) of the mentioned Act a foreigner is granted tolerated stay on the territory of Poland if their removal:

- ✓ could be effected only to the country where there would be a risk to their right to life, liberty and personal security, in which they could be subjected to torture or to inhuman or degrading treatment or punishment or be forced to work or deprived of their right to a fair trial or be punished without legal standing within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (point 1);
- ✓ would violate the right to family life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, or violate the rights of the child as defined in the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (Dz.U. of 1991, No 120, item 526 and of 2000 No 2, item 11), to an extent substantially threatening their psychophysical development (point 1a)³³;
- ✓ is unenforceable due to reasons beyond the authority executing the expulsion decision and beyond the alien (point 2).

Paragraph 2 of the cited Article also states that a foreigner can be granted tolerated stay on the territory of the Republic of Poland if his/her expulsion could take place only for the country to which foreigner's expulsion is not permitted under the court ruling on the inadmissibility of handing over a foreigner or on the basis of the decision of the Minister of Justice on refusal to issue such an expulsion decision, having regard to the reason for which the foreigner's expulsion has been refused, and the interests of the Republic of Poland.

However, one must bear in mind that this solution (as it is with a number of other situations in which the decision on expulsion is not taken and if it is, it is not executed)³⁴ is based on exceptional conditions (e.g. with regards to the Article 53a of the Act of 2003 as premises may be found poor health requiring medical treatment on the territory of Poland, the need to appear before a Polish court or the fact of being a victim of human trafficking staying on the territory of Poland without a proper residence permit) inducing to temporarily legalise the stay of a given foreigner, and is intended only to have a protective function against expulsion.

In the case of a minor foreigner, one always has to carefully analyse the reasons that justify his/her return, and always take into account the need to ensure a safe return and to make sure that he/she is reunited with his/her family or that the minor will be handed over to the care of proper care institutions in the country of origin. Minors who are not nationals of the European Union or the European Economic Area may be expelled from the Republic of Poland under certain conditions. According to Article 94 of Act of 13 June 2003 on foreigners, the decision on expulsion of a minor to their country of origin or to another country is carried out only if the minor will be

³³ The Act also stipulates that the provisions of Article 97 paragraph (1) point (1a) does not apply if the continued stay of a foreigner on the territory of the Republic of Poland poses a threat to national defence or security or public safety and order.

³⁴ More on this in "Raport dotyczący krajowych form udzielania cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej" [Report on national forms of granting protection to foreigners on the territory of the Republic of Poland] and in a document titled "Polityki dotyczące przyjmowania, powrotu oraz integracji w Polsce małoletnich cudzoziemców bez opieki oraz ich liczba" [Policies for the reception, return and integration in Poland of unaccompanied minor foreigners and their number]. Both studies were prepared by PL NCP EMN (available in electronic version on the website <http://www.emn.gov.pl>).

cared for there by parents, other adults or care institutions, in accordance with the standards defined by the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989.³⁵ Minors in an unregulated situation are placed in institutional care or in a guarded detention centre. In this case, the costs of their stay in institutional care and medical expenses are financed from the state budget, from the part which is administered by the minister in charge of internal affairs, from the resources at the disposal of the Chief Commander of the Border Guard.

³⁵ Dz. U. [Journal of Laws] of 1991, No 120, item 526 and of 2000 No 2, item 11.

Chapter 4. International cooperation in limiting illegal migration

4.1. Agreement on cooperation

Discussing the international cooperation of Poland in the scope of limiting illegal migration, one should mention numerous readmission agreements and other arrangements related to the transfer and readmission of persons, provided for by mutual visa waiver agreements concluded by the Republic of Poland. All the binding agreements (as of 31 August 2011) constitute Annex 1 to this report.

4.2 Non-legislative forms of cooperation with third countries

The issues related to forms of cooperation in limiting illegal migration will be presented from two perspectives: cooperation with third countries with a view to expel irregular migrants and cooperation with other EU Member States.

Forms of cooperation with third countries in expulsion of migrants staying irregularly

The bilateral Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on transferring and readmitting citizens of both states (concluded on 22 April 2004, date of entry into force: 14 May 2005) is an important instrument in combating illegal migration.

On July 2010, representatives of the Immigration Board of the Border Guards Headquarters participated in a meeting in Vietnam to exchange information and good practice regarding returns and identification, as well as to strengthen cooperation between Polish Border Guards and Vietnam Office for Border Traffic Control. During their visit, the Polish Border Guards Headquarters representatives gave a seminar for officers from the Office for Border Traffic Control of the Ministry of Public Security of the Republic of Vietnam entitled “Strengthening the capacity of Vietnamese immigration services in combating illegal migration”.

As regards Polish Vietnamese cooperation in combating illegal migration, in 2010, based on the abovementioned agreement, experts representing the Office for Border Traffic Control of the Ministry of Public Security of the Republic of Vietnam visited Poland twice, and in result the identity of 89 citizens of Vietnam with a decision on expulsion was confirmed. Moreover, in December 2010, pursuant to Article 12 of the abovementioned agreement, a meeting was held to sum up the cooperation. The goal of the meeting was also to evaluate the implementation of the provisions of the agreement, to discuss the conditions for readmission of Vietnamese citizens holding valid passports who are covered by the readmission agreement, and to establish an agenda of visits in 2011, of experts in confirming the identity of persons.

In terms of international cooperation with countries of origin/transit, the representatives of Immigration Board of the Border Guards Headquarters participated in a study visit in Berlin to diplomatic posts of third countries, with no diplomatic representation in the Republic of Poland. The goal of the visit, which took place in May 2010, was to discuss former cooperation in the area of confirming the identity of foreign national and in issuing travel document for return of foreigners to their country of origin; another goal of the visit was to establish contact with employees of 9 diplomatic posts of third countries directly responsible for these activities. The Border Guards representatives met, inter alia, with representatives of diplomatic posts of the following African countries: The Republic of Ivory Coast, The Republic of Senegal, the Republic of Togo, The Republic of Namibia, The Republic of Guinea, Sudan, The Republic of Benin, and The Republic of Liberia. This action confirmed that working meetings in diplomatic posts of countries

with no diplomatic representation on the territory of the Republic of Poland are the best way to gather information indispensable for the identification of foreign nationals. Moreover, the meetings initiated personal contacts, resulting in direct cooperation, which used to consist of emails sent via liaison officers of the Border Guards. The lack of direct cooperation led to a situation where it was impossible to confirm the identity of foreign nationals declaring themselves as citizens of these countries. As a result of the visit, employees of the embassies are ready to conduct interviews by phone or in person (in the diplomatist post in Berlin or in Poland with foreign nationals held in detention centres), and will be able to issue travel documents for identified foreign nationals returning to their country of origin. Such action was implemented for the first time at the beginning of the 3rd quarter of 2010, when the Consul of the Republic of Guinea visited Poland in order to conduct interviews with foreign nationals declaring themselves as citizens of this country.

In October 2010, in Przemyśl, a meeting was held of the representatives of border services of the Republic of Poland and of the Ukraine. The talks focused on procedures of transfer and readmission, via common border, of people, who do not meet or ceased to meet the conditions of entry and stay on the territory of the Republic of Poland or on the territory of the Ukraine, as provided for in the Readmission Agreement concluded between the European Community and the Ukraine. The goal of the meeting was to get to know the practices in implementation by competent Ukrainian and Polish authorities of the activities related to the transfer and readmission of people under the readmission procedure (simplified and full), in line with the provisions of the above-mentioned agreement - until the executive protocol on the implementation is signed and enters into force.

Forms of cooperation with the European Union Member States in expulsion of irregularly staying migrants from third countries

The abovementioned cooperation is conducted first and foremost within the framework of readmission agreements. In 2010, among the main partners one should indicate:

- ✓ Germany (Germany submitted 386 readmission applications, out of which 386 were approved. Poland submitted 61 readmission applications, out of which 61 were approved).
- ✓ The Czech Republic (Czech Republic submitted 9 readmission applications, out of which 6 were approved. Poland submitted 14 readmission applications, out of which 12 were approved).
- ✓ France (France submitted 12 readmission applications, out of which 12 were approved. Poland submitted 7 readmission applications, out of which 7 were approved).
- ✓ Italy (Poland submitted 5 readmission applications, out of which 2 were approved).
- ✓ The Netherlands (The Netherlands submitted 4 readmission applications, out of which 4 were approved).
- ✓ Spain (Poland submitted 2 readmission applications, out of which 2 were approved, including 1 approval of application of 2009. In one case, the Spanish side did not agree for readmission).
- ✓ Austria (Austrian submitted 22 readmission applications, out of which 16 were approved. Poland submitted 2 readmission applications, out of which 2 were approved).

- ✓ Slovakia (Slovakia side submitted 2 readmission applications, none of which was approved. Poland submitted 1 readmission applications, which was approved).
- ✓ Hungary (Poland submitted 1 readmission applications, which was approved).
- ✓ Estonia (Poland submitted 1 readmission applications, which was approved).
- ✓ Finland (Finland submitted 1 readmission applications, which was approved).
- ✓ Sweden (Sweden submitted 1 readmission applications, which was approved).

Another form of cooperation with EU Member States consists in implementing Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air. The aim of the Directive is to determine the means of support which can be used by the competent authorities in transit airports in the Member States in relation to unescorted and escorted removals. Pursuant to the Directive, if, for justified and practical reasons, the country cannot use a direct flight to the country of destination (the country of expulsion) it may request an authorisation for transit by air via a Member State. The implementation of the above-mentioned Directive by the Border Guard in 2010 can be described as follows:

- ✓ Poland applied to other countries for support in transit by air by submitting 19 applications concerning 20 people. 18 approvals and 1 refusal were given.
- ✓ Other EU Member States applied to Poland for support in transit by air by submitting 133 applications concerning 138 people. 119 approvals were and 14 refusals were given.

Trans-border cooperation centres and contact points are also an important element of cooperation (effects of information exchange and transfer of people.)

On the internal EU/ Schengen border there are:

- ✓ Contact Point in Budzisko (information exchange with Lithuania,)
- ✓ Police and Customs Cooperation Centre in Barwinek, and Police and Customs Cooperation Centre in Trstena (information exchange with Slovakia,)
- ✓ Common Post in Kudowa-Słone and Common Post in Chotěbuz – (information exchange with the Czech Republic)
- ✓ Border Guards, Police and Customs Cooperation Centre in Świeck (information exchange with Germany) and Admission points and Regional information exchange points in Kołbaskowo and Zgorzelec.

On 22 December 2010, the rules of procedure of common posts in Kudowa-Słone and Chotěbuz were signed.

In result of cross-border cooperation in 2010, in Polish cooperation centres and contact points on the EU/Schengen internal border, an exchange of information was going on, concerning inter alia, theft of vehicles and documents, forgery of document, illegal border crossing, as well as the identity of persons not holding any document or sought by the judicial authorities.

The overall number of the pieces of information received in 2010 by Poland equalled 15,418, whereas the neighbouring countries (EU members) received 22,027 pieces of information.

On the external EU/ Schengen border, there are two consultation points located on road border crossing points:

- ✓ Consultation Point Korczowa – Krakowiec,
- ✓ Consultation Point Dorohusk – Jagodzin.

