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Border Management and Migration Controls in Poland

Research report

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About the project

RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms, and more research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centres, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies, but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

Executive summary

The report focuses on the laws and practices of border management and migration control in Poland. The main analysis is preceded by the introduction and a short description of the methodology. Part 3 includes a description of the main developments in migration policy and laws concerning border control and since 2011, focusing on the arrival of asylum seekers, the lack of significant changes in the law, and substantial changes in the state's attitude towards immigration. The necessity of introducing new laws and revising migration policy has been emphasised by the government from late 2015 onwards. However, till the beginning of 2019¹ no new migration policy was announced by the government and the expected changes in the legal framework (mostly related to the modification of the asylum system and introduction of border procedure) have been postponed. This may stem from political reasons (the approaching elections to the EU parliament in May 2019 and the domestic parliament in October/ November 2019).

Part 4 includes a detailed description of the legal framework related to border management and migration control concerning different phases of the migratory process: before entry, at the border, within the territory, and during return procedures. The domestic laws are presented against the background of the European Union law. In general, the laws concerning non-nationals are compliant with the EU law. However, the transposition of the EU directives to the Polish legislation only meet minimum standards. The legislation is not based on elaborating the rules that could be beneficiary for the main addressees of these acts. The better application of the EU directives might decrease the doubts related to the application of these laws (e.g. regarding the appeal in visa procedures and access to legal aid in return procedures).

Part 5 is based on the analysis of the documents available publicly, released by the institutions or organisations dealing with immigration, and in particular forced migrants. This part contains the main conclusions of the qualitative analysis of documents selected purposively from the archives of the parliamentary proceedings between 2011 and 2019, information and requests published by the office of the Ombudsman, the website of the Office for Foreigners, the website of the Ministry of Internal Affairs and Administration, and the reports aimed at eliminating improper laws or practices, published by non-governmental organisations. These sources of information were identified as the most relevant and provided sufficient data to answer the question of how the policy and laws concerning forced migrants and protection of the EU and national borders are discussed in the public space. The main conclusion from this analysis is that despite no significant changes in the reality of arrivals of forced migrants to Poland, the state's and social attitudes towards admitting asylum seekers and refugees changed dramatically as politicians and the society became divided into those open towards refugees and those who refused to admit them. The topics of migration, admission of forced migrants and sharing the responsibility for the consequences of the 'migration crisis' became publicised and politicised. The debate concerning asylum seekers has been conducted in the broader context of immigration to Poland, which has grown in scale since 2014. Since late 2015 the migration reality in Poland was characterised by the increased

¹ The changing legal and political reality made it challenging to finalise the analysis referring to the legal framework. The report is up-to-date as of 31 March 2019.

share of immigrants (especially migrant workers) in the population of Poland and the lack of will to deal with forced migrants.

Part 6 of the report concerns the implementation of the laws described in part 4 is discussed. It discusses problems and challenges as identified by experts in immigration issues. The topics identified as requiring attention and improvement concern: (1) the situation at the Polish eastern border and the restricted access to apply for international protection in Poland (due to refusals of entry issued to non-nationals appearing at the border without the required visas), (2) the dual role of the Border Guard at the border and the consequences of it for the process of receiving applications for international protection, (3) problems with the lack of legal aid for persons in the process of the return procedure, and (4) issuing decisions on detention despite negative prerequisites to do so, especially in case of families with children.

The conclusion, constituting part 7 of the report, indicates the main findings related to both the legal framework, the implementation of the laws in force and includes policy recommendations. In the context of forced migration, the most urgent issue refers to the access to asylum procedure which has been dramatically restricted due to practices of the Border Guard at the border. The disagreement between the institution responsible for border control and bodies involved in protection of human rights concerns the way the control is conducted and the practice of not admitting asylum seekers to submit application for international protection. Observations conducted at the border crossing point in Brest/ Terespol and the legal interventions in cases of refused access to apply for international protection brought information about what should be improved, and in what aspects the law is not applied correctly. However, both court decisions and a number of requests addressed to the government calling for respect for fundamental rights and court verdicts or decisions, did not improve the situation of asylum seekers. Instead, the pressure of human rights organisations on the Polish authorities seemed to contribute to even less transparent and stricter practices at the border, discouraging non-nationals from seeking asylum in Poland. Many restrictions introduced in the practice of protecting the state border, and controlling migration have been justified by the need to prevent irregular migration or the potential threats to the state security. However, such justifications were hardly grounded in reality, since Poland has remained a country outside the main routes of irregular migration to the EU.

The general conclusion from the analysis concerning laws and practices in the area of border management and control is that the law in force is usually compliant with the EU regulations. The process of harmonising the law takes longer than it is expected in the EU legislation and it is based on only fulfilling the minimal requirements. Nevertheless, problems identified in the field of the implementation of this law prove that the way of applying the rules is a much bigger challenge than the legal framework. Another issue worth emphasising is the politicisation of the topic of immigration and admission of asylum seekers. On the one hand, the fact these issues are taken into consideration by politicians, the media and society in general might be perceived as positive. However, on the other hand, the intensified debate concerning migration policy, way of reacting to humanitarian needs of asylum seekers, 'opening' or 'closing' the borders for immigrants and asylum seekers has been often based on non-substantive arguments.

1. Introduction

This report is part of Work Package 2, titled *Border Management and Migration Controls of the Research Project RESPOND – Multilevel Governance of Mass Migration in Europe and Beyond*. The report concerns the functioning of the legal and institutional system of border controls, internal controls and measures applied to prevent irregular migration and manage forced migration in Poland. It focuses on policy and legal developments since 2011, and if relevant, it refers to earlier events in Poland's history of developing asylum and immigration law in order to shed more light on the current situation in the area of admitting asylum seekers² and granting protection to foreigners³ in Poland.

Poland acceded to the European Union in 2004. The country has been applying the Schengen *acquis* since 2007. However, the desk analysis of legal documents at international or EU level in this report has been limited to those issues that play a role in the implementation of border and migration control in the Polish context. At the EU level certain regulations or particular types of agreements (e.g. rules of sea operations and rescue missions) have great importance in terms of managing forced migration. However, in Poland, due to its geopolitical position, such issues are not the key ones. Similarly, the EU-Turkey statement and its consequences, seen as an important step in managing irregular flows through the EU external border on the South has not impacted Poland's migration management.

The definitions applied in this report are compliant with the definitions elaborated for the project purposes, used in the project report focused on border management and migration control at the EU level (see Karamanidou and Kasperek, 2018). This is to maintain consistency in the way of understanding and comparing different legal frameworks between the EU and national levels. Thus, border management is denoted as “the EU's ensemble of legislation, policies, implementation practices, institutions, and actors that are concerned with defining, conceptualising, and policing of the external border of the member states of the European Union” (Karamanidou and Kasperek, 2018, p. 7). However, to cover important issues related to border management in Poland, in this report the term “border management” refers not only to rules and practices of protection, but also border control at the EU external border shared

² In the Polish context, the Polish term equivalent to ‘asylum’ means a special permit for stay, not connected with the system of granting international protection under the 1951 Geneva Convention. Nevertheless, in both the official and the everyday language the shorter term ‘asylum procedure’ replaces sometimes the term ‘procedure of granting international protection’, ‘asylum application’ replaces the official term ‘application for international protection’, and the term ‘asylum seekers’ is applied to indicate persons who seek international protection. In this report, the use of the English term ‘asylum’ serves only as synonymous term for ‘protection’, not as the ‘asylum’ understood as a national form of protection (see also Centrum Pomocy Prawnej im. Haliny Nieć, n.d.; see more on the national forms of protection in Szulecka et al., 2018, p. 50).

³ Despite the discussion concerning the term ‘foreigner’ (showing distance towards the person), in the official translations from Polish to English the word ‘foreigner’ is used commonly and treated as neutral, as the most general term indicating persons without Polish citizenship, non-nationals. When referring to Poland's official policy or legal acts in documents written in English, it is impossible to replace the questionable term ‘foreigner’ with other words, perceived as more neutral, due to the presence of the English term in the official language of institutions dealing with immigration in Poland. See, for instance, the website of the Office for Foreigners or the Ombudsman's website (Commissioner for Human Rights, 2017; Urząd do Spraw Cudzoziemców, n.d.). Also, in this report, the word ‘foreigner’ is used to reflect the language of the legal acts and public institutions. However, it should be stated that the Polish equivalent has neutral character.

by Poland. It also covers reflections on the situation at the internal border, which partially⁴ constituted the EU external border before Poland joined the European Union in 2004 and the Schengen zone in 2007.

In this report, the way of understanding of 'migration control' is in line with the definition suggested by Karamanidou and Kasperek (2018, p. 7) and it captures 'modes of control that might fall outside the scope of border management. However, it relates to the regulation, control or inhibition of migratory movements to, and within the territory of the European Union'. However, the emphasis is put on the measures used in the context of forced migration. Some measures are universal ones (e.g. document checks at the border or during the internal controls of the legality of stay, obliging foreigners to return). Other measures are specific for forced migrants, as in the case of procedures linked to receiving asylum applications. The Polish legislation is much more developed with regard to admitting migrants to the labour market, and to the territory of Poland as the scale of migrants arriving in Poland for work or educational purposes is far greater than the number of forced migrants. It includes detailed regulations pertaining to the legality of work performed by foreigners, and special instruments aimed at admission of certain categories of migrants (such as highly skilled, foreigners with Polish ancestry). However, in this report only these modes of control are mentioned that are potentially applicable with regard to border management, admission, returns, and control activities targeting asylum seekers and persons granted selected types of protection in Poland.

