

From *Labour Immigration Policy in a Country Known for Emigration: Poland's Policy towards Economic Immigration after EU Accession* by Agnieszka Zogata-Kusz (2013).

5 ANALYSIS OF KEY FACTORS FOR LABOUR IMMIGRATION POLICY

As the previous chapter indicated, a cluster of factors have affected Poland's labour immigration policy in recent years. The current chapter discusses them across the whole period under examination and completes the list with a few more determinants. Despite the fact that the latter were not explicitly indicated in any legislative materials, they often had an important impact on the policy outcome. Their identification was possible thanks to the interviews with experts. Hence, the following sections are devoted to altogether as many as ten determinants. These are the state of the economy, foreign policy considerations and – this time discussed separately – the influence of the European Union, the volume and composition of immigration, and security considerations (together with questions of lobbying), i.e. factors pointed out in the hypotheses of the current study. Then, the analysis of all the materials gathered for the purpose of the study additionally made it possible to identify the role of political factors and the human factors, as well as the experience of other countries and the experience of Poland with applying earlier rules.

5.1 The state of the economy

In the study it is supposed that the factor of the state of the economy is the most important for the development of the labour immigration policy. The current section demonstrates the relationship between the two elements in the whole period under examination. Then it sums up the findings on lobbying, since – at least in the case of Poland – it is mainly connected to the economic situation.

In the years 2004-2005, when the Polish economy was gaining new strength after a few years of economic problems, the question of the access of foreigners to the labour market seemed to remain beyond the interest of policymakers. The rules pertaining to the employment of foreigners were complicated and rather strict. Since 2006, when its economic development accelerated, Poland has started to introduce some facilitation of the employment of foreign workers. In 2006 alone, the channel for the access of foreigners to the labour market became slightly wider – employers' declarations were introduced, but originally only for a short time and only for work in agriculture. The year 2007 was, in a way, the golden year of the decade with regard to the economic prosperity of Poland. Simultaneously, many

things happened then in terms of the labour immigration policy. Thanks to the extension of the possibilities of using employers' declarations to all sectors, and thanks to the reduction of the application fee rates, but also because of the introduction of the Polish Charter, the channel through which foreigners could access the Polish labour market legally widened again. At the beginning of 2008, i.e. a time when the situation of Poland's economy was still favourable, the period for which a foreigner could work on the basis of a declaration was extended. As already stated, the world financial crisis came to Poland with a delay, so the macroeconomic indicators for 2008 were very good. The unemployment rate was even the lowest in the decade. It was in this context that the 2009 amendment to the Act was prepared; the amendment which clearly simplified the procedure for issuing a work permit. Together with the amendment to the Act, at the beginning of 2009, a ministerial regulation was issued that extended the possibility of using employers' declarations for nationals of further countries – signatories of mobility partnership agreements – and for work permit holders who would use them for some additional job. In 2009, the world financial crisis affected Poland. Nonetheless, as already stated, the government did not perceive that situation as a *crisis* but rather as an economic *slowdown*, since in contrast to most EU countries, Poland had positive economic outcomes. Nothing was done to narrow the channel for the adoption of foreigners on the labour market, despite the fact that the economic slowdown was severe for many Poles, who lost jobs at that time – between 2008 and 2010 the unemployment rate increased from 9.4 to 11.7 per cent. On the contrary, in 2010 the pilot phase of the implementation of the employers' declarations ended and they became introduced permanently. The fact is, however, that even the increased unemployment rate was lower than the unemployment rate that existed in the 'golden' year of 2007, when it reached 12.3 per cent.

Looking at the dynamics of Poland's economic development on the one hand and the changes in the labour immigration policy on the other hand, one can say that the latter reflected the former to a large extent. The relation between the two elements was not, however, directly proportional (i.e. the better the economic situation, the more liberal the LIP is). It was especially the case for the year 2006. The truth is that the state of the economy was improving in that year; however, there was still an unemployment rate of almost 16 per cent. In such a situation the government decided to open the labour market to foreigners for work in agriculture. The analysis proved that it was done because of extraordinary pressure from agricultural producers, who initiated the change by complaining about labour shortages. The abolition of the sectorial limitation of the usage of employers' declarations in the

following year also occurred because of the initiative of the various organisations of employers.

The analysis of the available materials showed that it was not so much the state of the economy that was used as an argument in the matter of rules regarding the employment of foreigners as the state of the labour market. On the one side, reference was made to there being an insufficient labour supply. On the other side, it had been repeated that the access of foreigners to the labour market was subject to the needs of the labour market: foreigners' work could not substitute for the work of Poles. It must only be complementary to it.

In relation to this principle, it should be borne in mind here that one of the main objections to declarations was the fact that the decision was made without an analysis of the actual needs of the labour market. Together with its increased involvement in the development of the LIP in 2006, the Ministry of Labour and Social Policy started to care more that the policy was based on adequate analyses, so the above principle was followed. For this reason, the MLSP ordered a few research studies. Among them was the research project *Migration policy as an instrument for the promotion of employment and restraining unemployment*.¹ While the bill of the 2009 amendment to the Act on the Promotion of Employment was being worked out, its results were already known.² The results are interesting enough for at least some of them to be presented here.