The information exchange in Consultation Points was based on the *"Agreement No 16 between the Commander in Chief of the Border Guards of the Republic of Poland and the Administration of National Border Guards of the Ukraine on the rules for establishment and functioning of Consultation Points"*, concluded on 22 September 2004 in Warsaw.

In 2010 in Consultation Points in Korczowa and Dorohusk, 1,598 pieces of information were transferred to Poland and 4,139 pieces of information were transferred the Ukraine. The information concerned: vehicles, obstacles at Polish-Ukrainian border crossings, unusual events at border crossing points, illegal migration, and detention for illegal border crossing or in the border zone, smuggling of excise goods, vehicles and persons as well as information on the current activities of border services.

Moreover, the officers of Consultation Points consulted the Border Guards database in search of data on border crossing by persons and vehicles, and prepared answers on the above-mentioned issues for the authorities of the Republic of Poland (Customs Service, Police, Courts, the Prosecutor's Office, the Voivodeship Inspectorate of Road Transport, the Border Guards units, contact points at the Polish border, Central Bureau of Investigation, and Military Gendarmerie.) Cooperation with border services of neighbouring countries is ongoing, based on the existing cooperation channels within so-called border plenipotentiary system.

International cooperation of the Border Guards is also important – Border Guards cooperates with liaison officers of other countries, including in particular: the Federal Republic of Germany, the Ukraine, the Netherlands, the United Kingdom, the USA, Slovakia, Russia, Spain, Romania, Bulgaria and the Nordic Liaison Office (Sweden, Denmark, Norway, and Finland.)

Working contacts with liaison officers are maintained mostly by the competent organizational units of the Border Guards Headquarters.. The cooperation is focused on ongoing information exchange and on preparation of joint ventures. The liaison officers visited the Border Guard organisational units and intermediated in establishing cooperation at the regional level. Their activity greatly contributes to the development of cooperation, and it enhances the implementation of the tasks of the Border Guards.

4.3 Cooperation with international organization and on the EU level

Within the main partners of the Border Guard one should mention Frontex Agency, Europol and Interpol.

Cooperation with Frontex

The Border Guard cooperates closely with Frontex on multiple issues. The most important include:

- ✓ **joint operations.** Depending on the assumed goals, the operations are either aimed at monitoring of irregular migration of foreigners of a given nationality or they focus on third country nationals travelling in certain directions. One of these projects aimed at working out and implementing an efficient system allowing for a flexible reaction to the so-called transfer effect, consisting in dynamic adaptation of smuggling nets to changing situation, and redirecting promptly the migration flows to another region. There are also operations focused on monitoring of minor foreigners, crossing the border with or without legal guardians, as well as operations with the aim to increase the effectiveness of border checks at EU airports in terms of detection of documents which were forged or obtained under false pretences.

- ✓ participation in Frontex trainings. The purpose of such trainings is i.e., to work out a common approach to the protection of the external border, to exchange the recent experience, and to complement the national training system of the Border Guards.
- ✓ cooperation in the use of CIRAM (Common Integrated Risk Analysis Model) carried out on behalf of Frontex by the Risk Analysis Unit – RAU. Such cooperation involved the use of FRAN - Frontex Risk Analysis Network and ICONet platform, and it consisted in regular exchange of immigration data and information between the EU Member States and Frontex.

In 2010, the Border Guards took part in four return operations organised with other Member States (including two operations organised by Poland and two operations organised by Austria). As a result of these operations, which were neither coordinated nor co-financed by Frontex, 90 citizens of Georgia were expelled.

In the framework of cooperation with Frontex in 2010 the following tasks were accomplished:

Direct Contact Points for Return Matters

A meeting of the EU Member States and Schengen states was organized under this project (26.05.2010, Warsaw), which provided an opportunity to exchange best experiences and practices of the EU Member States as regards preparation of return operations and acquisition of travel documents.

Core Country Group for Return Matters (CCG)

6 working meetings were organized as part of the project, in order to define common guidelines of return policy as well as realistic possibilities and needs for joint return operations.

Participation in joint return operations (JRO)

In 2010, Polish Border Guard participated in 12 joint return operation coordinated by Frontex, which resulted in expulsion of 90 foreign nationals to their country of origin.

Participation in the Attica 2010 project (November 2010 Alexandroupoli – Greece)

The aim of the project was to help Greek immigration services to combat illegal migration. A representative of the Border Guards participating in the project was responsible for carrying out verification procedures regarding foreign nationals declaring themselves as citizens of: Pakistan, India, Nepal, Sri Lanka, Afghanistan and Iran. The procedure consisted in checking if the foreign nationals knew the mother tongue and dialect of the country they declared to be citizens of, as well as culture and religion of that country.

Partnership cooperation with Europol was carried out based on the *Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office Europol* (through the agency of the Europol National Unit located in the Bureau for International Cooperation of the Police Headquarters.)

Partnership cooperation with Interpol in 2010 was carried out through the agency of Interpol National Central Bureau located in the Bureau for International Cooperation of the Police Headquarters.) The cooperation consisted in the exchange of information with third countries on, inter alia, illegal migration, human traffic and forging of documents.

Chapter 5. The influence of the EU policy and legislation

The EU migration policy and legislation have a significant impact on the shape of migration policies of individual Member States, including Poland. The EU law requires changes in the existing procedures or it sets standards which should be met by Member States within specified deadline.

Polish provisions regulating the migration issues are compliant with the EU law. In case of some mechanisms work on their full implementation are in progress. The abovementioned process of the following directives can serve as an example:

- ✓ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, whose provisions have been comprised in the new Act on foreigners;
- ✓ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for the minimum standards on sanctions and measures against employers of illegally staying third-country nationals, whose provisions have been comprised in the draft Act on the effects of employing foreign nationals whose stay on the territory of Poland is illegal.

The provisions of Directives reflect a need for significant changes in Polish legislation, inter alia, in the context of illegal residence, illegal employment and expulsion of foreign nationals from Poland.

Third countries cooperating with Poland in implementing the EU readmission agreements

Ukraine

Date of issue of the agreement: 2007-06-18

Date of entry into force of the agreement: 2008-01-01

Implementing Protocol to the Readmission Agreement is currently in the process of firming up. Until the conclusion of the protocol, the readmissions are carried out based on a bilateral agreement (of 24 May 1993) due to technical problems delaying the delivery of correspondence. In 2010, Poland submitted to the Ukraine 497 readmission applications, and received 497 approvals. In 2010, 281 persons were readmitted in Ukraine (the difference between the number of applications and that of readmissions stems from the fact that some of readmissions were not carried out, for different reasons.) In 2010, the Ukraine submitted 26 readmission applications to Poland, and received 25 approvals. In 2010, 6 persons were readmitted in the Republic of Poland.

Russia

Date of issue of the agreement: 2006-05-25

Date of entry into force of the agreement: 2007-06-01

Implementing Protocol to the Readmission Agreement was approved by the parties. The final works on implementation are in progress. Poland submitted 44 readmission applications to Russia. Federal Migration Service, through the Liaison Officer in Moscow, issued 29 approvals of readmission applications. In 2010, 17 persons were readmitted by the Russian Federation.

Moldova

Date of issue of the agreement: 2007-10-10

Date of entry into force of the agreement: 2008-01-01

Implementing Protocol to the Readmission Agreement is currently in the process of firming up. In 2010, Poland submitted to the Moldova 20 readmission applications and received 20 approvals. In 2010, 20 persons were readmitted by the Republic of Moldova.

Pakistan

Date of conclusion of the agreement: 26-10-2009

Date of entry into force of the agreement: 01-12-2010

From the time the agreement entered into force until today, Pakistan has not submitted any readmission applications. Last year, Poland requested Pakistan to confirm the identity of and issue a replacement travel document for 10 Pakistani citizens. Upon request, Embassy confirmed the identities of 3 persons.

Georgia

Date of issue of the agreement: 2009-10-26

Date of entry into force of the agreement: 2011-03-01

Poland started talks with the Georgian embassy with a view to draft the rules of transfer of readmission documents between the parties.

Third countries rarely cooperating with Poland in implementing the EU readmission agreements

Sri Lanka

Date of issue of the agreement: 2004-06-04

Date of entry into force of the agreement: 2005-05-01

Implementing Protocol to the Readmission Agreement is currently at the beginning of the process of firming up. In 2010, Poland submitted 2 readmission applications to the Sri Lanka. There was no answer.

Albania

Date of issue of the agreement: 2005-04-14

Date of entry into force of the agreement: 2006-05-01

Implementing Protocol to the Readmission Agreement is currently in the process of firming up. In 2010, no applications have been submitted. In the previous years, applications were sporadic.

Montenegro

Date of issue of the agreement: 2007-09-18

Date of entry into force of the agreement: 2008-01-01

Implementing Protocol to the Readmission Agreement is currently in the process of firming up. In 2010, no applications were submitted. In the previous years, applications were sporadic.

Macedonia (FYROM)

Date of issue of the agreement: 2007-09-18

Date of entry into force of the agreement: 2008-01-01

Implementing Protocol to the Readmission Agreement – the parties did not undertake the initiative. In 2010, 1 readmission application was submitted. With no further answer.

Serbia

Date of issue of the agreement: 2007-09-18

Date of entry into force of the agreement: 2008-01-01

Implementing Protocol to the Readmission Agreement is currently in the process of firming up. 1 readmission application was submitted. Serbia side agreed for readmission.

Bosnia and Herzegovina

Date of issue of the agreement: 2007-09-18

Date of entry into force of the agreement: 2008-01-01

Implementing Protocol to the Readmission is currently in the process of firming up. 1 readmission application was submitted. Bosnia and Herzegovina agreed for readmission.

Hong Kong

Date of issue of the agreement: 2002-11-27

Date of entry into force of the agreement: 2004-03-01

Implementing Protocol to the Readmission Agreement – the parties did not undertake the initiative.

Macau

Date of issue of the agreement: 2003-10-13

Date of entry into force of the agreement: 2004-06-01

Implementing Protocol to the Readmission Agreement – the parties did not undertake the initiative.

Other activities financed by the EU

The European Return Fund was established on 1 January 2008 on the basis of the Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund as part of the General Programme "Solidarity and Management of Migration Flows".

The Border Guards in combating illegal migration frequently makes use of the fund to finance its undertakings. The resources coming from the European Return Fund are used for the purpose of expulsion from the territory of the Republic of Poland (by land and by air), as well as for trainings to improve qualifications of the Border Guards officers and employees.

For example, under the project 4/2/EFPI/2009, Main Border Guards Training Centre in Koszalin organized a series of training meetings entitled *Improving the efficiency of activities concerning the returns and implemented by the Border Guard, including cooperation with other institutions*, co-financed from the European Return Fund. The project consisted in a series of trainings/workshops/seminars, intended in particular for the officers and employees involved in the process of controlling the legality of stay and employment and in return operations in cooperation with other institutions, for example, National Labour Inspectorate.

Trainings organized by Main Border Guards Training Centre in Koszalin within the project included:

- ✓ specialist training entitled: “Checking by Border Guards officers the legality of rendering work by foreigners, of their business operations and employment”,
- ✓ specialist training entitled: “ The Border Guards administrative proceedings regarding foreign nationals”,
- ✓ specialist training entitled: “Controlling the legality of stay of foreign nationals in the Republic of Poland”,
- ✓ workshop with, inter alia, the National Labour Inspectorate representatives, intended for people dealing with the issues involved in verifying the legality of employment.