Since the mid-1990s the EU context has shaped both Poland's legislation and policies. However, in particular dimensions, such as giving access to the labour market in Poland for the third-country nationals; the national solutions are elaborated in a more detailed way, and often have been implemented before the EU adopted relevant laws in this respect⁵. In the field of asylum policy, the development of laws and practices was mostly the response to completely new experiences; namely responsibility for asylum seekers returned from among others Sweden in the first half of the 1990s (see more in Łodziński and Szonert, 2011). Also, in other fields, such as the arrivals of economic migrants, the Polish state had to establish the rules to manage migration of foreign workers. The increasing number of migrants coming to Poland, and their more frequent presence in the labour market (in both formal and informal economy), especially after 2004 (when significant number of Polish citizens chose to leave Poland for other EU countries due to economic reasons) contributed to the creation of more detailed rules regarding the admission of third-country nationals to the Polish territory and the labour market, as well as rules of labour inspections and internal controls.

The development of Poland's national migration legislation and state policy has been significantly influenced by the Ministry of Internal Affairs and Administration. This ministry coordinated the elaboration of the document summarising priorities in migration management. The activity of this ministry and its key role in proposing laws and elaborating migration and asylum policy was mostly linked to the fact that after the economic and political transition (started in 1989), Poland needed new institutions and regulations to address arrivals from

⁴ Due to the main subject of study within the project, particularly the Polish-German border and attitude towards its control is important in the context of managing forced migration in Poland.

⁵ A distinct example is the *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers* (OJ L 94, 28.3.2014, p. 375–390). It was approved 7 years after Poland had introduced a facilitative procedure of employing foreigners in short-term work in agriculture connected with the procedure of obtaining visas (see more in part 3 and 4.1 of this report).

other countries on either a long-term or short-term basis or the issue of migrants traversing Poland and entering other countries clandestinely (such as Germany, Austria or Sweden). This required a focus on laws and control institutions, which meant that the Ministry of Internal Affairs and Administration became the key actor in this area (Łodziński and Szonert, 2017, p. 66). The significance of this ministry has been also visible in the recent years, when migration control became an important issue due to changing migratory situation in the EU and in Poland.

On the basis of the analysis of qualitative interviews⁶ conducted with institutional experts and asylum seekers and refugees in Poland, the report also addresses the perceptions of policies and practices amongst immigration law practitioners and foreign nationals seeking protection in Poland. It also reflects on the question how asylum seekers respond to the EU border management regime in the Polish context. Individual experiences and opinions on implementation of asylum and migration law expressed by local governors, practitioners, and NGO activists are preceded by an overview of the relevant legal framework in Poland, with a focus on its compliance with the EU law. The description of the legal framework includes references to different phases of migration control (pre-entry measures, control at the border, internal controls, and returns).

An important part of this report is dedicated to the discussion of the implementation challenges; as observed by non-nationals applying for international protection in Poland or granted some forms of protection, and by experts who meet asylum seekers and refugees on a daily or almost daily basis due to their profession. Although micro-level perspective was not planned as the main source of information for the report on border management and migration control, numerous accounts referring to practices in this area occurred to be worth presenting. Importantly, they reflect discrepancies that could not be found and addressed solely based on legal documents or official data.

⁶ For more information on the selected interviews see Appendix 1.

2. Methodology

The methodology applied in this report is compliant with the RESPOND project guidelines for Work Package 2, focused on border management and migration control. Two different methodological approaches were used in this report. The first, was policy and legal analysis structured along a common scheme for all countries participating in the project, referring to the main legal acts shaping border and migration controls in the EU and its neighbourhood. The analysis in part 4 of this report concerns mostly legal instruments that are important in the Polish context from the perspective of it as an EU member state, sharing the eastern external border. Part 3 and 4 are aimed at reflecting the most relevant issues in migration and border control in Poland from the legal and policy perspective, and they are based on a convenient sample of legal and political documents. The main sources of information include the following websites:

- EUR-Lex containing the EU law (<https://eur-lex.europa.eu/homepage.html>);
- Polish governmental database of information on the legislative process (<https://legislacja.rcl.gov.pl/>);
- Polish parliamentary database of information on laws in force and the legislative process for the terms of office 2011-2015 and 2015-2019 (<http://isap.sejm.gov.pl/isap.nsf/home.xsp>; <http://www.sejm.gov.pl/Sejm8.nsf/proces.xsp>);
- The website of the Polish Border Guard (<https://www.strazgraniczna.pl/>);
- The website of the Polish Ombudsman (<https://www.rpo.gov.pl/>);

Moreover, the websites of the key non-governmental organisations (NGOs) active in providing immigrants and asylum seekers with legal aid were used as a source of information about particular cases, interventions, monitoring of migrants' and asylum seekers' access to rights, the law enforcement practices and activities of public institutions in the area of border control, admission of asylum seekers, and migration control.

The content analysis (reflected in part 5) of documents found relevant for the topic through convenience sampling of the report had a qualitative character. The documents included official documents (especially the parliamentary debates and parliamentary interpellations and responses to them), as well as the reports published by either NGOs or public institutions involved in activities linked to border management and migration control. Also the political debate reflected in the media was taken into account at this phase of the analysis.⁷

The second group of material analysed include a qualitative analysis of 26 interviews conducted within the project at meso and micro level. The data at the meso level included interviews with 14 experts or practitioners, and the data at the micro level were made up of 12 interviews with persons seeking protection. The aim of the analysis was to reflect on implementation practices, identified challenges, and proposed solutions to the reported problems linked to border control and migration control. Results of this analysis are mostly described in part 6. To shed more light on the issues revealed in the interviews, and the opinions expressed during the first meeting of the Migration Governance Network in Poland

⁷ For the list of general sources used in the content analysis aimed at identifying key narratives of border management and migration control, see Appendix 2.

were referred to⁸. If relevant, opinions revealed during the interviews are presented with reference to the reports from monitoring visits, other information provided by organisations, or institutions involved in promotion of fundamental rights and equal access to justice.

The analysis conducted for the purpose of herein report has had a strictly qualitative character and was supported by Maxqda software. This served mostly to analyse interviews conducted with experts and persons seeking protection in Poland. Due to the thematic scope of this report only selected interviews were referred to. Only those who reflected on border checks, controls carried out along national borders (including EU internal and external parts), and within the territory of Poland were taken into account.

⁸ The list of interviews and information about the meeting are in the Annex 1.

3. Developments since 2011

Poland has been a member of the European Union since 1 May 2004, and it is a part of the Schengen area since December 2007⁹. Migration law and policy, including asylum-related provisions had been dynamically developed for a decade preceding Poland's accession to the EU. This process was largely influenced by the upcoming integration with the EU (and the need to harmonise the Polish law with the EU legal standards). It was also characterised by activities aimed at fulfilling international commitments (among others; linked to the signing of the Geneva Convention¹⁰ in 1991; see more in Łodziński and Szonert, 2017; Weinar, 2006).

3.1 The development of migration and asylum policy

The discussion on the need to elaborate official migration strategy started already in the 1990s. However, the first official document on migration policy, titled "Migration policy of Poland, the current state and recommendations", elaborated by intergovernmental task force was adopted by the government in July 2012 (*Polityka migracyjna Polski – stan obecny i postulowane działania*, see more in: Zespół do Spraw Migracji, Ministerstwo Spraw Wewnętrznych, 2012). In 2014, the government accepted the plan to implement the recommendations included in the aforementioned document. Despite efforts to include integration policy as an integral part of migration policy, the development of Poland's migration policy prioritised having control over the arrivals of foreigners to Poland and its labour market. Since 2015, the stated priorities have referred to the need of securing legal order and safety of the state and its society in the face of the expected increase of the number of arrivals to Poland and potential 'problems' with their management. Although the 'migration crisis' at its peak in mid-2015 was not directly experienced by Poland, it became the point of reference for its law proposals and changes in practices aimed at restricting border control, issuance of visas or residence permits, and improvement of executing return decisions (see more in Szulecka et al., 2018, pp. 61–64). To some extent this followed the shifts in migration and border management at the EU level (discussed in part 4 of this report).

In the late 2015, the issue of admitting asylum seekers (together with the issue of immigration) to the territory of Poland became highly politicised. This year symbolises the beginning of the shift in the admission policy of Poland and based on a strong opposition to accept refugees from other EU countries. Poland together with other EU countries from the Central Eastern Europe (in particular Hungary and the Czech Republic) eventually did not participate in relocation programme, attracting the attention of the European Commission (see e.g. European Commission, 2017; Sejm, 2016a, 2016b). It was associated not only with the fear linked to 'migration crisis' but also stemmed from the change of distribution of political power in Poland, with the right-wing party of Law and Justice taking the lead (see more in Szulecka et al., 2018, pp. 22–23). In October 2016, the above-mentioned official document on migration policy was annulled by the government assuring that this policy needs deep revision in the face of new challenges linked to the 'migration crisis' (see more in Szulecka et al., 2018, pp. 36–37). However, the trends in Poland observed in 2015 and the consecutive years did not indicate any direct consequences of the 'crisis'. On the contrary, asylum trends

⁹ Waiving border controls at internal land and sea borders was implemented on 21 December 2007, whereas waiving internal border controls at airports was implemented on 30 March 2008.