That comprehensive research, realised by the Centre of Migration Research of Warsaw University, involved as many as seven complementary research procedures. One of its findings regarded, for instance, the complementarity of the employment of foreigners in Poland. According to experts involved in the Delphi research study of the Centre of Migration Research, it is not only a desirable phenomenon, but a foreign labour force was actually complementary in its character and it would be complementary even if the number of foreign workers employed in Poland increased. Apprehension regarding substitutability was justified only to a very limited extent: only a few experts noted that in the case of small companies with foreign capital it happened that some workplaces were *created* for foreigners (family members, friends) but generally, this phenomenon was limited. These conclusions were also confirmed by the research conducted into employers: foreigners did not endanger the position of Polish workers. First of all, it was like that because in general foreigners were not a cheaper labour force, although sometimes it was worth employing them for their social

¹ Kaczmarczyk and Okólski 2008.

² The project was co-financed by the European Social Fund. A summary of its results was presented in the publication 'Does the Polish Economy Need Foreigners?': Grabowska-Lusińska and Żylicz 2008.

capital. Then, and this is the main thing, it was because the employment of a foreign workforce resulted from shortages in the domestic labour force and the shortages appeared because Poles were reluctant to work in some segments of the labour market or because they did not have proper qualifications. Finally, according to employers, many workplaces were only temporarily occupied by foreigners: in the course of time, foreigners were expected to be replaced by Poles returning from emigration.³

Another issue that is worth noting is the matter of the declining labour supply, which later became one of the main arguments in the debate over the bill for the 2009 amendment to the Act. Especially since 2005, entrepreneurs have faced growing difficulties with finding qualified employees, as well as problems resulting from increasing labour costs. They indicated those two matters as the main barriers to the development of their companies. The percentage of entrepreneurs who made the first point reached 14.3 per cent in the fourth quarter of 2007, while the number for whom the main barrier to development was the second point reached 6.7 per cent. The situation was especially difficult in the building industry, but also in the processing industry and trade.⁴

Concerning the reasons for labour shortages, different research procedures confirmed that these were e.g. a low level of interregional mobility, the reform of vocational schools (connected to limiting the number of that type of schools or the lack of interest in this kind of education), the low number of places and lack of opportunities for professional retraining, the seasonal emigration of Poles contributing to the deactivation of their qualifications, demographic changes, the deactivation of older employees, the social system, structural maladjustment, or business cycle factors.⁵ Similar explanations were given in the 2007 report of the Ministry of the Economy, which was referred to in the sub-chapter 3.1.

The lack of a domestic labour force contributed to the increased interest in the employment of foreign workers. In 2007, the scale of the employment of foreigners in the group of companies that was examined was rather small. There were only 71 thousand foreigners who were legally employed in Poland. According to Grabowska-Lusińska, there could be two main reasons for that: the shortage of a foreign labour supply in Poland, together with administrative difficulties, such as the length and costs of the procedure or the costs of accommodation. The research of the Centre of Migration Research revealed that the potential demand for foreign workers at that time was at the level of 535 thousand. The greatest

³ Żylicz 2008: 79-80.

⁴ Grabowska-Lusińska and Żylicz 2008: 28 based on the quarterly report of the National Bank of Poland for the fourth quarter of 2007.

⁵ Żylicz and Grabowska-Lusińska, 2008: 25-27.

potential demand was noted for two general categories: coal mining, industrial processing and energy production (as one category), as well as the building industry.⁶

Interestingly, the findings of the above research project are partly in contrast to the report of the Ministry of Labour and Social Policy regarding the situation on the labour market in 2007 (published in April 2008).⁷ The report revealed that in fact a labour surplus existed in Poland. The vacancies reported to the labour offices were not able to cover the labour demand. Hence, it is not surprising that labour unions referred to the report repeatedly when opposing the facilitation of the employment of foreigners.

With regard to labour shortages in the building industry, it is remarkable that the findings of the above research project differ from what is written in the 2007 report. According to the report, at the national level the number of job offers in that sector and the number of unemployed who had formerly worked in it stayed in balance. Labour shortages in the building industry were only found in three voivodeships (out of sixteen).⁸ Besides, at the national level labour shortages were noted in financial mediation, real estate services, public administration, and education, together with extraterritorial organisations and bodies, so in different categories than were indicated by the other research.⁹

Contrariwise, a labour surplus was found in agriculture. This is interesting, especially in relation to the original introduction of the employers' declarations only in agriculture, with reference to the labour shortages reported by the producers. According to the 2007 report, in the section 'agriculture, hunting, and forestry' the number of unemployed who had formerly worked in that sector outnumbered the job offers in all voivodeships. The report admits that such a situation can be surprising, mainly because of the fact that the employers (and the media) had called attention to the shortages in the seasonal labour force in agriculture. It explains that 'the fundamental reason for the lack of workers [in agriculture and horticulture] is that offers of seasonal jobs are not reported to the labour offices [...], which requires legal employment to be offered.'¹⁰ In addition to that explanation, one could bear in mind that the lack of suitable Polish workers in various areas could be explained by a range of reasons listed among the findings of the above research project (from the low level of interregional mobility, through structural maladjustment, to the business cycle factor). Besides, another factor contributing to the unwillingness of Poles to undertake employment in

⁶ Grabowska-Lusińska 2008, 62-65.

⁷ MPiPS 2008b.