Delivery of the abovementioned trainings and workshops falls within the operational objective of the project, i.e. promoting efficient and common standards for foreign nationals’ returns, in line with relevant policy. The seminars and workshops help to achieve the above mentioned objective, improving the knowledge of competent institutions involved in return activities on verification of the legality of stay and employment at the regional level. Trainings organized by the Main Border Guards Training Centre in Koszalin support the migration policy i.e. they help to manage properly the returns of illegal migrants.

External Border Fund³⁶ is an essential support for the Border Guard, which allows for implementation of numerous projects/investments, for example equipping the Border Guards in special means of transport, as well as for investment in construction, networking and information technology, etc., thus improving the effectiveness of measures to protect the EU external border.

³⁶ The legal basis to ensure the financial support from the External Borders Fund 2007-2013 constitutes the Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’. Document is available from the web site <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2007:144:SOM:EN:HTML>.

Chapter 6. Statistical data

The number of illegal immigrants in a given country is hard to evaluate, on one hand, because the phenomenon is undocumented and impossible to measure, and on the other hand, because it is impossible to use classic methods of data collecting. Thus, one can only talk about estimations..

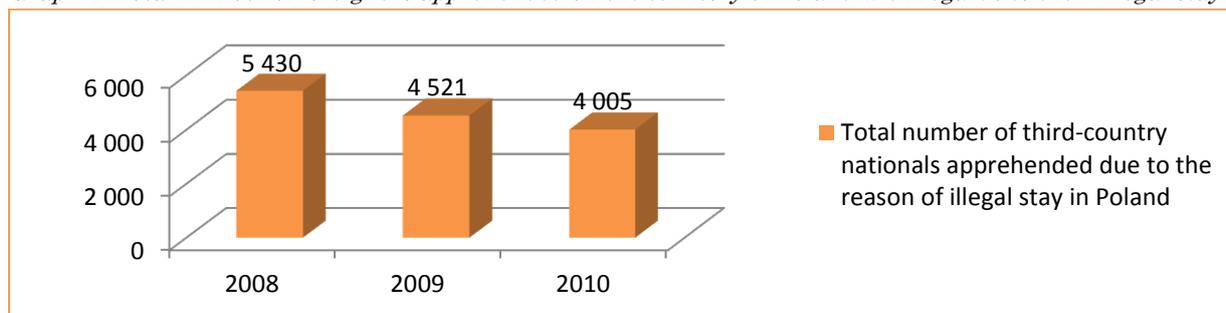
The most popular statistical data representing the range of the phenomenon concern: the number of immigrant visa refusals and refusals of entry (assessing immigration pressure) the number of foreign nationals detentions in relation to illegal border crossing (attempted border crossing), so called pggwp, number of foreign nationals detained on the territory of a given country during controls of the legality of foreign nationals' residence, employment and work, and the number of persons obliged to leave the territory of a given country due to their illegal residence (in Poland: expulsion, obligation to leave the territory of the Republic of Poland, order to leave the country resulting from refusal to grant residence permit or issued with the withdrawal of residence permit). This kind of data is extremely difficult to interpret, as it represents the volume of illegal immigration as much as the efficiency of actions taken by different authorities.

Moreover, the real scale of illegal migration can be assessed based on the number of foreign nationals legalizing their residence within regularization programme or other mechanisms allowing them to change their legal status.

Eurostat statistics

The statistics on the number of foreign nationals apprehended in Poland on account of illegal residence show that the number has decreased - from 5,430 in 2008 to 4,005 in 2010. However the total number of foreigners expelled from the territory of Poland maintains similar data over last two years: in 2009 6,945 foreigners were expelled from Poland (to 573 foreigners forced return was applied), whereas in 2010 – 6,768 (508 foreigners were the subject of forced return).

Graph 1: Total number of foreigners apprehended on the territory of Poland with regards to their illegal stay



Source: Border Guard

The majority of migrants found to be illegally present in Poland are men (about 67% of the total number of illegal migrants in Poland) of the working age (persons over 18 constitute 97% of the detained population). For several years, the Ukrainians and Russians are the biggest groups of immigrants staying illegally in Poland. In 2008, 3,202 Ukrainian citizens (466 Russian citizens) were detained in Poland on account of illegal residence; in 2010 1,883 Ukrainians and 469 Russians were apprehended. In 2008 and 2009 the citizens of Vietnam made the third biggest group of illegal migrants (435 and 330 persons, respectively), whereas in 2010 the group of Belarusian citizens was more numerous (286 Belarusians against 253 Vietnamese).

The effectiveness of control actions taken by the Border Guards is reflected in the statistics on the number of refusals of entry of foreign nationals to Poland. In the last two years, the number of

refusals (mostly by land border) oscillated between 23 and 26 thousand a year (in 2009, there were 26,232 refusals, in 2010 - 22,893). In the majority of cases the refusals of entry were motivated by the lack of a valid visa or a residence permits as well as by the lack of documents confirming the purpose of entry to Poland (the abovementioned reasons constitutes about 45% and 40%, respectively, of the total number of refusals).

Table 2: Grounds for refusal

| | 2008 | 2009 | 2010 |
|--|-------|--------|-------|
| No valid travel document | 39 | 180 | 68 |
| False/counterfeit/forged travel document | 15 | 15 | 12 |
| No valid visa or residence permit | 7 642 | 12 019 | 9 813 |
| False visa or residence permit | 29 | 24 | 18 |
| Purpose and conditions of stay not justified | 6 967 | 10 557 | 8 918 |
| Person already stayed 3 months in a 6-months period | 66 | 31 | 75 |
| No sufficient means of subsistence | 1 099 | 2 830 | 2 909 |
| An alert has been issued | 687 | 1 125 | 968 |
| Person considered to be a public threat | 308 | 107 | 112 |

Source: Border Guard

The Ukrainians, Belarusians and Russians are refused entry to Poland most frequently.

The statistics on the number of persons obliged to leave the territory of Poland show, though not precisely, the number of foreign nationals staying illegally in Poland. The available data show that each year the number of persons obliged to leave the territory of Poland is stable - in 2008, 8,143 obligations were issued, in 2009 – 11,876, whereas in 2010, only 10,700. The majority of obligations to leave the territory of Poland concerned Ukrainians, Russians and Georgians.

Table 3: Main 10 countries of citizenship of third-country national ordered to leave

| Position of the country of citizenship | 2008 | | 2009 | | 2010 | |
|--|------------------------------------|-------|------------------------------------|-------|------------------------------------|-------|
| | Name of the country of citizenship | Total | Name of the country of citizenship | Total | Name of the country of citizenship | Total |
| 1st main | Ukraine | 5 443 | UKR | 5 247 | UKR | 5 274 |
| 2nd main | Russia | 620 | RUS | 2 871 | RUS | 2 746 |
| 3rd main | Belarus | 402 | GEO | 1 570 | GEO | 738 |
| 4th main | Vietnam | 400 | BLR | 520 | BLR | 530 |
| 5th main | Moldova | 305 | VNM | 320 | VNM | 266 |
| 6th main | Armenia | 178 | ARM | 216 | ARM | 222 |
| 7th main | China | 166 | MDA | 194 | MDA | 124 |
| 8th main | Mongolia | 138 | CHN | 145 | CHN | 92 |
| 9th main | Turkey | 50 | NGA | 89 | TUR | 90 |
| 10th main | Georgia | 50 | MNG | 84 | NGA | 45 |

Source: Border Guard

The citizens of Ukraine and Russia constitute the highest percentage of foreign nationals who left the country based on the obligation to leave the territory of Poland. The data regarding the citizens of Belarus and Georgia show the high effectiveness of execution of the obligation to leave the territory of Poland.

Table 4: Main 10 countries of citizenship of person returned

| Position of the country of citizenship | 2008 | | 2009 | | 2010 | |
|--|------------------------------------|-------|------------------------------------|-------|------------------------------------|-------|
| | Name of the country of citizenship | Total | Name of the country of citizenship | Total | Name of the country of citizenship | Total |
| 1st main | Ukraine | 5 830 | UKR | 4 301 | UKR | 4 264 |
| 2nd main | Russia | 751 | RUS | 801 | RUS | 930 |
| 3rd main | Belarus | 452 | BLR | 479 | BLR | 495 |
| 4th main | Vietnam | 436 | GEO | 284 | GEO | 358 |
| 5th main | Moldova | 339 | VNM | 242 | VNM | 233 |
| 6th main | Armenia | 152 | ARM | 135 | MDA | 122 |
| 7th main | Mongolia | 142 | MDA | 127 | ARM | 77 |
| 8th main | China | 74 | CHN | 74 | TUR | 26 |
| 9th main | Georgia | 67 | NGA | 61 | KAZ | 23 |
| 10th main | Turkey | 43 | KAZ | 52 | MNG | 22 |

Source: Border Guard

National statistics

In 2010, the Border Guards apprehended **2,170 third-country nationals, who illegally crossed the border (pgpwp) or attempted to cross it**, immediately after or during the border crossing.

1,603 third-country foreign nationals were detained on their way to Poland. The majority of foreign nationals were apprehended after external border crossing – 959 persons. The detentions due to illegally crossed border took place on the border sections:

- ✓ with Ukraine-744,
- ✓ with Belarus-123,
- ✓ on external air links-61,
- ✓ with Russia-30,
- ✓ on external sea links-1.

After illegal **internal border sector** crossing **644 third country foreign nationals** were apprehended. The detentions due to illegally crossed border took place on the border sections:

- ✓ with Czech Republic- 293,
- ✓ with Germany- 285,
- ✓ with Lithuania- 35,
- ✓ with Slovakia- 17,
- ✓ on internal air links- 9,
- ✓ on internal sea links- 5.

In the total number of detained on the account of illegally crossed border (pgpwp) to Poland in all sections of the border the largest groups included: Ukrainians-1,020, Russians- 109, Belarusians- 83, Moldavians- 65, Vietnamese- 54, Turks- 52 and Georgians- 52.

The border control system of the Republic of Poland is adapted to the 4-level European external border surveillance system. According to the system, there are 4 complementary border surveillance zones³⁷. Zone 4 includes migrant controls on the territory of a Member State, which are complementary to the activities undertaken directly within the border (zone 3.). It is not always possible to determine if the purpose of entry declared during the border crossing (and previously in the visa application) is truthful. Very often, the real purpose is revealed during further investigations. That is why, in case of an apprehension of a person who obtained a visa

³⁷ Please verify information on page 14.