¹⁰ Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

were similar to those that of the previous two decades and the scale of immigration to the labour market has grown significantly (see also Górny, 2017; Przybysławska et al., 2018, p. 8; Szulecka et al., 2018, p. 7).

Since late 2015, the Polish authorities looked for support among other member states to create a strong opposition towards the automatic relocation within the EU. Poland's approach towards EU proposals on dealing with the refugee/ migration crisis was reported by the European Commission that requested Poland and countries having similar policy in this respect (Hungary, Czech Republic, Slovakia)¹¹ to fulfil the commitments related to relocation. Poland hosted a meeting with the Hungary, Slovakia and the Czech Republic to build an alternative response to the "migration crisis". The meeting resulted in creating by the Visegrad countries (V4)¹² Mechanism of Response to Migration Crisis to improve the exchange of information. However, the declaration bore no significant results. The position of the V4 countries on opposing the admittance of asylum seekers based on the relocation mechanism became an important direction in the development of migration policy after 2015¹³.

Despite the plan to publish a strategic document till March 2019, no document was made available. Further, work on elaborating new laws or amending the existing ones became less transparent (see e.g. Europejska Sieć Migracyjna, n.d.). This may be explained by two political factors. Firstly, despite the increased numbers of immigrants in Poland (entering the Polish labour market); the government assures the society that its policy is reluctant towards the admission of non-nationals, especially from 'distant' cultures (see e.g. Nowak, 2018). Secondly, the government will not announce the new policy before the elections in autumn 2019 as the electorate could be disappointed that the promise to reduce immigration was not kept. Further, the promise cannot be kept, taking into account the persistent demand of foreign labour force (see e.g. Bodalska, 2018; Minister Przedsiębiorczości i Technologii, 2018). Since 2015, the significant growth in numbers of economic migrants cannot be ignored in elaborating the new strategy. Another factor causing the announcement of the new migration policy to be postponed may be related to the overall condition of the country. A number of other reforms (in education, judiciary, social policy) created the impression that immigration is not the most pressing issue to be addressed in a strategic way. However, the EU context and the process of revision of the relevant laws (such as the Dublin regulation) play an important role. The effect of these revisions are supposed to be referred to in the amended legislation and the new migration policy.

The analysis of the process of migration policy reform indicates that guaranteeing security became the highest political priority and was presented as the most important value. This priority was emphasised in Poland's response to the European Commission with regard to EU procedure launched against Poland due to its refusal of relocating refugees (see e.g. Bodalska, 2017). It was also reflected in the Polish stand towards the UN Global Compact for Refugees and the UN Global Compact for Migration (Bodalska, 2017). Thus, humanitarian and economic considerations were given less priority in the hierarchy of policy goals.

¹¹ As of February 2019, the case *European Commission v Republic of Poland* (Case C-715/17) is still in progress.

¹² Visegrad countries include: the Czech Republic, Hungary, Poland and Slovakia. See more: <http://www.visegradgroup.eu/>.

¹³ For information meetings and conclusions from meetings organised by V4 countries, see: <http://www.visegradgroup.eu/>.

The hierarchy of declared values can be traced through the study of the roles the main ministries played in assigning the migration-related priorities. For instance, between 2007-2015 the Ministry of Labour and Social Policy seemed important. Between 2015 and 2018 the Ministry of Internal Affairs and Administration took the lead. Due to the focus on security and the need to take a stand regarding Poland's participation in the relocation programme. In the first half of 2018, the Ministry of Investment and Development seemed to take the lead in elaborating the new migration policy and attracting attention to the labour market and economic needs. However, a half year later all activities concerning the elaboration of new migration policy were overtaken again by the Ministry of Internal Affairs and Administration (see more Stefańska and Szulecka, 2018).

3.2 Selected legal changes

The developments in the legal and institutional framework with regard to Poland's border management and migration control between 2011-2017 addressed economic immigration challenges, rather than the arrivals of asylum seekers. The Law on granting protection to foreigners on the territory of Poland of 13 June 2003¹⁴ was amended several times in the respective period in order to harmonise the Polish law with the EU directives. Changes that included the possibility of relocation and resettlement of foreigners to Poland were introduced in 2011. This amendment also included specification of conditions for providing social assistance, medical aid to asylum applicants and providing assistance in voluntary returns. It also specified the conditions of apprehension and detention of asylum seekers¹⁵. The same law also introduced a regularisation programme that started in January 2012, and for the first time in the short history of regularisation programmes in Poland (previous programmes were announced in 2003 and 2007). This programme was also addressed to asylum seekers: either those who got negative decisions and were issued a return order before 1 January 2010, or those who were in the course of subsequent asylum procedure on 1 January 2010¹⁶.

¹⁴ *Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej* (t.j. Dz. U. z 2018 r. poz. 1109 z późn. zm.; hereinafter: Law on Protection).

¹⁵ *Ustawa z dnia 28 lipca 2011 r. o zalegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach* (Dz. U. Nr 191, poz. 1133).

¹⁶ Asylum seekers were not frequent beneficiaries of this programme. Out of 9,500 applications that were submitted during the programme (in the first half of 2012) only 2% (147 applications) were submitted by rejected asylum seekers or those who had applied several times for international protection. This outcome was associated with the lack of knowledge about the programme or fear that the application would be rejected and then followed by expulsion. Another reason could be irrelevant requirements for this category from potential beneficiaries of the regularisation programme due to incomplete asylum procedures (making the applicants' stay legal; see more on the provisions linked to the regularisation programme – Fagasiński et al., 2015, p. 27). Low interest in participation in the regularisation programme could be also linked to a lack of incentives for gaining a residence permit. Whereas being an asylum applicant has been associated with the possibility of receiving social assistance. For asylum seekers, repeating their application for refugee status and benefitting from assistance seemed to be the best way to manage in the host country (Dąbrowski, 2012, p. 39). However, after the introduction of restrictions for getting social assistance by asylum seekers who submitted subsequent applications this coping strategy became less attractive.

The key change in the legal framework was linked to the introduction of the Law on Foreigners of 13 December 2013 that came into force on 1 May 2014¹⁷. This law transposed the majority of EU directives linked to entry, stay and the return of third country nationals. The act is quite complex covering different spheres of migration control; from issuing visas (pre-entry control mechanisms), through issuing various kinds of residence permits, including those for persons with special needs (such as victims of trafficking in human beings) or with special privileges (such as the Polish origin), to issuing return orders or executing other measures towards foreigners (e.g. fines, detention).

The Law also transposed part of the EU return directive to introduce to the Polish legislation a permit to stay due to humanitarian reasons and modifying the permit for tolerated stay (previously used only in asylum procedures). It also changed the competencies of institutions involved in migration management by increasing the scope of responsibilities of the Border Guard, who became responsible for issuing return orders and deciding about permits to stay due to humanitarian reasons, tolerated stay and executing carrier sanctions. The introduction of this law influenced the scope of possibilities of obtaining visas or residence permits and hence of entering the territory of Poland in compliance with the law in force.

More amendments to the Law on Protection were introduced in 2015. They concerned provisions on the relocation of persons with international protection granted by other EU countries and on free legal aid for asylum seekers. Further, in the same year the government decided on the relocation of refugees from other countries within the EU relocation programme to Poland. However, it withdrew from this decision after the change of the government in October 2015.

Important changes were expected with the reform of the Law on Protection. The first proposal of amendments to this Law was published in January 2017¹⁸. It was an introduction of a border procedure, elaboration and application of lists of safe third countries and safe countries of origin. After critical comments on several provisions of the proposed law (specifically the period of updating the lists of third safe countries and safe countries of origin, lack of effective right to appeal against the decision issued in the border procedure mode, controversies over compliance of the proposal with international and EU law) work on the proposal continued. Critical voices were expressed by both social organisations and public bodies (see more in: Helsińska Fundacja Praw Człowieka, 2017b; Król et al., 2018; Rzecznik Praw Obywatelskich, 2017; Szulecka, 2017a). Despite these criticisms, the second version of the proposal published in June 2017 included only minor changes. Further, work on the proposal was scarcely communicated for the next one and half a year.

In February 2019, a new proposal of the amendment to the Law on Protection was announced¹⁹ which meant that the legislative process regarding this law proposal started from the beginning. The proposal included most of provisions from the document announced in

¹⁷ *Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach* (t.j. Dz. U. z 2018 r. poz. 2094 z późn. zm.; hereinafter: Law on Foreigners).

¹⁸ The law proposal is available on the website of the Governmental Centre of Legislation, see: Rządowe Centrum Legislacji, 2017.

¹⁹ All documents regarding the law proposal (including the justification and assessment of outcomes of this law) were published by the Ministry of Internal Affairs and Administration in February 2019 ("Projekt ustawy o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw," n.d.)