⁸ *Ibid.*: 11.

⁹ *Ibid.*: 14.

¹⁰ MPiPS 2007c: 10 [translation AZK].

some sectors was the low wages offered there. The last argument was mentioned again and again by the labour unions.

The above paragraphs show that the situation on the labour market was complex. While it was proved that the state of the economy (or rather of the labour market) was the main determinant of the development of the labour immigration policy, it was also found that an important intervening factor was lobbying on the part of the employers. With regard to the first two changes in employers' declarations, one can even talk about the existence of *client politics* in the development of the LIP in Poland, as stated earlier. The employers – as the carriers of the determinant (i.e. of the state of the economy/labour market) – were presenting an *interpretation* of the situation on the labour market to the government. The general complexity of the problems of the labour market and the lack of analysis of the actual state of the labour market – in particular, before the introduction of the declarations – contributed to the fact that the government gave an ear to the employers' arguments.

There is, however, one more issue worth referring to. It pertains to preferred categories of economic immigrants. The main instrument for widening the channel of foreigners' access to the labour market, i.e. the employers' declarations, concerned only circular and temporary foreign workers, i.e. regardless their professions or qualifications. The list of other cases released from the work permit requirement hardly changed at all in the period under examination. It happened that the conditions related to particular professions were changed and thanks to that more (as in the case of teachers of foreign languages) or less (as in case of media correspondents) foreigners were allowed to be accepted on the labour market. Nevertheless, within these few years, the list of cases was enlarged only by the addition of foreign nationals engaged in various types of exchange programmes (in 2007), people who were graduates of Polish schools (in 2009), and those whose work was related to international sports events (in 2010). In general, a clear majority of all the categories released from the work permit requirement was narrow, allowing only relatively small groups of foreigners free access to the labour market. A similar situation pertained to cases in which work permits could be issued without a local labour market test being conducted. With regard to that matter, it should be admitted that the governors could have extended the list in relation to their voivodeships.

Concerning the question of categories of immigrants accepted on the labour market, it can be concluded that the government did not decide to simplify access to the labour market for particular categories of foreigners because of labour shortages in those categories.

The greater liberalisation concerned particular types of economic immigration, i.e. circular and temporary ones. The Polish Charter represented a separate case.

5.2 Foreign policy considerations

An Eastern orientation, specifically focused on Poland's eastern neighbours, has been the second priority of Polish foreign policy for many years, i.e. just after relations with the European Union. Bearing this in mind, for some it could be obvious that the liberalisation of some elements of the Polish labour immigration policy, as well as the regions prioritised in that policy, are the result of foreign policy considerations. These considerations could therefore be perceived as being the second – just after the needs of the labour market – most important determinant of the LIP. In reality, the relations among the various determinants of the policy are much more complex.

The analysis of documents relating to Polish foreign policy, as well as the policy statements made by prime ministers, the ministers of foreign affairs of a few governments, and also other politicians, confirmed that Poland attaches particular importance to relations with its eastern neighbours and in particular with Ukraine. One of the main aims of Polish foreign policy for many years has been a stable and predictable situation in its immediate neighbourhood. Support for democratisation, modernisation, and economic development in Ukraine, Belarus, and Russia have repeatedly appeared in statements made by high-ranking politicians. Poland stood up for those countries' closer relations with Western European states and it wanted to offer its Eastern neighbours its 'experience in developing and consolidating democratic and pro-European transformation'.¹¹ It wanted to play the role of a 'good advocate of the region'¹² and 'a key supporter of Ukrainian democracy or Ukrainian rebirth'¹³ and a 'patron and promoter' of EU eastern policy.¹⁴ Poland was prepared to be and actually already was active in diplomatic, economic, and cultural areas of relations with its Eastern neighbours. The East was a 'Polish speciality'¹⁵ with which Poland wanted to gain a good neighbourhood, improve its international position and – last but not least – ensure its energy security.¹⁶

¹¹ Rada Ministrów RP 2005.

¹² Rada Ministrów RP 2003 [translation AZK].

¹³ Rada Ministrów RP 2006.

¹⁴ Sikorski 2008 [translation AZK].

¹⁵ *Ibidem* [translation AZK].

¹⁶ E.g. Rada Ministrów RP 2007a.

All those statements were not just empty words. As early as in 1998, Bronisław Geremek called for the creation of an Eastern Dimension of the EU in his speech inaugurating Poland's accession negotiations.¹⁷ Poland was trying to use various ways to bring Eastern European countries, in particular Ukraine, and the EU nearer (e.g. the 2003 Polish project for the Eastern Dimension of the EU). For several years, Poland had been repeating that the EU formula of relations with Eastern European countries, i.e. the European Neighbourhood Policy, was not sufficient. While the EU remained indifferent towards those initiatives, a new Polish-Swedish project, the Eastern Partnership, which was intended to complement the European Neighbourhood Policy, was successfully inaugurated in May 2009. A widely understood migration area remained one of the most important issues within the concept of the Eastern Partnership. The long-term aim would be visa-free movement within the countries of the Eastern Partnership and the short-term aim would be the facilitation of the visa regime. The concept called for a road map to achieve visa-free border crossing with the Eastern countries.