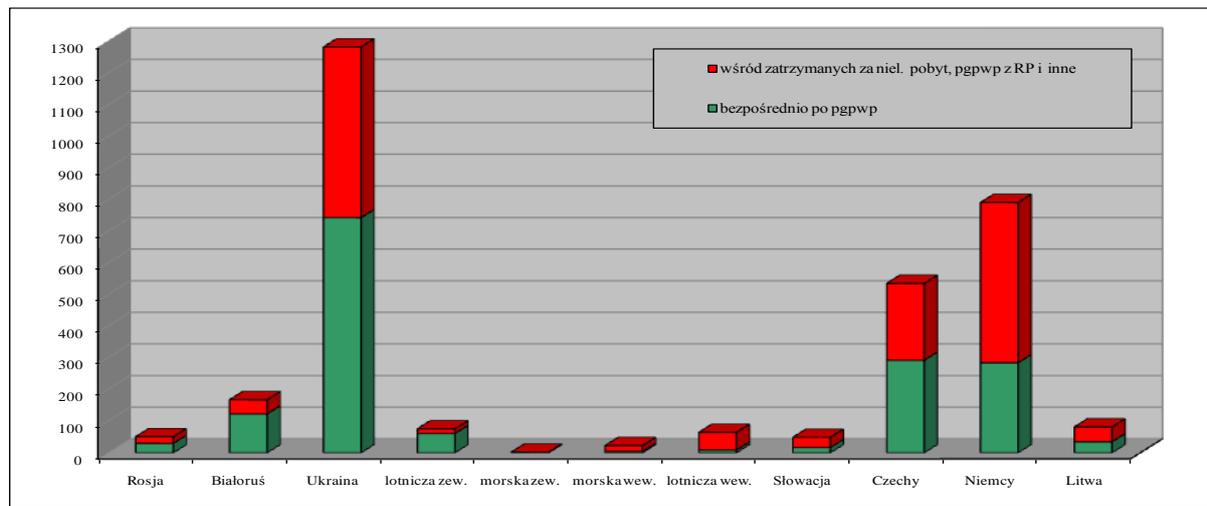
under false pretences or changed his/her name in order to circumvent the refusal to enter the territory of the Republic of Poland, it is assumed that such person crossed the border illegally.

Moreover, it has been established that 1,623 third-country nationals were apprehended as they attempted to enter other countries from the territory of Poland (illegal border crossing) or on account of illegal residence, employment and documents smuggling. Among them:

- ✓ **622 persons crossed the external border** (border with Ukraine- 540, with Belarus- 45, with Russia- 21, air border -15, sea border-1,)
- ✓ **903 persons crossed internal borders** (border with Germany- 507, with Czech Republic- 243, air border- 56, with Lithuania- 32, with Slovakia- 32 and sea border- 18.)

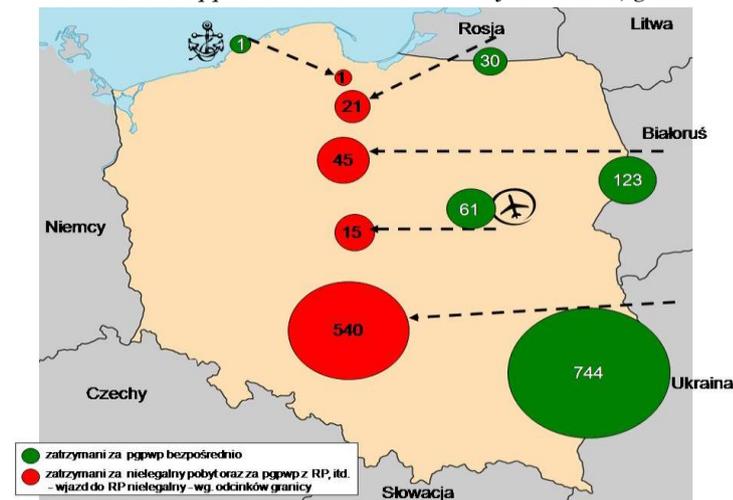
In the remaining 98 cases, the exact place of illegal crossing has not been established.

Graph 2: Number of third-country nationals who illegally crossed Polish border and were detained by the Border Guard by the sector of illegally crossed border (without 98 cases where sector of the border was not discovered) in 2010



Source: Border Guard

Map 2: Number of third country nationals apprehended due to illegally cross of the external sector of Polish border (red one apprehended on the territory of Poland, green – apprehended on the border)



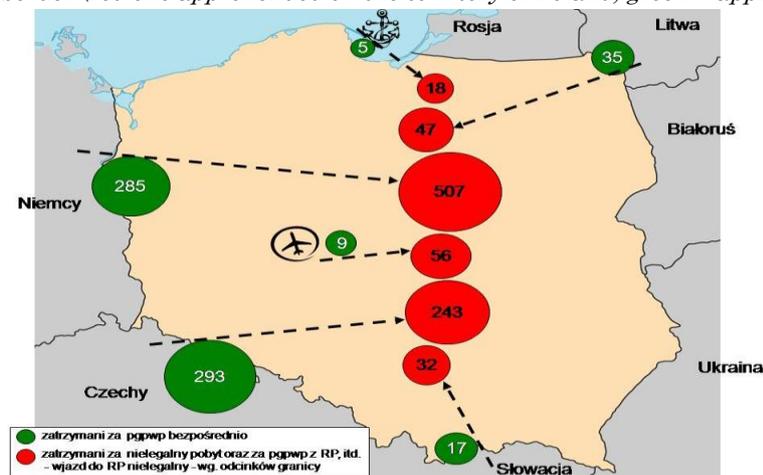
Source: Border Guard

The chart presents a total number of foreign nationals detained in the country; on their way **from Poland 567 persons were apprehended**, in the majority of cases those persons attempted to illegally cross **internal borders - 334 persons were detained**, including:

- ✓ with Germany- 252,
- ✓ with Czech Republic- 38,

- ✓ with Slovakia- 19,
- ✓ at the sea border – 19,
- ✓ at the air border – 6.

Map 3: Number of third country nationals apprehended due to illegally cross of the internal sector of Polish border (red one apprehended on the territory of Poland, green – apprehended on the border)



Source: Border Guard

233 persons attempted to cross the **external border**, including:

- ✓ with Ukraine-180,
- ✓ with Belarus-20,
- ✓ air border – 29,
- ✓ with Russia-4.

In the total number of 567 detained on the account of illegal crossed border on their way from Poland on all borders the largest groups included: Ukrainians- 249, Russians- 112, Georgians- 36, Iraqi- 19, Turks- 15, Belarusians-14, and Moldavians- 13.

Refusal of entry

In 2010, the number of entry refusals decreased due to, as one may indicate, ongoing process of diminishing number of foreigners who does not fulfil the conditions of entry to the territory of Poland. The abovementioned is also a result of a consequent use of this measure (in this case of preventive character) for persons who attempt to cross the border illegally.

In 2010, **23,521 foreign nationals** were refused entry to Poland (a decrease by 12,5%, in 2009- 26,889 decisions). 41,7% were refused entry due to the lack of a valid visa or a residence permit, 37,9% of foreign nationals did not possess proper documentation proving the purpose and conditions of their stay, whereas 12,4% had neither sufficient funds to support them, taken account of time and form of their stay, nor money for going back to their country of origin or to a transit country.

Table 5: Number of refusals to enter Poland

| Odcinek granicy / Tear | 2009 | 2010 | Increase / decrease |
|---|---------------|----------------|---------------------|
| with Russia | 1 286 | 931 | -27,6% |
| with Belarus | 12 211 | 10 371 | -15,1% |
| with Ukraine | 12 735 | 11 581 | -9,1% |
| sea | 44 | 48 | +9,1% |
| air | 613 | 590 | -3,8% |
| Total on external sector of the border | 26 889 | 23 521* | -12,5% |

*includes number of refusals to enter Poland issued when conditions of local cross-border (pl MRG) were not met

Source: Border Guard

The majority of refusals to enter Poland was issued in 2010 for: Ukrainians- 11,599 (12,802 in 2009) Belarusians- 4,719 (4,203 in 2009) Russians- 3,530 (3,348 in 2009) and Georgians- 2,886 (5,686 in 2009).

Table 6: Refusals to enter territory of Poland issued 2003-2010

| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| on land | 35040 | 29591 | 37862 | 36650 | 28740 | 16271 | 26232 | 22883 |
| on sea | 2268 | 30619 | 313 | 131 | 61 | 39 | 44 | 48 |
| on air | 1172 | 1274 | 1241 | 1185 | 1408 | 542 | 613 | 590 |
| <i>including:</i> | | | | | | | | |
| with Russia | 7403 | 3750 | 2420 | 2525 | 2065 | 1659 | 1 286 | 931 |
| with Belarus | 17989 | 13326 | 13658 | 13215 | 11868 | 5063 | 12 211 | 10371 |
| with Ukraine | 9648 | 12515 | 21784 | 20910 | 14807 | 9549 | 12 735 | 11581 |
| Total | 47519 | 66035 | 41663 | 40332 | 32204 | 16852 | 26889 | 23521 |

Source: Border Guard

The number of falsifications of specific travel documents and of border control stamps, and the falsification technique (crime range and dynamics)

In the group of 5,761 third country foreign nationals apprehended on account of illegal border crossing, illegal residence and work as well as documents smuggling, 1,372 possessed falsified documents (including documents of other persons, original and obtained under false pretences). The Border Guards revealed:

- ✓ 850 visas,
- ✓ 396 stamps,
- ✓ 66 passports,
- ✓ 26 IDs,
- ✓ 26 residence permits,
- ✓ 8 other documents.

813 of the revealed false documents were obtained under false pretences. Moreover, as a result of further proceedings concerning 1,372 apprehended persons, 111 additional falsified documents were revealed:

- ✓ 19 visas,
- ✓ 65 stamps,
- ✓ 7 passports,
- ✓ 16 IDs,
- ✓ 3 residence permits,
- ✓ 1 other document.

The number of applications to be granted refugee status

Potential group of illegal migrants are foreigners applying for being granted a refugee status always when the abovementioned applications are not submitted with the purpose to gain a form of international protection, but only to legalize their stay. In 2010, foreign nationals submitted **3,499** (6,300 in 2009) applications for refugee status on the territory of Poland, which included in total **6,534** (10,587 in 2009) foreigners. The majority of refugee status applications was submitted by the citizens of Russia – 2,197 applications (2,845 in 2009) against 4,795 applications (5,726 in 2009), and Georgia – 752 applications (2,900 in 2009) against 1,082 applications (4,214 in 2009).³⁸

It should be stressed that a Border Guards officer is obliged to accept each application for international protection submitted by a foreign national lodged by a foreign national, and the application is sent to further investigation by the Head of the Office for Foreigners.

³⁸ Data as of 28 January 2011 sorted by the application registration data.

Apprehension for expulsion of foreign nationals

In 2010, there were:

- ✓ **935** (**993** in 2009) apprehensions for expulsion or detentions in a guarded detention centre (2,413 foreigners were apprehended or detained in 2010; in 2009 - 2,621),
- ✓ 1,654 (1,466 in 2009) foreign nationals were apprehended and taken to the country border (in 2010 there were **787** apprehensions; 811 in 2009),
- ✓ **623** (577 in 2009) apprehensions of foreign nationals for expulsion from the Polish border to the country of destination by air or sea.

Verification of foreign nationals

In 2010, the following foreign nationals' verification activities were undertaken:

- ✓ **44,803** (in 2009 – 45,830) opinions in relation to residence permit granting,
- ✓ **16,168** (in 2009 – 11,201) community interviews,
- ✓ **29** (in 2009 – 92) apartment checks.