January 2017; which meant introduction of the border procedure, acceleration of asylum procedures through the use of the lists of safe third countries and safe countries of origin, modification of institutional competences in the area of asylum policy (including the increased scope of Border Guard's competences). The important change between these two proposals referred to the position of the body responsible for appeal procedures. In the previous proposal the existing Refugee Board was supposed to be replaced with another body, of court-like character. In the resent proposal, the Refugee Board was remained as the appeal body for decisions on granting international protection, with the exception of decisions taken within border procedure. In the latter cases, the appeal body would be administrative courts, and the decisions would not prevent the removal of the applicant after the negative decision.

The Ministry of Internal Affairs and Administration as the authors of the proposal has justified the need to change the Law on Protection by referring to the 'refugee crisis' experienced by EU countries and the 'misuse of asylum procedure' communicated to the authorities by the institutions responsible for border control and processing asylum applications. According to the law proposal, most foreigners who appear at the border without valid documents and are allowed to enter Poland try to use asylum procedure to reach other EU countries for economic reasons²⁰. Both the legal aspects of the proposal and the reasoning for the proposed law still raise concerns among lawyers dealing with asylum cases and analysing the situation of giving or limiting access to asylum procedure to forced migrants coming to Poland (or attempting to enter this country). A lot depends on the content of the planned lists of safe third countries and safe countries of origin. If they contain Ukraine and Belarus, then there is a risk that almost every asylum seeker coming to Poland from the territory of Belarus or Ukraine will be placed in detention for the time of the border procedure. According to experts, Poland's facilities of migration control and border management are not designed to serve for the border procedure purposes (see also Białas et al., 2019, pp. 39–40; Rzecznik Praw Obywatelskich, 2019a).

²⁰ See more on the website containing all information about law proposal: "Projekt ustawy o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw," n.d.

4. Legal Framework

Since 2004, Poland as an EU member state is obliged to apply EU legislation. As far as harmonisation of the Polish law with the EU rules is concerned, the national provisions rarely surpass minimum standards stipulated in EU law. The inadequacies of national provisions have been revealed in courts decisions following complaints about particular control procedures (as in the case of appeal to refusal of issuing a visa; see more in part 4.1) or were identified in the course of the monitoring how law is applied in practice (for instance execution of the right to appeal in return procedures).

Another general issue in the context of the transposition of the EU law to the domestic legislation are the delays linked to this process. This meant that laws compliant with the EU requirements were usually implemented later than the expected date of their transposition to the national legislation. This relates to the EU Return Directive²¹.

In the next sections, the Polish legislation concerning border management and migration control is described from the perspective of EU law transposition. The number of directives and regulations relevant for the mentioned areas is relatively big; because it includes regulations covering various dimensions of cross-border mobility and asylum seeking (e.g. treatment of people, application of legal measures, using technical equipment and large-scale IT systems). Nevertheless, in the following part the main focus is put on these EU directives and regulations when transposed to Poland's legislation brought important changes or raised concerns (e.g. resulted in conflicting norms or controversial practices). Due to the lack of sufficient experience in some spheres (such as transposition of the EU directive on employer sanctions²²) there is no possibility to elaborate on the issue, since the law is either new or is often not applied in the Polish context. Therefore, the next paragraphs refer mostly to legislation seen as most important from the perspective of Poland's approach and practice to border management and migration control.

4.1 Pre-entry measures

4.1.1 Visas

Pre-entry measures applied by Poland are mostly linked to implementing visa policy in accordance with the EU regulations. Visas (Schengen or national ones) are issued by the Polish consulates or – in very specific cases – by the Voivodes (regional governors) or the Border Guard. Issuance of visas – both Schengen and national ones – is regulated in the Law on Foreigners (in part IV). Key EU regulations applied in performing visa policy are as follows:

- Regulation 2018/1806 of 14 November 2018 listing the third countries whose nationals must possess visas when crossing the external borders and those whose nationals are

²¹ 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, 24.12.2008, p. 98–107).

²² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals (OJ L 168, 30.6.2009, pp. 24–32).

exempt from that requirement²³, which replaced the Council Regulation No 539/2001 of 15 March 2001 regarding the same issue²⁴ (amended several times and thus losing its clarity);

- The Visa Code²⁵,
- VIS Regulation²⁶.

For a long time, the Polish legislation has lacked provisions guaranteeing an effective appeal procedure against refusals to issue a visa. The Law on Foreigners of 2013, including regulations of obtaining visas, states that in case of negative decision on visa issuance, the visa applicant may turn to the consul with request for considering visa application again or with an appeal to the Chief Commander of the Border Guard, if a visa was issued at the border by the Border Guard (articles 76 and 93). There is no legal basis for appealing a negative visa decision to the administrative court, which is seen as the right institution to consider the appeals against consuls' decision. The attempt to improve the legislation regarding the right to appeal for visa applicants has been ongoing since at least 2014. Then Poland was requested by the European Commission (reasoned opinion regarding infringement no 20122240) to introduce measures guaranteeing the applicants for visas, a possibility to appeal to a non-arbitrary body. In 2016, the Ombudsman requested the Ministry of Foreign Affairs to consider changes in the law. It was inspired by the above-mentioned opinion and the complaints from migrants who were refused visas and were deprived of the possibility to appeal against this. However, it did not lead to legal changes. The Ministry stated that the national provisions were sufficient to guarantee effective appeal measure in visa procedures and the provisions of the Visa Code did not guarantee the right to court to third-country nationals who are outside the country. According to the Ministry, the country issuing a visa should be able to control the execution of the right to appeal to non-arbitrary body in case of visa refusal, and it is not possible to guarantee this in case applicants are not in Poland (Rzecznik Praw Obywatelskich, 2016).

The Ombudsman's opinion was later supported by the verdict of 13 December 2017 of the Court of Justice of the European Union (CJEU) stating that the third-country nationals should be provided with the effective appeal measure in the procedures linked to visa issuance (C-403/16, *Soufiane El Hassani against the Minister of Foreign Affairs*; see more CJEU, 2017). This verdict was followed by the verdict of the Supreme Administrative Court in Warsaw stating that the EU law should be applied directly in this respect. This meant that the appeal against a negative decision on issuing visa brought to the administrative court should be processed by this court. The previous judgement assumed rejection of this appeal due to the lack of

²³ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement PE/50/2018/REV/1 (OJ L 303, 28.11.2018, p. 39–58).

²⁴ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

²⁵ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1–58).

²⁶ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60–81).

relevance of administrative courts in the proceedings conducted by consuls (Supreme Administrative Court in Warsaw, 2018). As a result of the CJEU verdict the national court issued decisions in appeals connected with visa procedures (see Żaczkiewicz-Zborska, 2018). In December 2018, among other reasons due to the CJEU verdict; the amendment to the law on the proceeding before administrative courts²⁷ was passed (in force since 4 March 2019) and it has introduced another exempt from the rule on excluding visa issues from the responsibility of administrative courts. According to this amendment; in case of a negative decision on visa issuance or a decision on visa annulment, the applicant may appeal to the administrative court in Warsaw (where the Ministry of Foreign Affairs has its seat; see also Rzecznik Praw Obywatelskich, 2019b).

Apart from the citizens of specific countries such as Moldova, Ukraine, Georgia, who may travel to the EU without a visa (provided that they possess biometric passports) based on agreements between the EU and these countries, Poland also offers facilitated access to visas or free visas. In formal terms,²⁸ visas are cheaper and easier to get than residence permits. Further, they may be valid for up to 12 months; this means that for some third-country nationals visas are sufficient documents authorising them to stay in Poland. They are also obtained more easily than residence permits. There are 27 different kinds of visas issued by Poland (article 60 of the Law on Foreigners). Some purposes are specific only for Poland; while others are standard ones (as in the case of the purposes of Schengen visas), related to e.g. tourism, education, medical treatment. Those specific only for Poland include visas issued to benefit from the Polish Charter²⁹ or being a family member of the foreigner who obtained a permanent residence permit in Poland based on possessing a Polish Charter. Repatriation visas or visas for the closest family members of repatriates belong to the catalogue of visas issued specifically by Poland.

Permits for local border traffic between Ukraine and Poland are another key measure in the context of facilitating entry. The agreement on local border traffic between these two countries is in force since 2009 and it stipulates that inhabitants of the border areas (30 kilometres from the border line) may obtain permits for border crossings and do not need visas (or since 2017 also biometric passports) to cross the border. However, the permitted period of stay is limited to 90 days and is restricted to the border areas. In case inhabitants of border areas want to reach other destinations, they need either visas or biometric passports. The latter document is sufficient if the planned period of stay is no longer than 90 days. The bilateral agreement between Poland and Russian Federation on local border traffic had been in force since 2012. It was not re-established till January 2019 after it was suspended in 2016 due to the NATO summit in Poland. The process of implementation of local border traffic between

²⁷ *Ustawa z dnia 9 listopada 2018 r. o zmianie ustawy - Prawo o postępowaniu przed sądami administracyjnymi* (Dz. U. z 2019 r. poz. 11).

²⁸ As the research indicates that foreigners sometimes need to cover higher costs than official ones if they use intermediary services aimed at speeding up the process of obtaining visa or arranging all documents required as attachments to visa application (see e.g. Szulecka, 2017b).