It is difficult to spread the idea of democracy and modernisation and convince somebody about one's friendship and at the same time to restrict cross-border movement, which prevents human contacts. Thanks to the Eastern Partnership, Poland was able to realise what it had already been making efforts towards for many years, i.e. to ensure easier access for nationals of its Eastern neighbours (in particular Ukraine) to EU territory. In November 2010, the European Union set 'an action plan for Ukraine toward the establishment of a visa-free regime for short-stay travel'.¹⁸ A similar action plan for Moldova was announced by the European Commissioner for Home Affairs in January 2011.¹⁹

Poland's labour immigration policy developed against the background of the above-mentioned statements, as well as developments in Poland's foreign policy. Interestingly, the importance of foreign policy considerations for the LIP was not so great as it might seem. In the process of the preparation and enactment of the 2004 Act on the Promotion of Employment or its amendments, it did not appear at all. However, the Act itself obliged the minister of labour to take into account international agreements and the principle of reciprocity when issuing an ordinance on cases exempted from the work permit requirement. Only in 2010 was the rule amended and it was explicitly said that the minister must consider, *inter alia*, the foreign policy of Poland.

¹⁷ Kapuśniak 2010: 9-10.

¹⁸ Rompuy van 2010.

¹⁹ European Union 2011a.

In relation to ministerial regulations, foreign policy considerations were explicitly referred to to a much smaller extent than might be expected. The argument of foreign policy priorities was raised in connection with the employers' declarations (but rather in the interviews with experts). Apart from that, the foreign policy reflections remained in the background of the 2007 document setting the directions of Poland's labour immigration policy. In all these cases, the priorities of Polish foreign policy mainly meant relations with Poland's Eastern neighbours and then with other former Soviet republics, which, for Poland, remained the most important partners, just after the European Union. Referring to different aspects of the engagement of Poland in international relations appeared only sporadically – examples can be found in relation to the 2006 ordinance on the exceptions to the work permit requirement.

The secondary analysis of the available materials (including the records of the interviews) calls into question the assumption that foreign policy considerations would be the second most influential determinant of the development of the LIP. The priorities of Polish foreign policy, if they appeared in relation to some changes, were only *mentioned*, usually far behind other influencing factors. After the labour market needs, the most important factor was the volume and composition of immigration, which – thanks to geographical proximity – addressed the demands of the policymakers regarding the type of migration that was welcomed (circular and temporary). Interestingly, the experts who were interviewed and who were directly connected to the Ministry of Labour and Social Policy did not indicate foreign policy reflections among the determinants of the labour immigration policy at all. Moreover, another expert explicitly said that e.g. in the case of the employers' declarations, the priorities of Poland's foreign policy were used in the justifications only because there was a need to find diplomatic explanations for those facilitations; to have more arguments against possible opponents of that solution.²⁰ Other experts who were interviewed mentioned the importance of foreign policy, but rather in the context of migration policy as a whole, and not with particular regard to the access of foreigners to the labour market.²¹ If somebody related foreign policy priorities to the LIP, it was mostly only the Ministry of Foreign Affairs.

The fact is that regardless of whether the second most important determinant was the volume and composition, together with the type of immigration that was required, or foreign policy considerations, the liberalisation of the labour immigration policy would concern the

²⁰ I2.

²¹ I1.

same groups of foreigners. This is because clearly the greatest number of foreign workers in Poland came from Ukraine and the priority for Polish foreign policy was Ukraine too.

There are, however, some signs that the importance of foreign policy reflections may grow in the future. The 2011 document on the Polish Migration Policy explicitly said that ‘Migration policy has to take the priorities of the state’s foreign policy into account.’²²

To conclude, foreign policy represented an important background for the development of the labour immigration policy. Reflections of it were one of the factors shaping the LIP in the period under examination. They supported the liberalisation of the rules concerning nationals of Eastern European countries. However, their role was much smaller than might seem at first glance. Other factors were found to be more important. Poland has started to notice immigration only recently. There is a chance that it will make better use of the possible interdependence between foreign policy and labour immigration policy in the future.

5.3 Influence of the European Union

Immigration is a sensitive topic that is considered to be a question of national sovereignty and security, and therefore EU states have been reluctant to alter their right to determine who, when, and under what conditions can enter and stay on their territory. Nevertheless, they have been systematically harmonising their policies, cooperating more and more closely in questions of immigration and crossing borders, and deciding on more and more common rules regarding those issues. Whereas the existence of the Schengen area has facilitated finding compromises in relation to policies concerning access to common territory and asylum policies, questions of the access of nationals of third countries to the labour market have been more complex. Nonetheless, the EU has been making attempts to harmonise the principles of opening the labour market to nationals of third countries while at the same time leaving the member states the right to decide about the number of economic migrants they are willing to accept.

This is not the place to discuss in detail the common EU policy towards labour migration. Nevertheless, the general development in that area is outlined in the following paragraphs. After a brief presentation of the EU approach, the current section discusses the influence of the EU on the creation of Poland’s labour immigration policy.