The extradited within Dublin II and by readmission

The number of foreign nationals from Poland transferred by other countries services to Poland:

- a) **in the framework of Dublin II³⁹, 49** foreign nationals were transferred from Poland (in 2009 – 62 foreign nationals) including at different national border sections:
 - ✓ air border- 41 (53),
 - ✓ Germany – 8 (2).
- b) **in the framework of Dublin II, 2,212** foreign nationals were transferred to Poland (in 2009 – 1,965) including at different national border sections:
 - ✓ air border- 1,346 (957),
 - ✓ Germany – 456 (389),
 - ✓ Czech Republic- 301 (477),
 - ✓ air border- 104 (40),
 - ✓ Slovakia- 5 (102).
- c) **in the framework of readmission, 557** foreign nationals were transferred to other countries (in 2009 – 350 foreign nationals), including at different national border sections:
 - ✓ Ukraine- 281 (143),
 - ✓ air border- 158 (15),
 - ✓ Germany – 58 (74),
 - ✓ Lithuania- 40 (56),
 - ✓ Czech Republic- 16 (49),
 - ✓ Belarus- 3 (11),
 - ✓ Slovakia- 1 (2).
- d) **in the framework of readmission 234** foreign nationals were transferred to Poland (in 2009 – 425 foreign nationals), including at different national border sections:

³⁹ Council Regulation (EC) [No 343/2003](#) of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Official Journal L 050 , 25/02/2003).

- ✓ Germany – 157 (291),
- ✓ Czech Republic- 66 (88),
- ✓ Ukraine- 6 (3),
- ✓ air border- 3 (21),
- ✓ Lithuania- 1 (17),
- ✓ Belarus- 1 (2).

Control of the legality of residence

In the framework of the legality of residence verification 1,893 (in 2009 – 1,570) foreign nationals were apprehended in 2010 on account of invalid visa or other important document entitling to entry and residence in Poland.

In the reported period, **6,449** (in 2009 – 6,174) foreign nationals were obliged to leave the territory of Poland. **10,108** (in 2009 -3,603) actions regarding the legality of residence control were taken independently by the Border Guard. Moreover, **802** (in 2009 – 807) already mentioned controls were carried out in cooperation with public administration authorities. In total, **887** third-country foreign nationals were detained in relation to their illegal residence. The detention took place:

- ✓ **in the country** (including the internal border)– **1,908** persons,
- ✓ **as they were trying to leave Poland through external border** (mainly to their country of origin- so called returnees) - **979**, including 371 on the Russian border, 364 on the Ukrainian border, 233 on the Belarusian border and 11 at the air border.

In 2010, 1,669 decisions on expulsion have been issued in connection with the evidenced lack of a valid visa or other valid document entitling for entry and residence on the territory of Poland, which demonstrates that the downward trend (2006 – 4,895 persons, 2007 – 2,833 persons, 2008 – 4,714 people, 2009 – 2,191 persons) continues. Foreigners in whose case decisions on expulsion from the territory of Poland are usually taken include citizens of countries such as Ukraine (554), Vietnam (234), Russia (204), Georgia (127), and Armenia (108).

Table 7: Number of foreigners ordered to leave the territory of Poland and who returned to the country of origin 2008-2010

| | 2008 | 2009 | 2010 |
|---|--------------|--------------|--------------|
| Number of foreigners ordered to leave the territory of Poland | 3 431 | 6 337 | 6 606 |
| Number of decision on expulsion issued | 4 714 | 2 191 | 1 669 |
| Total | 8 145 | 8 528 | 8 275 |
| Number of foreigners returned to the country of origin | 8 595 | 6 945 | 6 768 |

Source: Border Guard

Control of the legality of employment

Control of the legality of residence/employment is one of the basic instruments to counteract illegal employment used by the relevant national authorities, i.e. from 2008, the National Labour Inspectorate and the Border Guards. Both institutions cooperate in implementing their task, inter alia, with the Police, the tax offices and the Social Insurance Institution (ZUS).

In 2010, in total, the Border Guards conducted **1,537** (649) controls of legality of foreign nationals' employment on the territory of Poland, including **153** jointly with the National Labour Inspectorate. In 2010, this institution conducted almost 2,000 controls of the legality of employment and work. In 2010, **1,011** foreign nationals were revealed to work illegally⁴⁰ which

⁴⁰ Despite a significant increase in recognitions of illegal employment and the illegal performance of work by foreigners in recent years, one should take into account some definitional changes made to the Act of 20 April 2004 on employment promotion and labor market institutions in February 2009, and reaching for the

means that the number of such cases increased by 45% compared to 2009 (697), and there were three times as many such cases than in 2008 (343) including 618 citizens of Ukraine, 77 of China, 66 of Philippines, 32 of Vietnam, 30 of the Democratic People's Republic of Korea (North Korea.) The lack of the required work permit concerned 572 foreign nationals, whereas 286 foreign nationals worked on a different position or in different conditions than specified in their permit. 104 foreign nationals worked without a valid visa or other document entitling them to stay on the territory of Poland, or without a work permit, whereas 265 foreign nationals worked without relevant labour contracts. When it comes to the legality of employment control, in 2010, the Border Guards apprehended **589** (361) foreign nationals on account of working without a work permit or running business operations incompliant with relevant regulations binding in the Republic of Poland. In 2010, the Voivode received 116 applications to issue decisions on expulsion. The Border Guards issued 513 obligations to leave the territory of the Republic of Poland. In total, **in connection with identifying the illegal work of foreigners**, 688 third-country nationals were detained, including the largest groups of the citizens of Ukraine- 566 persons and Thailand- 43 persons. The apprehensions took place mostly in Dolnośląskie Voivodeship-220 persons, Śląskie Voivodeship - 87 persons, Opolskie Voivodeship - 86 persons and Lubuskie Voivodeship - 66 persons. The most frequent reasons for detentions included: working in a different place than the one indicated in the declaration on the intention to employ, and failure to complete formalities regarding employment.

However, the experience of the National Labour Inspectorate has shown that most of illegal work in Poland is performed by foreigners whose stay in Poland is rather short-term (mainly circular migration); as exemplified best by citizens of Ukraine. Based on the above one can conclude that short-term migrants predominate also among people who work while residing on the territory of Poland illegally.

Table 8: Number of foreigners staying and performing work in the territory of Poland illegally, 2005-2010

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|-------|-------|-------|-------|-------|-------|
| Third-country nationals detected as irregularly employed (irregular migrants in employment and legal migrants working outside of conditions of residence) in Member States | 2 027 | 1 357 | 1 594 | 1 237 | 1 591 | 1 699 |

Source: Border Guard

Other activities

The activities aiming at counteracting illegal migration are undertaken also during the proceedings concerning the legalization of residence – it is verified if a given foreign national entry or residence constitute a risk for the country's defence, security or for protection of security and public order. For that reason, before a residence permit is granted, the Voivode applies to the Border Guards Chief, the Voivodeship Police Chief, the Head of the Internal Security Agency, and sometimes to the consul in the last place of residence abroad for information if the foreign national's entry and residence on the territory of the Republic of Poland constitute a risk for the country's defences or security or for protection of the security and public order.

The scale of illegal migration

Although estimating the size of illegal immigration is a difficult task, all the same one can attempt to approximate it, taking into account a number of factors and data, such as the scope of

broader entitlements for the National Labour Inspectorate in the fight against illegal immigration and the scope of the statistical data collected in this area.

legal migration, the number of detected illegal border crossings, estimates of illegal stay of some well-documented and recognised migrant communities, and the scale of denials given to foreigners in the procedures for the legalisation of stay.

It follows from the above quoted statistics on illegal border crossings, as well as on inspections of legality of residence, and on expulsions, that the scale of these phenomena is generally small and in general it tends to steadily decline.

According to the estimates by the Ministry of the Interior and Administration, the number of illegal migrants in Poland amounts to tens of thousands, including about 15 thousand people belonging to the Vietnamese and Armenian communities⁴¹.

Taking into account the number of refusals of applications for the legalisation of stay of foreigners as a the stay factor that may have an impact on the scale of illegal immigration in the country one should also emphasise a relatively high percentage of admitted applications for the legalisation of stay of foreigners. In the period 2008 - 2010 about 85 percent out of 97,717 applications for residence permit for a fixed period were approved, also 73 percent out of 3,792 applications for EC long-term resident`s residence permit and 85% out of 11,404 applications for permit to settle were approved. During this period, the total number of foreigners who were refused the residence permit for a fixed period amounted to about 15 thousand, which gives an average of about 5 thousand per year. The number is rather low, and does not constitute a potential threat to illegal migration.

⁴¹ Information based on data indicated in the reports of the Migration Policy Department of the Ministry of the Interior and Administration, i.e. "The Vietnamese community in Poland. Migration policy in Vietnam. Report" published in 2007, and "The Armenian community in Poland. Migration policy of Armenia. Report" published in 2009.

Chapter 7. Conclusions

Having crossed the Polish border, one has an unlimited access to the Schengen area; therefore border control has to ensure the highest level of security to prevent the inflow of undesirable or dangerous goods and persons. At the same time, it is impossible to stop legal cross-border movement of persons and international trade (streamlining the cross-border movement of persons in places where it is needed, i.e. in areas of local cross-border movement, and improving the quality of border infrastructure should be continuously supported).

Counteracting illegal migration, i.e. entry/residence of a foreign national on the territory of a given country in breach of that country's provisions on admitting foreign nationals, before the border of the country of destination is actually crossed, is the most efficient and the cheapest way to limit the phenomenon. Treating visas as the only barrier on the third-country nationals' way to Poland and Schengen area would be far too simple. Despite the fact that it is extremely important to use visa policy to efficiently combat illegal migration, there is also a need to take up other initiatives aiming at promotion of simple and clear mechanisms of initial control, which would help to prevent illegal immigration (e.g. road maps supporting the creation of means of illegal immigration security, cooperation between liaison officers, etc.).

Regardless of the importance of initial control of illegal migration, its burden rests on the national authorities and services, as this phenomenon involves foreign nationals entering on the basis of visas, as well as illegal migrants who enter the country (with no visa) or stay in Poland for long without a permit (for examples, entered Poland legally, but lost their title to the residence). On top of that, there are persons who take actions which are different from those declared in a visa, for example, work without a work permit. In this case, the most important role, apart from the National Labour Inspectorate, is played by the Border Guard which acts on the basis of the Act 12 October 1990 on the Border Guards.

Analysing the operation of the Border Guards after Poland joined the Schengen in 2007, one should pay attention to the increased importance of illegal migration control carried out in the country, independently from the complementary control actions at the border. This task is difficult, and requires material changes in law, organization and logistics. For that reason, the Border Guards, apart from their statutory activities regarding state border and border traffic control on the external EU border, cooperates closely with the services of neighbouring countries (apart from the EU Member States, especially with Ukraine, Belarus and Russia), foreign institutions (inter alia, Frontex, Europol, International Border Police Conference), and it implements projects co-financed by the European Return Fund. One of the projects implemented under the Annual Programme of ERF for 2008 - 2009, is entitled "Strengthening of cooperation with third countries in foreign nationals' identification". It provides for cooperation with the countries of origin of illegal migrants with a view to strengthen cooperation in the area of confirming the identity of third-country nationals in order to issue replacement travel documents for their return to the country of origin. Under this project also meetings are organized with representatives of migration services of third-countries in order to enhance/initiate cooperation. In the framework of the abovementioned project, several meetings with representatives of third countries immigration services were organized with a view to enhance/initiate cooperation, including: the representatives of Vietnam, Russia, Ukraine, Georgia and African countries. Moreover, a number of visits of experts on the foreigners' identity confirmation took place, which resulted in confirmation of identity of several hundred of illegal migrants (mostly of the citizens of Vietnam, who received replacement travel documents for return to their country of origin).