²⁹ The Polish Charter is granted to persons who have either Polish origin or are active in the Polish community. It is granted to citizens of the former Soviet Union states. It confirms belonging to the Polish nation and gives a number of facilitations, including open access to the labour market, access to financial support in adaptation in Poland for persons willing to settle in Poland. See more: Ministerstwo Spraw Zagranicznych, n.d.; *Ustawa z dnia 7 września 2007 r. o Karcie Polaka* (t.j. Dz. U. z 2018 r. poz. 1272 z późn. zm.).

Poland and Belarus has been never concluded. Despite the agreement signed in 2010 the next necessary steps were not undertaken.

4.1.2 Carrier sanction legislation

Poland transposed the *Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (carrier sanctions)*³⁰. Since 1 May 2014, (based on the Law on Foreigners of 2013³¹) these sanctions are executed by the Border Guard. Previously, the Border Guard requested the Voivodes to impose the administrative fine (based on the Law on Foreigners of 2003³²). Laws regarding the responsibility of carriers were present in the Polish legislation already in the Law on Foreigners of 1997. However, then they referred to the responsibility of sea and air carriers³³. The provisions in this respect developed later have been compliant with the provisions of the Directive.

According to the provisions in force as of March 2019 carriers transferring foreigners to the border are responsible for checking whether foreigners travelling with the carriers possess valid documents authorising them to enter Poland or other countries in air or sea travels. This obligation refers also to carriers serving regular international road transport. However, those who offer only border traffic are exempt from this obligation (article 459).

According to the law accepted in 2013, the carrier is obliged to check the validity of documents possessed by a foreigner intending to enter the territory of another country (destination of the carrier) before the departure. In the previous law (of 2003), the carrier was supposed to check these documents during the journey, at the border and before border crossing. The existing provision assumes that the carrier does not take on board travellers who do not have valid documents allowing for crossing the border and entering the country of destination. In the past it was possible that carriers found out about lack of these documents after the journey started, just before border crossing and not before the departure.

The Law specifies circumstances when the carrier is obliged by the Border Guard to transport back a foreigner to the border of the country from which he or she came or to any country that will admit the foreigner; if transferring the foreigner to the country of departure is not possible (article 460). These circumstances include the situation when a foreigner is refused entry on the territory of Poland (either another country of destination or country bordering Poland). If it is not possible for the carrier to transfer the foreigner directly to the border of the country of departure to Poland; the carrier is obliged to assure other means of transport to assure that the foreigner exits Poland as soon as possible. The carrier bears the cost of the alternative means of transport to the border and – if necessary – the cost of stay on the territory of Poland until the transfer to the border is possible.

³⁰ *Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985* (OJ L 187, 10.7.2001, p. 45–46).

³¹ *Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach* (t.j. Dz. U. z 2018 r. poz. 2094 z późn. zm.).

³² *Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach* (t.j. Dz. U. z 2011 r. Nr 264, poz. 1573 z późn. zm.).

³³ *Ustawa z dnia 25 czerwca 1997 r. o cudzoziemcach* (t.j. Dz. U. z 2001 r. Nr 127, poz. 1400 z późn. zm.).

In case a foreigner is refused entry on the territory of Poland or another Schengen country, he or she may be ordered by the commander of the Border Guard outpost to stay in particular place until exiting Poland is possible. Other options are to stay on board of the sea or air carrier in order to travel back to the country of departure, or to take another aircraft or ship (than the one with which the foreigner came) to depart for the country from which he or she came. Such a decision may be appealed against to the Chief Commander of the Border Guard (article 461).

As far as the carrier sanctions are concerned, if the carrier brings to the border a person without valid documents allowing for entering Poland, an administrative fine equivalent to EUR 3 000-5 000 for each imported person may be imposed on the carrier. However, the sum of the fine for a single importation of a group of persons cannot exceed the equivalent of EUR 500,000. Importantly, the fine is not applied in case the foreigner brought to the border is an applicant for international protection or in case the carrier was not able to check the validity of documents possessed by the foreigner despite efforts to do so (article 462). The administrative fine is imposed on the carrier in the form of a decision by the commanding officer of the Border Guard outpost in which the foreigner was refused entry into Poland, and should be paid within 14 days from when the decision becomes final. The decision may be appealed against to the Chief Commander of the Border Guard (article 462). Additional costs for the carrier may result from the fact that the Border Guard upon request of the carrier secures the transfer of a foreigner who has already been refused entry into Poland. This may happen if the foreigner poses a threat to the safety in international transportation. If the Border Guard decides themselves about the need to secure the transfer then the cost is covered by the Border Guard (article 463).

4.1.3 Advance passenger information/ Passenger name information

The Aviation Law³⁴ in Poland includes the provisions from the *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data*³⁵. The provisions (articles 202a and 202b) were added to the Aviation Law in 2011³⁶. They stipulated that the passenger data are communicated in case of the flights from/ to Poland to/ from non- EU or non- Schengen countries. The technical requirements regarding communication of passenger data to the Border Guard upon its request are specified in the ordinance to the Aviation Law³⁷.

In 2018, the Polish parliament passed the law and relevant regulations³⁸ transposing the *EU Directive 2016/681 of the European Parliament and of the Council of 27 April 2016 on the*

³⁴ *Ustawa z dnia 3 lipca 2002 r. - Prawo lotnicze* (t.j. Dz. U. z 2018 r. poz. 1183 z późn. zm.).

³⁵ *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data* (OJ L 261, 6.8.2004, p. 24–27).

³⁶ The provision was introduced by *Ustawa z dnia 30 czerwca 2011 r. o zmianie ustawy - Prawo lotnicze oraz niektórych innych ustaw* (Dz. U. Nr 170, poz. 1015).

³⁷ *Rozporządzenie Ministra Spraw Wewnętrznych z dnia 24 października 2012 r. w sprawie wymagań technicznych i organizacyjnych dotyczących przekazywania Straży Granicznej informacji przez przewoźników lotniczych* (Dz. U. poz. 1249).

³⁸ The main act transposing the directive is *Ustawa z dnia 9 maja 2018 r. o przetwarzaniu danych dotyczących przelotu pasażera* (Dz. U. poz. 894 z późn. zm.), in short: Law on PNR data. The executive acts linked to this Law include: *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 22 maja 2018 r. w sprawie określenia protokołów i formatów danych wykorzystywanych przez przewoźników lotniczych w celu przekazywania danych PNR do Krajowej Jednostki do spraw Informacji*

*use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime*³⁹. The provisions based on the Directive 2004/82/EC stipulated that only information on passengers' data was collected and passed to the Border Guard after a request of the Border Guard was sent to air carriers. These were aimed at either preventing irregular migration or improving border checks. These provisions were a part of a general law regarding aviation.

Upon transposing the PNR Directive, several institutions were granted access to passenger data in justified cases. According to the national law (article 3 of the Law on PNR data) data is processed for the purpose of prevention, identification or combating offences sanctioned with imprisonment for 3 years or more. Processing PNR data is aimed at prosecution of the offenders of the following offences: terrorist crime and other serious crime including financial ones, participation in organised crime group, trafficking in human beings, sexual offences (especially involving a minor victim), rape, murders or serious harms to someone's health, illegal trade in human organs, unlawful deprivation of someone's freedom or kidnapping, serious robbery (with firearm or threat of using it), illicit drug-related crimes, crimes related to trade in illicit weapon or explosive material, corruption, frauds (especially against the EU financial interests), money laundering and using false payment means, offences against protection of data stored in databases, offences against the natural environment an related to illicit trade in animals or plants; facilitating the unlawful border crossing or stay in the country, illicit trade in arts, falsifying or trade in false goods, document frauds, illicit trade in hormones or similar substances, illegal trade in radioactive materials, trade in stolen vehicles, kidnapping of a ship or aircraft, sabotage and industrial espionage, and offences persecuted by the International Criminal Court.

PNR data is passed to the national unit established to process information on passengers, and responsible for operating the special system containing this data. The unit is established within the Border Guard (article 12). Passengers are informed about collecting and storage of and the right to access PNR data, administered by the Border Guard. Access to data is executed through the request procedure involving the Head of the Office of Personal Data Protection (article 9). Passengers whose PNR data are processed may also contact the inspector of data protection within the administering body, which is the Border Guard.

In general, PNR data are stored for 5 years. However, in case of a positive result during checks, data are deleted immediately, provided that there is no need to further check them or pass them to the competent institution for processing (article 32). The data allowing for direct identification of a passenger are depersonalised after 6 months. The personal data may be retrieved for the purpose of an investigation, prosecution and court purposes (article 33).

According to article 36 of the Law on PNR data, the institutions authorised to access PNR data include: the General Inspector of the Financial Information, the Head Commander of the Police, the Chief Commander of the Border Guard, the Main Commander of the Military Police, the Commander of the State Security Service, the National Prosecutor, the Head of the Internal Security Agency, the Head of the Central Anti-Corruption Bureau, the Head of the

o Pasażerach (Dz. U. poz. 1012), and *Rozporządzenie Rady Ministrów z dnia 30 maja 2018 r. w sprawie przetwarzania danych dotyczących przelotu pasażera przez Krajową Jednostkę do spraw Informacji o Pasażerach* (Dz. U. poz. 1148).

³⁹ OJ L 119, 4.5.2016, p. 132–149.

Foreign Intelligence Agency, the Head of the National Fiscal Administration, the Head of the Military Counter-Intelligence Service, the Head of the Military Intelligence Service.