Poland joined the EU in a period when it was searching for the best ways of using economic migration, as well as the best ways of cooperating within the EU and with migrants’

²² Zespół do spraw Migracji 2011: 122.

countries of origin. For instance, in the 2004 Hague Programme, the European Council called on the Commission to present a programme on legal migration that would include the procedures allowing a flexible response to be made to fluctuating demands for migrant labour.²³ The year 2005 brought the Policy Plan on Legal Migration,²⁴ which was the result of the Green Paper on an EU Approach to Managing Economic Migration.²⁵ The Policy Plan included very concrete solutions regarding labour migration, i.e. proposals for five directives. One of them regarded a general framework directive. This was a proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work on the territory of a member state and on a common set of rights for third-country workers legally residing in a member state. Other proposals were related to specific directives. These were a proposal for a directive on the conditions of entry and residence of highly skilled workers (the so-called Blue Card Directive); a proposal for a directive on the conditions of entry and residence of seasonal workers; a proposal for a directive on the procedures regulating the entry into and temporary stay and residence of Intra-Corporate Transferees, and a proposal for a directive on the conditions of entry and residence of remunerated trainees.²⁶ Apart from ‘the Blue Card Directive’, which gained its final shape in May 2009, in the middle of 2011 all the other proposals were merely under discussion.

In general, it could be said that since 2005, circular and temporary migration has been recognised more and more often as a remedy for the labour market shortages in the European Union. It has been underlined what kind of advantages it can bring and simultaneously it has been pointed out that it can be related to some challenges and risks. Among the former, the European Commission indicates that if well managed, circular migration can counterbalance labour supply and demand in various countries.²⁷ Furthermore, it underlines e.g. that ‘In the context of an ageing Europe, the potential contribution of immigration to EU *economic performance is significant*.’²⁸ Additionally, the promotion of legal labour migration could reduce the tendency to stay and work in the EU illegally. Among the latter, i.e. the challenges and risks, the Commission mainly pointed out the risk that originally circular migration would transform into permanent settlement, often of an illegal nature.²⁹ In that matter the EU can take a lesson from the history of economic migration to countries such as Germany or

²³ EU 2005b.

²⁴ EU 2005a.

²⁵ EU 2005c.

²⁶ EU 2005a.

²⁷ E.g. EU 2007c.

²⁸ EU 2008a (the highlighting is original).

²⁹ E.g. EU 2007c.

Switzerland, which – to paraphrase the famous sentence of the Swiss novelist Max Frisch – wanted just *hands* but then realised that *people* came. The people came and stayed.

The key instrument of the common policy on legal labour migration became mobility partnerships established between the European Union and third countries. On the basis of these, the third countries oblige themselves, *inter alia*, to cooperate with the EU in combating illegal migration and thanks to that, their nationals got easier access to the EU labour market. The European Commission had come up with the idea of such a form of cooperation with third countries in 2006.³⁰ By the middle of 2011, the EU had launched three mobility partnerships: with Moldova and Cape Verde in 2008³¹ and with Georgia in 2009.³² Preparations were also under way to establish the fourth such partnership – with Armenia.

Apart from the 2005 Green Paper and the Policy Plan that accompanied it, the key political document referring to migration questions was the 2008 European Pact on Immigration and Asylum, accepted by all EU member states during a meeting of the European Council. The Pact stated, among other things, that the EU labour immigration policy should be selective. On the one side, the European Council recognised the freedom of each member state to create its own labour immigration policy. On the other side, it underlined that it should be borne in mind that steps taken by one member state can influence the situation of others. For these reasons, it agreed on the need for cooperation within the EU in questions of labour migration and the need to bear in mind potential human resources within the European Union, as well as taking into account all the needs of the labour market of each member state. Furthermore, it was important that the European Council agreed to increase the attractiveness of the EU for highly qualified workers and to facilitate the reception of students and researchers. Additionally, it underlined e.g. the necessity to ensure that circular and temporary migration promoted by the EU would not end up in a brain drain for the sending countries.³³

From what has already been said, it is obvious that the European Union was trying to harmonise the actions of its member states in the area of labour migration more and more. Nonetheless, by the end of the period that is under examination in the current study, no EU regulation or decision immediately enforceable as law in EU member states had been released. Moreover, no directive directly related to labour migration was issued within that period.

³⁰ EU 2006a.

³¹ EU 2008d; EU 2008c.

³² EU 2009c.

³³ EU 2008b.

The only exception was the Blue Card Directive,³⁴ which, however, was not implemented by Poland (and five other countries) within the prescribed period, i.e. by 19 June 2011.³⁵

In spite of that, the influence of the EU on the development of the Polish labour immigration policy was indisputable. It was so for at least two reasons. First, Poland, as a member state, took part in all the meetings at the EU institutions at which the above-mentioned issues connected to labour migration were discussed. Second, the awareness of the role of Poland as a border guard of the Schengen zone was always present in the background.

With regard to the first matter, Polish officials and politicians took part in works of the EU bodies. As it was stated, and they had a chance to listen to the opinions of others regarding migration and the employment of foreigners. They became influenced by the whole atmosphere of these meetings. This seems to be very important, even though only the indirect effect of the EU on the shape of the Polish rules regarding labour migration and directions of policy development. This fact was confirmed by almost all the experts who were interviewed.