The return policy is one of the most important mechanisms to counteract illegal migration in the country. Generally, there is no need for changes of activities related to expulsion, readmission or voluntary return as they are considered as sufficient. It seems justified to introduce mechanisms allowing, in individual cases, for legalization of residence of illegal migrants.

In assessing the actions taken so far by the authorities responsible for combating illegal migration on the territory of Poland (mainly Border Guard, Ministry of Foreign Affairs, the National Labour Inspectorate, etc.), should be noted their effectiveness. Available statistics on the number of illegal border crossings, the legality of residence and expulsion of foreigners, indicate that the scale of these effects is small. Although territory of Poland is treated by foreigners as a transit country (also for illegal migration) phenomenon of irregular stay of foreigners in Poland shows a tendency in this regard as stable, in order to decrease.

Annexes**ANNEX I. READMISSION AGREEMENTS CONCLUDED BY THE REPUBLIC OF POLAND**

| No. | Name of the Country | Title of the Agreement | Place and date the Agreement was signed | Title of the Implementing Agreement | Place and date the Implementing Agreement was signed | Remarks |
|-----|---|--|---|--|--|--|
| 1. | The Kingdom of Belgium, Federal Republic of Germany, French Republic, The Kingdom of Netherlands, The Grand Duchy of Luxembourg, Italian Republic. countries of Schengen Group. | Agreement on the Re-admission of Illegal Immigrants | Brussels 29 March 1991 | Protocol on the establishment of technical conditions for the transfer of persons at the border between the Republic of Poland and the Federal Republic of Germany in connection with the implementation of the Agreement of 29 March 1991 between the Governments of the Schengen Group States and the Government of the Republic of Poland concerning the readmission of persons residing without authorization, and the Agreement of 7 May 1993 between the Government of the Republic of Poland and the Government of the Federal Republic of Germany concerning cooperation with regards to the effects of migration movements. | Warsaw 29 September 1994 | The Agreement entered into force on 01.04.1991, and for Poland on 01.07.1991. |
| 2. | Republic of Austria | Agreement between the Government of the Republic of Poland and the Federal Government of the Republic of Austria on Re-admission of Illegal Immigrants | Vienna 10 June 2002 | Implementing Protocol to Agreement between the Government of the Republic of Poland and the Federal Government of the Republic of Austria on Re-admission of Illegal Immigrants | Vienna 10 June 2002 | The Agreement entered into force on 30.05.2005 Polish Journal of Laws [Dz.U.] of 2006, No. 51, item 373 |
| 3. | Republic of Bulgaria | Agreement between the Government of the Republic of Poland and the Government of the Republic of Bulgaria on Transfer and Re-admission of Illegal Immigrants | Warsaw 24 August 1993 | Agreement between the Government of the Republic of Poland and the Government of the Republic of Bulgaria on Transfer and Re-admission of Illegal Immigrants | Warsaw 24 August 1993 | The Agreement entered into force on 04.02.1994 |
| 4. | Republic of Croatia | Agreement between the Government of the Republic of | Warsaw | Protocol concluded between the Ministry of the Interior of the Republic of Poland and the Ministry of the Interior of the Republic of | Warsaw | The Agreement entered into |

PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION IN POLAND. NATIONAL REPORT

| No. | Name of the Country | Title of the Agreement | Place and date the Agreement was signed | Title of the Implementing Agreement | Place and date the Implementing Agreement was signed | Remarks |
|-----|---------------------|---|---|---|--|---|
| | | Poland and the Government of the Republic of Croatia on Transfer and Re-admission of Illegal Immigrants | 8 November 1994 | Croatia on Transfer and Re-admission of Illegal Immigrants | 8 November 1994 | force on 27.05.1995. |
| 5. | Czech Republic | Agreement between the Government of the Republic of Poland and the Government of the Czech Republic on Transfer of Persons across the Common State Border | Prague 10 May 1993 | Agreement between the Ministry of the Interior of the Republic of Poland and the Ministry of the Interior of the Czech Republic on Transfer of Persons across the Common State Border | Warsaw 17 August 1993 | The Agreement entered into force on 30.10.1993. |
| 6. | Hellenic Republic | Agreement between the Government of the Republic of Poland and the Government of Hellenic Republic on Transfer and Re-admission of Illegal Immigrants | Warsaw 21 November 1994 | Agreement between the Minister of the Interior of the Republic of Poland and the Minister of the Interior of Hellenic Republic on implementing the Agreement on Transfer and Re-admission of Illegal Immigrants | Athens 25 January 1995 | The Agreement entered into force on 5.05.1996. |
| 7. | Kingdom of Spain | Agreement between the Republic of Poland and the Kingdom of Spain on Re-admission of Illegal Immigrants | Warsaw 21 May 2002 | Exchange of diplomatic notes informing about the authorities competent to implement the Agreement. | | Entered into force on 23.06.2004. Polish Journal of Laws [Dz.U.] of 2004 No. 228, item 2300 |
| 8. | Ireland | Agreement between the Government of the Republic of Poland and the Government of Ireland on Transfer and Re-admission of Persons Entering the Territory of their States | Warsaw 12 May 2001 | The Agreement does not provide for concluding an implementing agreement. | | Entered into force on 22.06.2002r. Polish Monitor |

PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION IN POLAND. NATIONAL REPORT

| No. | Name of the Country | Title of the Agreement | Place and date the Agreement was signed | Title of the Implementing Agreement | Place and date the Implementing Agreement was signed | Remarks |
|-----|-----------------------|---|---|---|--|--|
| | | Illegally | | | | [M.P.] of 2002 No. 31, item 497 |
| 9. | Republic of Lithuania | Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on Transfer and Re-admission Persons | Warsaw 13 July 1998 | Agreement between the Minister of Interior and Administration of the Republic of Poland and the Minister of Interior of the Republic of Lithuania on Transfer and Re-admission Persons | Warsaw 13 July 1998 | The Agreement entered into force on 08.01.2000. |
| 10. | Republic of Latvia | Agreement between the Government of the Republic of Poland and the Government of the Republic of Latvia on Transfer and Re-admission of Illegal Immigrants | Riga 29 March 2006 | Implementing agreement between the Minister of Interior and Administration of the Republic of Poland and the Minister of Interior of the Republic of Lithuania on Transfer and Re-admission of Illegal Immigrants | Luxembourg 27 April 2006 | The Agreement entered into force on 27.12.2007. Polish Journal of Laws [Dz.U.] (Dz. U. of 2008, No. 15, item 95 |
| 11. | Republic of Macedonia | Agreement between the Government of the Republic of Poland and the Government of the Republic of Macedonia on Transfer and Re-admission of Illegal Immigrants | Warsaw 6 April 2006 | | | The Agreement entered into force on 04.02.2007 |
| 12. | Republic of Moldova | Agreement between the Government of the Republic of Poland and the Government of the Republic of Moldova on Transfer and Re-admission of Illegal Immigrants | Warsaw 15 November 1994 | Agreement between the Ministry of the Interior of the Republic of Poland and the Ministry of the Republic of Moldova on Transfer and Re-admission of Illegal Immigrants | Warsaw 15 November 1994 | The Agreement entered into force on 28.05.1995 |

PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION IN POLAND. NATIONAL REPORT

| No. | Name of the Country | Title of the Agreement | Place and date the Agreement was signed | Title of the Implementing Agreement | Place and date the Implementing Agreement was signed | Remarks |
|-----|----------------------|--|---|---|--|--|
| 13. | Republic of Romania | Agreement between the Government of the Republic of Poland and the Government of the Republic of Romania on Mutual Re-admission of Persons Entering the Territory of one of the Contracting States | Warsaw 24 July 1993 | Implementing protocol concluded between the Ministry of the Interior of the Republic of Poland and the Ministry of the Interior of Romania on Mutual Re-admission of Persons Entering the Territory of one of the Contracting States | Warsaw 24 July 1993 | The Agreement entered into force on 19.01.1991 |
| 14. | Slovak Republic | Agreement between the Government of the Republic of Poland and the Government of Slovak Republic on Transfer and Re-admission of Person at the Common State Border | Bratislava 8 July 1993 | Implementing protocol concluded between the Ministry of the Interior of the Republic of Poland and the Ministry of the Interior of Slovak Republic on implementing the Agreement between the Government of the Republic of Poland and the Government of Slovak Republic on Transfer and Re-admission of Person at the Common State Border | Bratislava 30 August 1993 | The Agreement entered into force on 12.11.1993 |
| 15. | Republic of Slovenia | Agreement between the Government of the Republic of Poland and the Government of the Republic of Slovenia on Transfer and Re-admission of Illegal Immigrants | Ljubljana 28 August 1996 | Protocol between the Minister of Interior and Administration of the Republic of Poland and the Minister of Interior of the Republic of Slovenia on Transfer and Re-admission of Illegal Immigrants | Luxembourg 27 April 2006 | The Agreement entered into force on 06.04. 1998 |
| | | | | | Entered into force on 01.01.2007 | |
| 16. | Swiss Confederation | Agreement between the Government of the Republic of Poland and the Federal Council of Swiss Federation on Transfer and Re-admission of Illegal Immigrants | Warsaw 19 September 2005 | Protocol on implementing the Agreement – as an integral part of the Agreement | Warsaw 19 September 2005 | The Agreement entered into force on 31.03.2006 Polish Journal of Laws [Dz.U.] of 2006r No. 162, item 1147 |
| 17. | Kingdom of Sweden | Agreement between the Government of the Republic of | Stockholm | | | The Agreement entered into |

PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION IN POLAND. NATIONAL REPORT

| No. | Name of the Country | Title of the Agreement | Place and date the Agreement was signed | Title of the Implementing Agreement | Place and date the Implementing Agreement was signed | Remarks |
|-----|-------------------------------|--|---|---|--|--|
| | | Poland and the Governmnet of the Kingdom of Sweden on Re-admission of Illegal Immigrants | 1 September 1998 | The Agreement does not provide for concluding an implementing agreement. | | force on 09.04. 1999 |
| 18. | Ukraine | Agreement between the Government of the Republic of Poland and the Government of Ukraine on Transfer and Re-admission of Person across the Common State Border | Kiev 24 May 1993 | Protocol on implementing the Agreement between the Government of the Republic of Poland and the Government of Ukraine on Transfer and Re-admission of Person across the Common State Border | Kiev 24 May 1993 | The Agreement entered into force on 10.04.1994 |
| 19. | Republic of Hungary | Agreement between the Government of the Republic of Poland and the Government of the Republic of Hungary on Transfer and Re-admission of Illegal Immigrants at State Boarder | Budapest 25listopada 25 November 1994 | Agreement between the Minister of the Interior of the Republic of Poland and the Minister of the Interior of the Republic of Hungary on implementing the Agreement on Transfer and Re-admission of Illegal Immigrants at State Boarder | Budapest 24 November 1994 | The Agreement entered into force on 05.08.1995 |
| 20. | Socialist Republic of Vietnam | Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on Transfer and Re-admission of Nationals of Both Countries | Hanoi 22 April 2004 | Agreement between the Minister of Interior and Administration of the Republic of Poland and the Minister of Public Safety of the Socialist Republic of Vietnam on implementing the Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on Transfer and Re-admission of Nationals of Both Countries | Hanoi 22 April 2004 | The Agreement entered into force on 14.05.2005. Polish Journal of Laws [Dz.U.] of 2005, No. 156, items 1306 and 1307 |