Upon a verified request of the relevant unit responsible for the processing of PNR data in another Member State, the data stored by Poland may be passed to this unit (article 39). The law includes conditions for refusal of passing PNR data or results of their processing to another Member State, if the request is not justified or there is a risk that the data would be used for purposes other than the ones indicated in the request (article 45). The law also includes provisions regarding requests of PNR data sent to another Member States and necessary actions to be performed in this respect, and passing PNR data to Europol (article 52) and to third countries provided that they guarantee a sufficient level of protection of personal data (article 53).

According to article 64 of the Law on PNR data, an administrative fine of 20,000 PLN (approx. 4,600 EUR) is imposed on the air carrier who does not communicate PNR data before the flight (time specified for this is between 48 and 24 hours before the flight, and just after boarding and luggage check is closed boarding – article 6.1). Passing incomplete PNR data is sanctioned with a fine equal to 12,000 PLN (which is approx. 2,800 EUR). The fines concern each flight involving PNR data not passed or passed in incomplete form. In case the form of passing PNR data is inadequate or not-compliant with the relevant regulations the administrative fine for this amount to 16,000 PLN (which is approx. 3,700 EUR). The fines may be reduced by 50% in specified situations, e.g. when PNR data are passed but with delay (e.g. 6 hours before the flight). The total amount of fines for one flight cannot exceed 40,000 PLN (which is 9,300 EUR). Lower fines are applied in case of not passing PNR data in the specified time upon request of the national unit responsible for processing PNR. The administrative fines are imposed by the Border Guard and should be paid in 30 days. After 3 years, the imposition of fines expires. In exceptional situations not caused by the carrier the fines may be not imposed.

4.1.4 Immigration liaison officers

With respect to immigration liaison officers; the EU regulations⁴⁰ are applied directly in Poland. The Polish Border Guard has its immigration liaison officers in Russia, Ukraine, Germany, and Vietnam. There are also liaison officers from Poland at the seat of Europol in the Hague as well as at the Permanent Representation of the Republic of Poland in Brussels. In Poland, the Border Guard cooperates with the liaison officers from the neighbouring countries as well as from other EU or non-EU countries, such as the USA, the UK, Austria (Komenda Główna Straży Granicznej, 2019). According to data gathered within the expert interviews for the RESPOND project, Polish authorities plan to have immigration liaison officers in countries whose citizens are associated with the highest risk of irregular migration to Poland. In the recent years, it concerns more and more often Asian countries such as India and Pakistan. Thus, the focus on establishing cooperation through liaison officers is on Central Asia.

⁴⁰ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1–76).

4.2 Controls at the border

4.2.1 The rules of border crossing and border checks

The rules of border crossing and requirements for the third-country nationals to enter the territory of Poland are specified in the Law on Foreigners of 2013 (article 25). Similar requirements were also specified in the previous laws regarding foreigners; passed in 1963, 1997 and 2003. However, only the amended Law on Foreigners of 2003 referred to EU law. The main EU Regulation applied in the context of border control is the Schengen Borders Code⁴¹ and its subsequent amendments. This document specifies the details of how border crossing points are organised and how the border check is conducted. Special attention should be drawn to the obligation of conducting more thorough checks stemming from changes of 2017 to the Schengen Borders Code⁴² (see more in part 6).

According to the above-mentioned laws; non-national crossing the border should possess valid travel document and (if required) a valid residence permit or visa. Moreover, foreign nationals must justify the purpose of entering Poland and staying in its territory. They are obliged to possess health insurance valid for the period of stay (this requirement concerns national visa holders) or – if they come to work in Poland – valid until they start working when the relevant national health insurance contributions are paid. The value of health insurance should be not lower than 30,000 EUR. Non-nationals without residence permits should also have financial means of subsistence for the planned period of stay or be able to document the possibility of obtaining them in compliance with the law. The latter requirement does not apply to particular categories of incomers. This includes those whose cost of stay should be covered by the Polish state or those who are not obliged to present possession of financial means at the border (according to bilateral agreements between states or according to specific provisions as repatriation; the Polish Charter). Document check at the border is conducted by officers of the Border Guard.

The check of the necessary documents i.e. travel document and visa (if required) is performed against the large-scale EU databases: the Schengen Information System (SIS II)⁴³ and if applicable the Visa Information System (VIS). At the border these information systems are accessed by a national system of automated border control of all persons and all vehicles crossing the Polish border administered by the Border Guard called *Zintegrowany System Ewidencji 6 – ZSE 6*. It allows for accessing EU and national databases, and editing information on vehicles and persons crossing the border. The system allows also for accessing information related to criminal issues including Interpol database and national system of police information (*Krajowy System Informacji Policyjnej – KSIP*). The ZSE 6 system allows for checking biometric data in the electronic documents stored in the system. Another important register consulted in the course of document check of non-nationals crossing the border is the

⁴¹ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1–52).

⁴² Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders (OJ L 74, 18.3.2017, p. 1–7).

⁴³ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4–23).

registration of persons whose stay on the territory of Poland is undesirable, which is run by the Office for Foreigners (see more Office for Foreigners, n.d.).

4.2.2 Refusals of entry

As stated in the article 28 of the Law on Foreigners; refusals of entry are issued to foreigners if they have no valid travel document or valid residence permit or visa (if required) and no health insurance. Refusals of entry are also issued in case foreigners who do not present documents confirming the purpose and conditions of stay and do not possess financial means for the period of stay or documents confirming the possibility to obtain such means. If in a period of 180 days a foreigner already stayed in the Schengen area for 90 days or longer, and they have no other documents allowing them for an extension they will be also refused entry. Non-nationals crossing the border with a false or falsified travel document, visa or other documents are also denied entry. Being registered in SIS II (for refusal of entry purposes) or the national register of persons whose stay in Poland is undesirable constitutes the prerequisite to issuing a refusal of entry. If foreigner's entry or stay is deemed a potential threat to the public health or state's defence, security and public order of Poland or other EU countries; the Border Guard issues a decision that refuses entry to such persons.

According to article 28, refusal of entry is not issued to persons who possess Schengen visas obtained for humanitarian reasons based on Poland's international commitments. Persons, who submitted or declared⁴⁴ the will to submit an application for international protection during border control, should not be issued a refusal of entry. Non-nationals having short-term residence permit obtained due to important reasons justifying the need of their presence in Poland (e.g. due to the proceedings before the court, the interests of Poland, private reasons) are not refused entry despite not meeting the conditions for entrance. Persons with documents confirming their right to enter or transit EU countries and not fulfilling all the conditions to enter Poland may be allowed to enter in case their data are not stored in databases for purposes of the refusal of entry.

In case a person refused entry requires medical aid due to their health condition, despite refusal he or she is not transferred to the third country and is provided with the necessary medical aid (article 31). Upon permission of the Chief Commander of the Border Guard; the Head of the Border Guard outpost at the border may allow for the entrance of a person whose data are in SIS II for refusal of entry purposes if there are humanitarian reasons justifying this. The period of permitted stay in such circumstances is no longer than 15 days and the country that entered foreigner's data to SIS II due to the refusal of entry purposes should be informed by the Polish Border Guard about the permission for the concerned non-national to enter Poland due to humanitarian reasons (article 32).

The decision for refusing entry is issued by the Border Guard and must be executed immediately. It can be appealed against to the Chief Commander of the Border Guard (article 33). Issuing the decision on the refusal of entry is preceded by the check of documents and checks in databases and registers concerning foreigners. It should be issued after an interview with the person whose refusal of entry is considered and potentially of persons who accompany this foreigner in border crossing. Before issuing a refusal of entry the Border

⁴⁴ This applies to unaccompanied minors and persons who declared the will to submit an application but the application could not be received by the Border Guard (e.g. due to technical reasons) on the same day.

Guard may also verify the purposes of the person's entry and stay in Poland with public institutions or other bodies and natural persons who can confirm these purposes. However, the decision on refusal of entry may be issued based only on the document check if the examination reveals obvious reasons for not allowing the foreigner entering Poland e.g. in case of false documents (article 34).

4.2.3 The use of IT systems

If non-nationals are allowed to enter Poland and submit an asylum application at the border, officers of the Border Guard receive the application, collect biometric data (photo of a person and fingerprints) and inform the applicant of the necessary next step to report to the reception centre within two days. The fingerprints collected are sent to Eurodac⁴⁵ database. However, Eurodac is not accessed directly but through the information system POBYT. The latter is administered by the Office for Foreigners that gives the direct access to it to the Border Guard. Importantly, the POBYT system is linked to the Automated Fingerprint Identification System (AFIS). The fingerprints taken at the border (with a special device) are automatically sent to the Central Fingerprints Register Unit (*Centralna Registratura Daktyloskopijna*) where their quality is verified. If the quality is satisfactory the fingerprints are enrolled into the POBYT system. A person whose fingerprints were enrolled into the POBYT database obtains the so-called AFIS number.