For example, I4 noted that the 2005 Policy Plan on Legal Migration triggered a debate about labour migration and induced the Polish MLSP to search for new solutions.³⁶ According to I2, the debate about migration in Poland only started in 2007, spurred on by the first experience with employers' declarations and, as he emphasised, in connection to developments in the EU, because the topic of immigration achieved top priority during the French presidency. According to I2, Poland had to take a position on that question and the government decided to prepare something more comprehensive. A result of that was the initiative that led to developing the strategy called the Polish Migration Policy.³⁷ Additionally, I3 noted that the influence was not only one-sided. The EU affected the policies of its individual member states, but at the same time, the member states affected e.g. the shape of directives. They could also influence the shape of their proposals, but Poland had not used that possibility, mainly because of its modest experience with immigration.³⁸ The influence of Poland on the EU was, however, evident in the case of the initiative of the Eastern Partnership, which was partly connected to migration issues.

In relation to the second matter, i.e. Poland as an Eastern rampart of the Schengen zone, the awareness of that helped to stop the proposal for opening the Polish labour market to

³⁴ If we omit the 2003 directive concerning the status of third-country nationals who are long-term residents, which is not directly related to labour migration. Additionally, the target group of the directive remains beyond the scope of the current study.

³⁵ Przedstawicielstwo Komisji Europejskiej w Polsce 2011.

³⁶ I4.

³⁷ I2.

³⁸ I3.

non-Europeans. It was argued, *inter alia*, that Poland could become a gateway for people who would get into the Schengen zone legally and then later stay and move there illegally. The case of the resolution on the directions of measures regarding the employment of foreigners in Poland was similar. The awareness of being a watchdog of the Schengen zone indirectly affected the orientation of the Polish labour immigration policy. Furthermore, the influence of the EU was mentioned in the justification to the bill of the 2009 amendment to the Act on the Promotion of Employment. It was indicated that the need existed to adjust the rules to the functioning of Poland in the Schengen area. Then, elsewhere in the justification, it was added that the adoption of the amendment would represent a first step in preparations for the future implementation of the single permit directive that was being discussed at that time in the European forum.³⁹

It is interesting that in the case of the employers' declarations, an instrument that is evidently focused on circular or temporary migration, i.e. the type of migration preferred in the EU, the EU did not appear even as an additional argument supporting their introduction and then their maintenance. The influence of the EU was visible to some extent in the case of including countries that had signed agreements on the mobility partnership with the EU in the 2009 amendment to the rule on employers' declarations. Nonetheless, it should be noticed that Georgia and Moldova, the main countries it concerned, had been among the countries belonging to the preferred region sending economic migrants anyway.

Taking into account the developments in the common labour immigration policy which were presented above, it is justified to suppose that the influence of the EU on the Polish LIP will clearly increase in the future.

5.4 Volume and composition of immigration

The volume and composition of economic immigration was found to be the second most important determinant of Poland's labour immigration policy in the period that was examined. The factor was repeatedly indicated in various documents and during various debates, mainly since 2006. For this reason, it has already been intensively discussed in the current study. Therefore, the following paragraphs only put together a few main findings related to the issue.

The influence of the volume and composition of immigration on the labour immigration policy appeared more visibly together with the introduction of employers' declarations in 2006. Concerning that specific situation, it could be argued that the pressure of

³⁹ Rada Ministrów RP 2008.

employers required fast solutions and addressing the nationals of Poland's neighbours was simply the fastest one. This was true not only because specific agreements had been concluded between Poland and these countries, but just because the highest number of economic migrants (both these working legally and illegally) in Poland had always come from Ukraine.⁴⁰ In other words, the policymakers decided to address the foreign labour force that was waiting for such a step.

Nevertheless, the 2007 resolution on the directions of measures regarding the employment of foreigners in Poland was not passed in a hurry. It was passed after a series of long and stormy discussions and the preference for Eastern Europeans became confirmed. Despite the increasing interest of Asians in employment in Poland and the support they got from the Minister of Labour and Social Policy, the Team for Migration stated that the preferred sending countries are Poland's Eastern neighbours and then other former Soviet Union countries, and countries of the Western Balkans, together with countries associated with the European Union. The facilitated reception of nationals of states from other regions became explicitly related to fulfilling a range of conditions.⁴¹ In other words, the volume and composition of the potential immigration again, i.e. similarly to the case of the idea of recruitment of non-Europeans that had been discussed a few months earlier, acted as a brake on the liberalisation of the access of particular groups of foreigners to the Polish labour market.

The experts who were interviewed indicated a spectrum of arguments supporting the preference for Eastern Europeans. They pointed out, *inter alia*, the cultural closeness of these foreigners, which would facilitate their integration into Polish society, along with their geographical proximity, which would permit the flexible use of that labour force. Underlining the last two factors – geographical proximity, together with the flexibility of a labour force that can come and go – the experts confirmed that the types of migration preferred by Poland are circular and temporary ones.

Even more important than the preference for the Eastern Europeans was the openness to people of Polish origin. In the resolution, the interministerial Team for Migration noted

⁴⁰ Whereas Ukrainians always clearly outnumbered economic migrants coming from all other countries, the position of the other two Eastern neighbours of Poland was not that strong. Belarus was in third place only until 2005 – behind Vietnam – and in the first two years of that period the Russian Federation did not get higher than to fifth position. After 2006 more and more Asians were interested in employment in Poland. Apart from Vietnamese, who had already been present on the Polish labour market for many years, Poland received mainly Chinese and Indians. Since 2009, there has been growing interest on the part of nationals of Nepal in work in Poland. Eventually, in the first half of 2011, nationals of Belarus were in fifth position with regard to the number of work permits issued, whereas nationals of the Russian Federation were as low as fourteenth - MPiPS 2012a.