PROVISIONS ON TRANSFER AND ADMISSION OF PERSONS ARE ALSO INCLUDED IN THE AGREEMENTS ON MUTUAL WAVING OF VISA REQUIREMENT CONCLUDED BY THE REPUBLIC OF POLAND

| No. | Name of the Country | Title of the Agreement | Place and date the Agreement was signed | Title of the Implementing Agreement | Place and date the Implementing Agreement was signed | Remarks |
|-----|---------------------|---|---|-------------------------------------|--|--|
| 1. | Republic of Estonia | Agreement between the Government of the Republic of Poland and the Government of the Republic of Estonia on Mutual Waving of Visa Requirement | The Agreement was concluded through exchange of diplomatic notes between the parties on 26 February 1993. | | | The Agreement contains provisions on re-admission. |
| 2. | Republic of Latvia | Agreement between the Government of the Republic of Poland and the Government of the Republic of Latvia on Visa-Free Travel Regime | Warsaw 17 December 1992. | | | The Agreement contains readmission provisions. |

PROVISIONS ON TRANSFER AND ADMISSION OF PERSONS ARE ALSO INCLUDED IN AN AGREEMENT ON TRANSIT OF THIRD COUNTRY NATIONALS CONCLUDED BY THE REPUBLIC OF POLAND WITH:

| No. | Name of the Country | Title of the Agreement | Place and date the Agreement was signed | Title of the Implementing Agreement | Place and date the Implementing Agreement was signed | Remarks |
|-----|---------------------|------------------------|---|-------------------------------------|--|---------|
|-----|---------------------|------------------------|---|-------------------------------------|--|---------|

| | | | | | | |
|----|-----------------------------|---|----------------------------------|--|--|--|
| 1. | Federal Republic of Germany | Agreement between the Minister of the Interior and Administration of the Republic of Poland and the Federal Ministry of Internal Affairs of the Federal Republic of Germany on Transit of Third Country Nationals | Heiligendamm 23 March 2006 | | | The Agreement entered into force on 01.08.2006 |
|----|-----------------------------|---|----------------------------------|--|--|--|

EC readmission agreements

Poland also implements the provisions of the so called readmission agreements concluded between the EU and third countries (date of entry into force):

Hong Kong (01.03.2004), Macao (01.06.2004), Sri Lanka (01.05.2005), Albania (01.05.2006), Russia (01.06.2007), Ukraine (01.01.2008), Montenegro (01.01.2008), Macedonia (01.01.2008), Serbia (01.01.2008), Bosnia and Herzegovina (01.01.2008), Moldova (01.01.2008), Pakistan (01.12.2010), Georgia (01.03.2011)

Local border traffic

1) Agreement between the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine on the rules of Local Border Traffic, executed in Kiev on 28 March 2008 - the Protocol between the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine on amending the Agreement between the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine on local border traffic, executed in Kiev on 28 March 2008 executed in Warsaw on 22 December 2008. Date of entry into force: 1 July 2009

2) Agreement between the Government of the Republic of Poland and the Government of Belarus on the rules of local border traffic executed in Warsaw on 12 February 2010. The Agreement has not entered into force yet.

ANNEX II. MAP OF THE REPUBLIC OF POLAND



Source: Polish Border Guard

ANNEX III. STATISTICS

1.

Table 1.1: Third country nationals **found to be illegally present** on the territory of the Republic of Poland

| | 2008 | 2009 | 2010 |
|---|-------|-------|-------|
| Total number of third-country nationals found to be illegally present | 5 430 | 4 521 | 4 005 |

Source: Border Guard

Table 1.2: Age of migrant found to be illegally present on the territory of the Republic of Poland

| | 2008 | 2009 | 2010 |
|----------------------------|------|------|------|
| Fewer than 14 years | 112 | 219 | 78 |
| From 14 to 17 years | 33 | 47 | 36 |
| From 18 to 34 years | 2712 | 2213 | 1902 |
| 35 years or over | 2573 | 2042 | 1989 |

Source: Border Guard

Table 1.3: Sex of migrant found to be illegally present

| | 2008 | 2009 | 2010 |
|---------------|------|------|------|
| Male | 3557 | 3043 | 2735 |
| Female | 1873 | 1478 | 1270 |

Source: Border Guard

Table 1.4: Main 10 countries of citizenship

| | 2008 | | 2009 | | 2010 | |
|------------------|------------------------------------|-------|------------------------------------|-------|------------------------------------|-------|
| | Name of the country of citizenship | Total | Name of the country of citizenship | Total | Name of the country of citizenship | Total |
| 1st main | UKRAINE | 3 202 | UKRAINE | 2 071 | UKRAINE | 1 883 |
| 2nd main | RUSSIA | 466 | RUSSIA | 606 | RUSSIA | 649 |
| 3rd main | VIETNAM | 435 | VIETNAM | 330 | BELARUS | 286 |
| 4th main | BELARUS | 246 | GEORGIA | 254 | VIETNAM | 253 |
| 5th main | MOLDOVA | 238 | BELARUS | 178 | ARMENIA | 144 |
| 6th main | CHINA | 128 | CHINA | 149 | TURKEY | 84 |
| 7th main | MONGOLIA | 114 | ARMENIA | 111 | GEORGIA | 73 |
| 8th main | ARMENIA | 112 | MOLDOVA | 94 | MOLDOVA | 68 |
| 9th main | TURKEY | 64 | TURKEY | 94 | CHINA | 61 |
| 10th main | NIGERIA | 39 | NIGERIA | 86 | NIGERIA | 44 |

Source: Border Guard

2.

Table 2.1: Third country nationals **refused entry** at the external borders

| | 2008 | 2009 | 2010 |
|--|--------|--------|--------|
| Total number of third-country nationals refused entry | 16 852 | 26 888 | 22 893 |

Source: Border Guard

Table 2.2: Grounds for refusal

| | 2008 | 2009 | 2010 |
|--|-------|--------|-------|
| No valid travel document | 39 | 180 | 68 |
| False/counterfeit/forged travel document | 15 | 15 | 12 |
| No valid visa or residence permit | 7 642 | 12 019 | 9 813 |
| False visa or residence permit | 29 | 24 | 18 |
| Purpose and conditions of stay not justified | 6 967 | 10 557 | 8 918 |
| Person already stayed 3 months in a 6-months period | 66 | 31 | 75 |
| No sufficient means of subsistence | 1 099 | 2 830 | 2 909 |
| An alert has been issued | 687 | 1 125 | 968 |
| Person considered to be a public threat | 308 | 107 | 112 |

Source: Border Guard

Table 2.3: Type of border where refused entry

| | 2008 | 2009 | 2010 |
|------|--------|--------|--------|
| Land | 16 271 | 26 232 | 22 255 |
| Sea | 39 | 44 | 48 |
| Air | 542 | 612 | 590 |

Source: Border Guard

Table 2.4: Main 10 countries of citizenship of third-country nationals refused entry

| Position of the country of citizenship | 2008 | | 2009 | | 2010 | |
|--|------------------------------------|-------|------------------------------------|--------|------------------------------------|--------|
| | Name of the country of citizenship | Total | Name of the country of citizenship | Total | Name of the country of citizenship | Total |
| 1st main | UKRAINE | 9 446 | UKRAINE | 12 802 | UKRAINE | 10 971 |
| 2nd main | BELARUS | 3 349 | GEORGIA | 5 686 | BELARUS | 4 719 |
| 3rd main | RUSSIA | 3 236 | BELARUS | 4 203 | RUSSIA | 3 530 |
| 4th main | MOLDOVA | 177 | RUSSIA | 3 348 | GEORGIA | 2 886 |
| 5th main | KAZAKHSTAN | 91 | ARMENIA | 222 | ARMENIA | 102 |
| 6th main | STATELESS | 59 | MOLDOVA | 125 | MOLDOVA | 87 |
| 7th main | TURKEY | 51 | STATELESS | 54 | KAZAKHSTAN | 67 |
| 8th main | UZBEKISTAN | 41 | KAZAKHSTAN | 50 | MONGOLIA | 61 |
| 9th main | GEORGIA | 39 | NIGERIA | 39 | UZBEKISTAN | 40 |
| 10th main | CHINA | 36 | TURKEY | 37 | KYRGYZSTAN | 35 |

Source: Border Guard

3.

Table 3.1: Third country nationals **ordered to leave** (after being found illegally present)

| | 2008 | 2009 | 2010 |
|---|-------|--------|--------|
| Total number of third-country nationals ordered to leave (after being found to be illegally present) | 8 143 | 11 876 | 10 700 |

Source: Border Guard

Table 3.2: Main 10 countries of citizenship of third-country national ordered to leave

| Position of the country of citizenship | 2008 | | 2009 | | 2010 | |
|--|------------------------------------|-------|------------------------------------|-------|------------------------------------|-------|
| | Name of the country of citizenship | Total | Name of the country of citizenship | Total | Name of the country of citizenship | Total |
| 1st main | UKRAINE | 5 443 | UKRAINE | 5 247 | UKRAINE | 5 274 |
| 2nd main | RUSSIA | 620 | RUSSIA | 2 871 | RUSSIA | 2 746 |
| 3rd main | BELARUS | 402 | GEORGIA | 1 570 | GEORGIA | 738 |
| 4th main | VIETNAM | 400 | BELARUS | 520 | BELARUS | 530 |
| 5th main | MOLDOVA | 305 | VIETNAM | 320 | VIETNAM | 266 |
| 6th main | ARMENIA | 178 | ARMENIA | 216 | ARMENIA | 222 |
| 7th main | CHINA | 166 | MOLDOVA | 194 | MOLDOVA | 124 |
| 8th main | MONGOLIA | 138 | CHINA | 145 | CHINA | 92 |
| 9th main | TURKEY | 50 | NIGERIA | 89 | TURKEY | 90 |
| 10th main | GEORGIA | 50 | MONGOLIA | 84 | NIGERIA | 45 |

Source: Border Guard

4.

Table 4.1: Third country nationals returned following an order to leave (after being found to be illegally present)

| | 2008 | 2009 | 2010 |
|--|-------|-------|-------|
| Total number of third-country nationals returned following an order to leave | 8 595 | 6 945 | 6 768 |
| Number of third-country nationals returned <u>to a third country</u> following an order to leave | 7 724 | 6 673 | 6 619 |

Source: Border Guard

Table 4.2: Main 10 countries of citizenship of person returned

| Position of the country of citizenship | 2008 | | 2009 | | 2010 | |
|--|------------------------------------|-------|------------------------------------|-------|------------------------------------|-------|
| | Name of the country of citizenship | Total | Name of the country of citizenship | Total | Name of the country of citizenship | Total |
| 1st main | UKRAINE | 5 830 | UKRAINE | 4 301 | UKRAINE | 4 264 |
| 2nd main | RUSSIA | 751 | RUSSIA | 801 | RUSSIA | 930 |
| 3rd main | BELARUS | 452 | BELARUS | 479 | BELARUS | 495 |
| 4th main | VIETNAM | 436 | GEORGIA | 284 | GEORGIA | 358 |
| 5th main | MOLDOVA | 339 | VIETNAM | 242 | VIETNAM | 233 |
| 6th main | ARMENIA | 152 | ARMENIA | 135 | MOLDOVA | 122 |
| 7th main | MONGOLIA | 142 | MOLDOVA | 127 | ARMENIA | 77 |
| 8th main | CHINA | 74 | CHINA | 74 | TURKEY | 26 |
| 9th main | GEORGIA | 67 | NIGERIA | 61 | KAZAKHSTAN | 23 |
| 10th main | TURKEY | 43 | KAZAKHSTAN | 52 | MONGOLIA | 22 |

Source: Border Guard

5.