When entering fingerprints in Eurodac, the system automatically checks whether the person had already applied for protection in another Member State. Taking or checking fingerprints is a part of submitting an application for international protection; if someone has already provided their fingerprints they must be in the database. Often also fingerprints of foreigners intercepted at the 'green border' (the land border sections between the border crossing points) are collected and checked in Eurodac. Migrants apprehended in the border area just after crossing the border unintentionally or in an unlawful manner may be immediately escorted to the border. In such cases fingerprints are not taken. However, if the person is not escorted to the border immediately after revealing their illegal border crossing; this person's biometric data are collected by the control institution that apprehended them (article 35). In the Polish case it is mostly the Border Guard as its control competencies are not limited to the border; it operates on the entire territory of Poland.

The application of the most recent regulations concerning the Exit/Entry System⁴⁶ may be perceived as a work in progress. There are pilot projects conducted regarding interoperability

⁴⁵ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1–30).

⁴⁶ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the

of the EU large-scale data systems⁴⁷; automatic border gates are used at selected border crossing points. The establishment of the Entry/ Exit System (EES) and European Travel Information and Authorisation System (ETIAS)⁴⁸ is declared as one of the tasks of the Ministry of the Internal Affairs and Administration. The Border Guard will be responsible for operating of both systems in Poland (Komenda Główna Straży Granicznej, 2019). All the above-mentioned systems are aimed at improving the performance of border control as well as to prevent irregular migration or other threats to the state's security and public order.

4.2.4 Provisions regarding unlawful border crossing and security threats

The contemporary Polish legislation has included provisions aimed at preventing irregular migration through criminalising illegal border crossing and its facilitation. Illegal individual border crossing is a minor offence; punished with a fine (article 49a of the Misdemeanours Code⁴⁹). Before 2005, this offence was included in the Penal Code. However, in 2005 it became a minor offence included in the Misdemeanours Code which. This change was justified by the need to harmonise the Polish law with the relevant legislation of the neighbouring countries as well as with practical observations indicating that such border crossings are often result of lack of awareness and are not seen as serious threat to public order (Klaus and Woźniakowska-Fajst, 2015, p. 195). If someone crosses the Polish border using violence, threat, deception, or in cooperation with others they may face imprisonment for up to 3 years (article 264.2 of the Penal Code⁵⁰). According to article 264.3, imprisonment between 6 months and 8 years is imposed on all those who arrange for others illegal border crossing. The limits of the imprisonment for arranging unlawful border crossing is the result of Poland's accession to EU and implementation of the Council framework Decision no 2002/946/JHA⁵¹. Upon the introduction of the Penal Code in 1997, the punishment for this offence was imprisonment between 3 months and 5 years⁵².

A new law aimed at preventing terrorist activity was introduced in 2016. It also includes provisions concerning foreigners. For instance, article 10 of the Law on counter-terrorism activities⁵³ gives officers of the Internal Security Agency, Police and the Border Guard authorisation to collect fingerprints or face image or non-invasive collection of biological material (allowing for the determination of DNA code) of foreigners in case there are doubts

Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20–82).

⁴⁷ See for instance the pilot project finalised by the Technical Academy of the Army in Poland: "Inteligentne granice," n.d.

⁴⁸ *Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1–71).*

⁴⁹ *Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń (t.j. Dz. U. z 2018 r. poz. 618 z późn. zm.).*

⁵⁰ *Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (t.j. Dz. U. z 2018 r. poz. 1600 z późn. zm.).*

⁵¹ *2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1–3).*

⁵² *Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (Dz. U. Nr 88, poz. 553).*

⁵³ *Ustawa z dnia 10 czerwca 2016 r. o działaniach antyterrorystycznych (t.j. Dz. U. z 2018 r. poz. 452 z późn. zm.).*

regarding their identity or the real purpose of stay in Poland. Collecting such data may also take place when there is suspicion of illegal border crossing by a foreigner or if it is probable that this person intends to stay in Poland illegally. If the non-national is associated by the mentioned institutions with terrorist activities, the biometric data or biological material may be collected by these institutions and then passed to the Border Guard. These provisions can be criticized because of vague expressions such as 'suspicion' or 'doubts' that create a risk of abusing this legislation in control activities (Buczowski, 2016, p. 27).

4.2.5 Border surveillance

As far as border surveillance is concerned, the border is constantly monitored by the Border Guard through patrols conducted on foot or by using vehicles (personal, personal-off-road vehicles, motorcycles, quads, and in winter also snowmobiles), aircrafts, and unmanned ships and the vessels (especially when the border runs along water). There are also observation towers equipped with long-range thermal imaging cameras, observation vehicles, portable thermal imaging cameras, night vision goggles and modern binoculars. On the flat sections of the border that have no forests, an arable belt is maintained as it allows for quick determination of illegal crossing and the number of persons crossing as well as of the possible direction of their movement (Sejm RP, 2016c). Since Poland is not on the way of key migratory routes into the EU the involvement of Frontex and its equipment is limited. However, in the context of border management and migration control the liaison officers operating within Frontex play quite an important role. Nine border crossing points at the Polish section of the eastern external border are the so-called focal points due to the intensity of cross-border mobility and localization at the main international roads. These border crossing points are visited by border guards from other EU states, specialising in the detection of document forgery or smuggling of stolen vehicles (Komenda Główna Straży Granicznej, 2019). Frontex is involved in border protection only during periods requiring intensified border control or special investigating activities and upon request of the Polish authorities. The EURO 2012 football cup or the NATO summit in Poland in 2016 were such occasions. However, in general the capacity of the Polish Border Guard is sufficient to protect the external border. Moreover, both the personnel of the Border Guard and its equipment is used in missions to other countries.

4.3 Internal controls

4.3.1 Control of the legality of stay

According to the Law on Foreigners (article 288) all non-nationals are obliged to possess travel documents and other documents authorising them to stay in Poland (if required) during the entire period of their stay. During the exercise of such control the non-national may be asked to present travel document and other documents authorising them to stay in Poland, financial means (or document confirming the possibility to obtain them) to cover the cost of stay in Poland and costs of return to the home country and documents authorising migrants to work or run their own business or hire workers. Further, non-nationals may be asked to present documents confirming the purpose and conditions of their stay in Poland (article 293). Migrants who come to reunify as a family with non-nationals granted refugee status in Poland are not

obliged to present travel documents and documents confirming possession of financial means, right to work or other documents related to the conditions of stay (article 294.2).

Controls of the legality of stay are conducted by several institutions. However, the crucial role is played by the Border Guard that operates on the entire territory of Poland and can check the legality of foreigner's stay on various occasions, such as road control, inspection of workplaces or inspection of places where foreigners may be at risk of exploitation, search for smuggled goods or operations aimed at fighting international organised crime. Other institutions also can perform checks of the legality of stay: the Police is authorised to control the legality of stay of non-nationals, the Head of the Office for Foreigners and the Voivodes may conduct control of the legality of non-national's stay in the course of the proceedings linked to applying for residence permits, the customs office may check the legality of foreigner's stay; if this regards control activities that are linked to competences of the custom service (e.g. control of goods transported across the border). The Law on Foreigners imposes an obligation of cooperation between the institutions mentioned. Collecting and checking fingerprints during control of the legality of stay is conducted in accordance with the VIS regulation. Control of the legality of stay should be conducted by at least two representatives of these institutions. Only in the headquarters of the Office for Foreigners or the Voivodes' offices such control may be carried out by one person. In exceptional cases one Border Guard officer may conduct the control of legality of foreigner's stay, if other activities justify it.

If the non-national stays in Poland in breach of the law it must be recorded in a protocol written form specified in the law (*protokół*). Such protocol should be signed by the person whose stay was found unlawful. The protocol shall contain information on the presence of an interpreter if relevant. The non-national concerned should be given a copy of the protocol. If a migrant is found to be staying lawfully a service note⁵⁴ documenting this is sufficient. If the unlawful stay is determined by another institution other than the Border Guard the relevant information should be passed to the Border Guard which can issue a return order (article 298).

According to the Law on Foreigners (article 465.1), the fines may be imposed on foreigners who:

- stay in Poland without valid document authorising to do so;
- do not return to their country in the period determined in their return orders;
- do not report to the indicated authority in the period of the postponed execution of the return order;
- leave their declared place of residence without informing the authorities (responsible for the procedure involving the foreigners) in the period of the postponed execution of the return order;
- do not present the required documents upon request of competent institutions;
- do not renew or return documents authorising them to stay despite an obligation to do so;
- do not inform about the loss of such documents;
- abuse the rules of local border traffic which means that they enter Poland with the permit for multiple border crossing within local border traffic and leave the designated border area where their stay is allowed or overstay the permitted period.

⁵⁴ It is not signed by the person towards whom the control activity is conducted.

During the controls of the legality of stay of foreigners, the authorities may reveal that unlawful stay was facilitated or enabled by another person. Since 2004⁵⁵, the Polish legislation includes provisions on assisting illegal stay which is either enabling or facilitating another person's stay in the Republic of Poland in breach of the law for the financial or personal benefit. This deed is liable to imprisonment from three months to five years (article 264a.1 of the Penal Code). In exceptional cases when the offender has not received financial benefits the court may apply extraordinary mitigation of the punishment, and issue an absolute decree (article 264a.2). Polish legislation does not contain humanitarian considerations linked with the facilitation of unlawful stay of a foreigner. Only the lack of financial gain may waive the punishment.