⁴¹ Zespół do spraw Migracji 2007.

their potential in the very first place. It recommended taking steps to reinforce their relations with Poland, including the development of their professional careers in Poland. In that way, the TM confirmed the correctness of the decision to open the labour market to holders of the Polish Charter, which had been made in August that year (see 4.7). In that case, the composition was the main determinant of the decision. As was evident in the rhetoric of the legislative process, these people, even though they were nationals of other countries, were not treated as foreigners, but simply as Poles.

All these preferences regarding the composition of economic immigration were further confirmed by the 2011 migration strategy.⁴²

5.5 Security considerations

As might be expected, security considerations related to so-called hard threats (criminality or terrorism) did not appear as a factor affecting the policy oriented towards the access of foreigners to the labour market. To some extent, they were present in connection with the soft threats, and, specifically, with two types of them. The first concerned the endangerment of the position of Polish employees and unemployed on the labour market, while the second pertained to settlement immigration. Both of these issues were additionally related to illegal employment and illegal migration.

With regard to the protection of the labour market, the security considerations seemed to loom behind all decisions regarding the labour immigration policy. Sometimes they were expressed explicitly (e.g. the justification to the bill of the 2004 Act on the Promotion of Employment), when *protection* of the labour market or *combating* the illegal employment of foreigners were talked about. Mostly, however, the factor was present implicitly. During the whole period under examination, from 2004 to the middle of 2011, it was frequently repeated that the fundamental principle of Poland's labour immigration policy is that the work of foreigners should be complementary in its character and not substitutive to the employment of Polish workers. The recommendation to maintain the principle was also expressed in the 2011 document Polish Migration Policy.⁴³

Explicitly, security considerations were present in particular in various debates that took place in 2007 in connection with the idea of facilitating the access to the labour market of Asians. As already stated, the main argument against opening up labour migration from Asia was the fear of the fact that what was originally temporary migration would transform

⁴² Zespół do spraw Migracji 2011: 33.

⁴³ *Ibid.*: 23, 32.

into long-term migration and then into settlement, which would not only raise integration problems but would mostly be illegal.⁴⁴ Asian countries, in particular China and India, were denoted as countries from which there was an increased *risk* of immigration.⁴⁵ Similar arguments were raised when the Team for Migration passed a resolution on the directions of measures regarding the employment of foreigners in Poland. The resolution explicitly linked Asian countries with the threats of illegal migration and transborder criminality, i.e. partly with hard threats.⁴⁶

5.6 Political factors

Apart from the determinants that have been discussed above, the analysis of the available materials allowed a few more factors to be identified and one of them were the political factors. Their influence on the development of the labour immigration policy remained an interesting and debatable question. The analysis of written materials did not confirm anything in that sense. The opinions of the experts who were interviewed were, however, inconsistent in that regard. For instance, I5 stated that if politics does matter for immigration policy, it is politics connected to international relations.⁴⁷ I1 did not refer to the existence of political factors at all. I2 believed that it was only thanks to the government which came in in autumn 2007 that greater involvement in migration issues started in Poland, since the government gave the green light to the work of the Team for Migration. Simultaneously, although he numbered politicians among the actors shaping immigration policy, he underlined that they are less important. He pointed out that the decisions are made by undersecretaries who are not politicians. In contrast, as previously stated, I3 stated that decisions are always political.

Two questions that might be connected to politics were the introduction of the employers' declarations and passing the Act on the Polish Charter.

In the case of the former, it must be said that the opinions pertaining to the possible influence of the political factor were divided. Some experts were convinced that their introduction was an effect of a political decision of the party Self-Defence of the Republic of Poland, whose leader was the minister of agriculture at that time. Thanks to the declarations, the party wanted in that way to meet the demands of its electorate – producers in agriculture. As already stated, other experts who were interviewed did not believe in the influence of such a determinant and subsequent developments confirmed their assumptions.

⁴⁴ I42.

⁴⁵ See e.g., MPiPS, BA: DMI, Notatka z konferencji uzgodnieniowej, also I42.

⁴⁶ Zespół do spraw Migracji 2007: § 4 and § 5.

⁴⁷ I5.

In relation to the second question, one can surmise that maybe not the content of the Act on the Polish Charter but chiefly the moment when it was passed could be an effect of political considerations. The Act was passed shortly before parliamentary elections took place.

The fact is that migration issues, and, in particular, questions relating to the inflow of foreigners, did not represent a matter for political or public debates. Immigration was non-existent in the public sphere, with the exception of sporadic incidents commented on by the media. The topic of foreigners in Poland appeared only marginally in political discussions. The question was not politicised at all. It was not a topic that society was interested in, and therefore it could not bring any political advantages for politicians.

Everything that was written in this section leads to the conclusion that the political factors did not shape the Polish LIP in the examined period. One may suppose, however, that together with a possible increase in the level of politicisation of immigration issues in Poland, the importance of the political factor may also increase.

5.7 The ‘human factor’

Something that is much more important for the development of the labour immigration policy in Poland seems to be another determinant that the interviews with experts revealed. This was the human factor. Its importance was underlined by almost all the persons who were interviewed. Since it is a factor whose influence was not observable in the preparation of any particular legal act, it has not been analysed above. As the interviews proved, it was, however, definitely present every time.