Table 5.1: Third country nationals **returned** in 2009

| Nationality of person | Total Returns | Total Forced | Enforced by Member State | Enforced by Joint Operation | Total Voluntary | IOM Assisted |
|-----------------------|---------------|--------------|--------------------------|-----------------------------|-----------------|--------------|
| AFGANISTAN | 1 | 0 | | | 1 | 1 |
| ALBANIA | 3 | 3 | 3 | | 0 | |
| ALGERIA | 9 | 8 | 8 | | 1 | 1 |
| ARMENIA | 73 | 54 | 50 | 4 | 19 | 19 |
| AZERBAIJAN | 1 | 0 | | | 1 | 1 |
| BANGLADESH | 2 | 2 | 2 | | 0 | |
| BOLIVIA | 1 | 1 | 1 | | 0 | |
| CAMEROON | 1 | 0 | | | 1 | 1 |
| CHINA | 63 | 53 | 53 | | 10 | 10 |
| DOMINICA | 3 | 3 | 3 | | 0 | |
| EGYPT | 3 | 3 | 3 | | 0 | |
| PHILIPPINES | 5 | 4 | 4 | | 1 | 1 |
| GAMBIA | 1 | 1 | 1 | | 0 | |
| GEORGIA | 390 | 174 | 141 | 33 | 216 | 216 |
| INDIA | 13 | 11 | 11 | | 2 | 2 |
| IRAN | 1 | 0 | | | 1 | 1 |
| IRAQ | 5 | 1 | 1 | | 4 | 4 |
| KAZKHSTAN | 4 | 1 | 1 | | 3 | 3 |
| KENIA | 1 | 0 | | | 1 | 1 |
| COLOMBIA | 1 | 1 | 1 | | 0 | |
| LIBAN | 6 | 3 | 3 | | 3 | 3 |
| LIBERIA | 1 | 1 | 1 | | 0 | |
| LYBIA | 1 | 0 | | | 1 | 1 |
| MACEDONIA | 1 | 1 | 1 | | 0 | |
| MOROCCO | 6 | 6 | 6 | | 0 | |
| MAURITIUS | 1 | 0 | | | 1 | 1 |
| MONGOLIA | 26 | 13 | 13 | | 13 | 13 |
| NEPAL | 4 | 2 | 2 | | 2 | 2 |
| NIGERIA | 26 | 26 | 14 | 12 | 0 | |
| PAKISTAN | 6 | 6 | 6 | | 0 | |
| ROMANIA | 1 | 1 | 1 | | 0 | |
| RUSSIA | 1,203 | 15 | 15 | | 1,188 | 1188 |
| SERBIA | 13 | 12 | 12 | | 1 | 1 |
| SRI LANKA | 3 | 1 | 1 | | 2 | 2 |
| SYRIA | 5 | 0 | | | 5 | 5 |
| TAJIKISTAN | 2 | 2 | 2 | | 0 | |
| TOGO | 3 | 2 | 2 | | 1 | 1 |

| Nationality of person | Total Returns | Total Forced | Enforced by Member State | Enforced by Joint Operation | Total Voluntary | IOM Assisted |
|-----------------------|---------------|--------------|--------------------------|-----------------------------|-----------------|--------------|
| TUNESIA | 10 | 9 | 9 | | 1 | 1 |
| TURKEY | 6 | 5 | 5 | | 1 | 1 |
| TURKMENISTAN | 1 | 1 | 1 | | 0 | |
| UKRAINE | 45 | 0 | | | 45 | 45 |
| UZBEKISTAN | 24 | 4 | 4 | | 20 | 20 |
| VIETNAM | 145 | 143 | 114 | 29 | 2 | 2 |
| ZIMBABWE | 1 | 0 | | | 1 | 1 |
| BELARUS | 12 | 0 | | | 12 | 12 |
| BURUNDI | 1 | 0 | | | 1 | 1 |
| ETHIOPIA | 2 | 0 | | | 2 | 2 |
| RWANDA | 1 | 0 | | | 1 | 1 |
| TOTAL | 2,137 | 573 | 495 | | | |

Source: Border Guard

Table 5.2: Third country nationals returned in 2010

| Nationality of person | Total Returns | Total Forced | Enforced by Member State | Enforced by Joint Operation | Total Voluntary | IOM Assisted |
|-----------------------|---------------|--------------|--------------------------|-----------------------------|-----------------|--------------|
| AFGANISTAN | 6 | 5 | 5 | | 1 | 1 |
| ALBANIA | 5 | 5 | 4 | 1 | 0 | |
| ARMENIA | 53 | 18 | 15 | 3 | 35 | 35 |
| AZERBAIJAN | 1 | 0 | | | 1 | 1 |
| BANGLADESH | 9 | 2 | 2 | | 7 | 7 |
| BOSNIA I HERZEGOVINA | 1 | 0 | | | 1 | 1 |
| CAMEROON | 1 | 0 | | | 1 | 1 |
| CANADA | 1 | 1 | 1 | | 0 | |
| CHINA | 25 | 16 | 16 | | 9 | 9 |
| DOMINICAN REPUBLIC | 2 | 2 | 2 | | 0 | |
| EGYPT | 4 | 2 | 2 | | 2 | 2 |
| GEORGIA | 549 | 315 | 148 | 167 | 234 | 234 |
| GHANA | 1 | 1 | 1 | | 0 | |
| GUINEA | 1 | 0 | | | 1 | 1 |
| INDIA | 10 | 9 | 9 | | 1 | 1 |
| INDONESIA | 1 | 0 | | | 1 | 1 |
| IRAN | 3 | 3 | 3 | | 0 | |
| YEMEN | 1 | 0 | | | 1 | 1 |
| JORDAN | 4 | 1 | 1 | | 3 | 3 |
| SOUTH KOREA | 1 | 1 | 1 | | 0 | |
| KOSOVO | 2 | 2 | | 2 | 0 | |
| LEBANON | 2 | 2 | 2 | | 0 | |
| LIBYA | 2 | 1 | 1 | | 1 | 1 |
| MALI | 1 | 1 | 1 | | 0 | |

| Nationality of person | Total Returns | Total Forced | Enforced by Member State | Enforced by Joint Operation | Total Voluntary | IOM Assisted |
|-----------------------|---------------|--------------|--------------------------|-----------------------------|-----------------|--------------|
| MEXICO | 1 | 1 | 1 | | 0 | |
| MOLDOVA | 10 | 4 | 4 | | 6 | 6 |
| MONGOLIA | 18 | 10 | 10 | | 8 | 8 |
| MOROCCO | 2 | 1 | 1 | | 1 | 1 |
| NEPAL | 13 | 4 | 4 | | 9 | 9 |
| NIGERIA | 11 | 8 | 1 | 7 | 3 | 3 |
| PAKISTAN | 2 | 2 | 2 | | 0 | |
| ROMANIA | 2 | 2 | 2 | | 0 | |
| RUSSIA | 1,253 | 8 | 8 | | 1,245 | 1245 |
| SENEGAL | 4 | 1 | 1 | | 3 | 3 |
| SYRIA | 1 | 0 | | | 1 | 1 |
| THAILAND | 20 | 20 | 20 | | 0 | |
| TAIWAN | 1 | 1 | 1 | | 0 | |
| TUNESIA | 5 | 3 | 3 | | 2 | 2 |
| TURKRY | 17 | 17 | 17 | | 0 | |
| UKRAINE | 49 | 0 | | | 49 | 49 |
| UZBEKISTAN | 12 | 5 | 5 | | 7 | 7 |
| VIETNAM | 50 | 34 | 34 | | 16 | 16 |
| ZIMBABWE | 1 | 0 | | | 1 | 1 |
| BELARUS | 4 | 0 | | | 4 | 4 |
| IRAQ | 4 | 0 | | | 4 | 4 |
| KAZAKHSTAN | 1 | 0 | | | 1 | 1 |
| KIRGIZSTAN | 4 | 0 | | | 4 | 4 |
| ETHIOPIA | 1 | 0 | | | 1 | 1 |
| TOTAL | 2,172 | 508 | 328 | | | |

Source: Border Guard

ANNEX IV. THE AVERAGE COSTS OF FORCED AND VOLUNTARY RETURN

THE AVERAGE COST OF FORCED RETURN

The average cost of expelling a foreigner (based on the actual expenditure incurred by the National Border Guard Headquarters on expulsions in the first quarter of 2008).

Costs of airline tickets: PLN 290,833.00 (approx. EUR 72,700.00)

Costs of escort tickets: PLN 251,929.00 (approx. EUR 63,000.00)

Costs of escort travel allowance: PLN 58,117.44 (approx. EUR 14,500.00)

Costs of overland transport: PLN 30,913.00 (approx. EUR 7,700.00)

Total: PLN 631,792.44 (approx. EUR 158,000.00)

The above costs refer to 166 expelled foreigners (including 88 foreigners expelled by air and 78 foreigners expelled by land).

The average cost: PLN 3,800/person (approx. 950 EUR/person)

Costs of the foreigner's stay in a detention centre – PLN 1,000/person/month (approx. EUR 4,000/person/month)

Length of the foreigner's stay in a detention centre – 3 months

The average cost: PLN 3,000 per person (approx. 750 EUR per person)

TOTAL: the average cost of forced return of a foreigner is PLN 6,800 (approx. EUR 1,700).

THE AVERAGE COST OF VOLUNTARY RETURN

The average cost of voluntary return of a foreigner (based on the approximations of the project that is currently being developed by IOM and the Border Guard under the Annual Programme 2008 of the European Return Fund)

Costs of travel to the place of destination in the country of origin: PLN 1,200.00 (approx. EUR 300.00)

Costs of assistance with transit: PLN 150.00 (approx. EUR 37.50)

Costs of obtaining a travel document: PLN 20.00 (approx. EUR 5.00) - (PLN 200 for every tenth person - approx. 50.00 EUR for every tenth person)

Costs of accommodation / food before travel: PLN 7.00 (approx. EUR 1.75) - (PLN 70 for every tenth person - approx. EUR 17.50 for every tenth person)

Cost of benefit in cash: PLN 350.00 (approx. EUR 87.50)

Costs of reintegration assistance: PLN 650.00 (approx. EUR 162.50) - (PLN 6,500.00 for every tenth person – EUR 1,625.00 for every tenth person)

The average cost: PLN 2,400.00 per person (approx. EUR 600.00 per person)

Costs of the foreigner's stay in a detention centre – PLN 1,000/person/month (approx. EUR 250 /person/month)

Length of the foreigner's stay in a detention centre – 1 month

The average cost: PLN 1,000.00 per person (approx. EUR 250.00 per person)

TOTAL: the average cost of voluntary return of a foreigner is PLN 3,400 (approx. EUR 850).

Source: Border Guard