The analysis of the experts’ statements allowed two general groups of elements to be defined of which the human factor consists. On the one hand, there was policymakers’ knowledge about and experience with issues related to immigration in general and its regulation in particular. On the other hand, there were policymakers’ personalities and interpersonal relations.

With regard to the first of these, Il indicated, for example, that the human factor was responsible for the lack of coherence in terms of both rules and action. People interested in migration issues and taking part in the work of the interministerial Team for Migration see more relationships between migration and other areas, whereas others do not. For instance, the Ministry of Infrastructure was interested in the arrival of a great number of Chinese workers who were expected to build a road. That ministry was interested in the final effect of their work – the road – and did not take into account other issues such as health insurance,

social security, work conditions, accommodation etc. Similarly, the Ministry of Science reported a need to accept more foreign students. Nonetheless, they usually did not take into account the fact that a foreign student could pay just for one semester and move (a question of security and of the image of Poland as a Schengen partner) or there was the question of whether the student could work and what was connected to that.⁴⁸

I5 stated that before the Team for Migration was established, there had not been any wider group of people in the administration who knew something more about migration in all its dimensions.⁴⁹ I5 highlighted the importance of the human factor for policymaking; nonetheless, he put it into the wider context of the professionalism, education, and efficiency of offices in Poland and the progress which had been made in that regard in comparison to the beginning of the 1990s.⁵⁰

Pertaining to the second question, i.e. policymakers' personalities and interpersonal relations, it is worth pointing out that one of the experts even indicated it as being in the very first place when asked about factors shaping Poland's immigration policy. I6 referred specifically to temperament in terms of pressing particular decisions, together with political conditions related to the institutional structure, where the personal relations are significant. He also drew attention to interest in migration questions and the will to dedicate effort to them.⁵¹ I2 directly said that policymaking 'must be based on individualities'. According to him, depending on who in the particular ministry dealt more with migration issues, then these or the other factors (labour market, security, formal or legal issues etc.) affecting the shape of the immigration policy prevailed.⁵² The question of personalities was, *inter alia*, responsible for the unequal position of the Ministry of Internal Affairs and the Ministry of Labour and Social Policy, where the former clearly dominated in policymaking concerning immigration as such.

The human factor therefore seems to be an important but invisible determinant in policymaking. It is the most important intervening factor which can be placed among the influencing variables in the model of the study.

In some sense the human factor is closely related to the notion of 'administrative discretion' that some authors refer to.⁵³ Nevertheless, the discretionary power of policymakers is mainly related to the matter of policy implementation (in particular at the local level), and it

⁴⁸ I1.

⁴⁹ I5.

⁵⁰ *Ibidem*.

⁵¹ I6.

⁵² *Ibidem* [translation AZK].

⁵³ See e.g. Caponio and Borkert 2010.

remains one of the reasons of policy failure, so the determinant affecting the policy impacts. But the idea of human factor is wider in my perception. It covers the discretion power too but also other elements such as above-mentioned ones. Besides, the human factor may be a determinant of both, policy outcomes as well as policy impacts.

5.8 Experience with previous law enforcement

Various parties, such as the labour offices, the district or voivodeship offices, or institutions like the National Labour Inspectorate, inform the Ministry of Labour and Social Policy about the advantages and disadvantages of the rules that are in force. References to the experience with the application of particular rules appeared at every time and at various moments in the legislative process. For instance, in 2009 the proposed changes to the amendment of the Act on the Promotion of Employment were justified, *inter alia*, by the overly long procedure, unnecessarily complicated procedure in the case of shortage professions, failure to take into account the mobility of migrant workers or specific situations on the local labour markets, and, finally, ambiguous definitions or guidelines.⁵⁴

It is worth bearing in mind that the employers' declarations were originally introduced as a pilot project. In the justification it was therefore underlined that one should be aware that in the case of negative experience with their application, the work permit obligation would be reintroduced for the categories of foreigners that the declarations concerned.⁵⁵ Nevertheless, in spite of the exploitation of the system of declarations (see 4.6), which the Ministry must have known about, the instrument was not only maintained but developed. It is evidence that the advantages related to the declarations were found to be more important or that the harmfulness of the exploitation was found to be too small.

Experience is an important intervening factor shaping Poland's labour immigration policy. It makes the policymaking dynamic (arrows in the model of the analysis).

In this context, it is worth mentioning that Poland did not only build on its own experience. It drew inspiration for the development of its labour immigration policy from the practices of other countries. Politicians and officials do not only learn this at the above-mentioned international meetings. The results of research studies conducted by order of the Ministry of Labour and Social Policy are also used. An example might be the use of the reports on the migration policies of thirteen countries (eight from the EU, and five from

⁵⁴ Rada Ministrów RP 2008: 136.

⁵⁵ MPiPS, BA: DMI, Uzasadnienie (dot. DZ.U. 2007 nr 120 poz 824).

outside the EU) prepared by the Institute of Social Policy.⁵⁶ As I3 admitted, the possibility of using money from EU funds for carrying out the research had great value in gaining that mediated experience.⁵⁷

⁵⁶ I2.

⁵⁷ I3.