4.3.2 Control of the legality of work

The legality of work of foreigners is controlled by the Border Guard and the National Labour Inspectorate. Competences of the Border Guard are wider as they also control foreign formal or informal entrepreneurs, formal and informal employers hiring foreigners, and also migrants performing paid activities based on different kinds of contracts or without them. In Poland, the semi-compliance predominates and it is more common than illegal stay. 'Semi-compliance' means migrants usually have valid visas and permits authorising them to stay in Poland but in the same time they perform paid activities in breach of the law (without permits or not in accordance with the conditions determined with these permits, see also e.g. Ruhs and Anderson, 2006). This is why the Employer Sanctions Directive⁵⁶ transposed to the Polish legislation in 2012⁵⁷ is considered as an important legal instrument aimed at preventing irregular migration. More challenges are identified in controlling the legality of work performed by foreigners coming to Poland with documents authorising them to stay. Working in breach of the law may result in return order for non-nationals. This means that upon detection of unlawful employment the visas or residence permits may be considered invalid as the conditions are violated through work non-compliant with the law.

4.3.3 Specific permits for stay in Poland

Non-nationals possessing valid travel documents and other documents authorising them to stay in Poland or to enter other Schengen countries may move around the Polish territory freely. They may also cross internal border and enter other Schengen countries. However, their stay there should not exceed the allowed period of time (usually 90 days) and should not be in breach of the law in force in these countries (for instance that the person with documents authorising the to enter Poland and work on its territory will not work in other countries, if this is not allowed without special permit).

As far as forced migrants are concerned; the applicants for international protection get a temporary confirmation of their identity. According to the law, they cannot cross the border based on the temporary identity document they get upon submitting an application. In Poland, they may move freely on the entire territory of the country. However, they should inform the

⁵⁵ The provisions were introduced to the legislation upon Poland's accession to European Union. They transposed the *Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence* (OJ L 328, 5.12.2002, p. 17–18).

⁵⁶ *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals* (OJ L 168, 30.6.2009, pp. 24–32).

⁵⁷ *Ustawa z dnia 15 czerwca 2012 r. o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej* (Dz. U. poz. 769).

Office for Foreigners about changes in their address since this is crucial for procedural purposes; especially if applicants stay outside the reception centres⁵⁸.

The Polish legislation does not include rules on the stay of the irregular migrants. The definition of irregular migrants may be derived from the provision determining situations when the return order is issued (article 302 of the Law on Foreigners). All those who do not meet conditions for further stay in Poland (for instance due to the lack of valid documents or overstaying the terms of validity of documents possessed previously) should be issued a return order. However, since 2014 it is obligatory for the Border Guard to check whether a person ordered to leave should be granted national forms of protection and allowed to stay in Poland. Whereas, the foreigner's need for international protection may lead to submitting an application for asylum which is then considered by the Office for Foreigners. There are also national forms of protection available to migrants and these are granted by the Border Guard.

There are the two forms of permits issued within return procedures. The first one is the permit for stay due to humanitarian reasons issued to foreigners whose return is impossible due to humanitarian reasons (i.e. due to family issues, children's rights, the risk of being tortured or forced to work, the potential of being deprived of the right to a fair trial after return). The permit is not issued if the foreigner committed a serious crime in Poland or another country or if he or she constitutes a threat to state security or public order. It may be withdrawn if it is discovered that the documents upon which the decision to issue the permit were false or if other grounds that would normally disqualify a candidate from receiving this kind of permit are discovered after the permit has already been issued (articles 348-350 of the Law on Foreigners). The second form is a permit for tolerated stay; this is issued if it is impossible to execute a return order (e.g. because there are no technical possibilities to organise a return flight or it is not possible to get travel documents for the foreigner, or the court issued a decision on ban of removal of a non-national to a particular country). A permit for tolerated stay is also issued when the foreigner would experience threats to their lives, torture or being forced to work in the country where they would be sent. Persons who committed crimes or constitute a threat to state's security and public order may not be granted a permit to stay due to humanitarian reasons. If they cannot return to their country of origin they are given the permit for tolerated stay (articles 351-353 of the Law on Foreigners).

Holders of the above-mentioned permits may work in Poland or run their own business but they cannot access any support that is offered to persons granted international protection. The permits are valid for 2 years. They may be prolonged if there are still reasons to protect the non-national from being returned to his or her country of origin. Whereas, the permit for stay due to humanitarian reasons allows the holder to cross borders. Crossing borders is not possible with a permit for tolerated stay. The protective dimension of these permits should be mostly understood as preventing non-nationals from returning to their country of origin since their return could cause harm to their family rights or their children's rights (Szulecka et al., 2018, pp. 52–53).

⁵⁸ According to information shared during the first meeting of Migration Governance Network, half of applicants for international protection stays outside the centres run by the Office for Foreigners.

4.4 Return, detention for return and readmission

4.4.1 Apprehension and detention

Detention for at least 48 hours may be applied after apprehension of non-nationals who may be ordered to leave the territory of Poland or who avoid executing the return order or do not fulfil obligations stemming from the non-custodial measures aimed at securing the execution of return orders or transfers imposed on them. Such detention may be also applied in case of persons whose return will be executed by the authorities or to secure the Dublin transfer or readmission (articles 394.1 and 394.1a of the Law on Foreigners). If this is the Police that apprehended a non-national not subjecting to the return order; the case should be passed to the Border Guard. The latter institution applies detention after apprehending foreigners. Depending on the circumstances; the Border Guard either decides on imposing alternative measures to detention on the apprehended foreigners, or turns to the court with a request to place those persons in a detention centre or a pre-trial custody for foreigners. The Border Guard may also turn to the Voivodes with a request on withdrawal of a residence permit obtained by the apprehended person previously. Upon apprehension the grounds for applying Dublin regulation or readmission agreements are analysed by the Border Guard (article 394.4).

The detained persons should be released after 48 hours if there was no motion on detention brought to the court and the person is not at the disposal of the court. If there is no decision on detention (or pre-trial custody) within 24 hours after handing over the person to the court, the person should be released. The detained foreigner should be released upon the order issued by the court or if the reasons for detention, or apprehension preceding this, are no longer valid (article 394.5).

Unaccompanied minors apprehended by the Border Guard or the Police may be placed in care and educational centre or in a guarded centre upon the court's decision. The court deciding on placing an unaccompanied minor in a guarded detention centre should consider the following factors: the level of development of the minor in physical and psychological terms, the personal features and condition of the minor as well as the circumstances of apprehension which have influenced the decision to place the minor in detention. Minors under 15 cannot be placed in guarded centres or in pre-trial facilities (article 397).

Asylum applicants may be detained for the purposes of determination of their identity or to conduct formalities (collect information) that would not be possible without detention (due to the risk of absconding). An applicant for international protection may also be apprehended and detained in case a return procedure concerning the asylum applicant has been initiated or completed and there is a risk that the asylum application has been submitted to avoid return (article 87.1.3 of the Law on Protection). Another reason for apprehension and detention of asylum applicants is the security and public order concerns. Also, to secure the Dublin transfer asylum applicants may be apprehended by the Border Guard and then detained, if the court decides so responding to the Border Guard request. There is a risk of absconding if a person did not possess identity documents upon submitting an application for international protection or crossed the border unlawfully (and did not submit the asylum application immediately after crossing the border in breach to the law and did not justify the reasons of crossing the border in an unlawful manner). In case of asylum applicants (as in the case of other immigrants) entering Poland during the period when their data is stored in the register of foreigners whose

stay is undesirable in Poland or in the SIS II for the purposes of entry ban is a reason for detention (article 87 of the Law on Protection).

In general, detention is applied when there is a risk that a foreigner will not leave Poland voluntarily (despite obligation to do so) or that he or she constitutes a threat to the state security and public order. In addition, if it is impossible to confirm the identity of a foreigner immediately upon apprehension, the person may be detained for the time necessary to confirm his or her identity, until they acquire the necessary documents (provisions of apprehension and detention are included in articles 394-407 of the Law on Foreigners).

If there is a risk that the foreigner will not follow the rules of staying in a detention centre; then the person is placed in a pre-trial custody for foreigners. They are parts of either the guarded centres for foreigners run by the Border Guard or part of other Border Guard's facilities (article 399 of the Law on Foreigners). Similar rules stem from the Law on Protection – asylum applicants that will not follow the rules of stay in a guarded centre should be placed in pre-trial custody for foreigners (article 88a.2).

Decisions on detention are taken by the courts upon a request by the Border Guard; after the hearing of the foreigner concerned. If the decision on detention regards a foreigner with a minor, the interests of the child should be taken into account (article 401 of the Law on Foreigners). Unaccompanied minors in guarded centres should be in a separated space whereas minors with their parents or guardians placed in detention should share the same room (article 414.3 and 414.4). When deciding about detention, the court should first take into account the possibility to apply non-custodial measures (article 414.5). The period of detention imposed by the court should not exceed 3 months. This period can be prolonged by the court upon the Border Guard's request based on the assessment of the risk of absconding in a given case. The prolongation is also justified by the need to secure the execution of return order or Dublin transfer. In case of a negative decision in the asylum procedure the detention period may be prolonged to secure the return. The maximum period in detention should be 6 months. However, it is possible to prolong it to 12 months (if there are delays in executing the return order), or to 18 months if the appeal procedure concerning the return order still lasts. The period of detention should be as short as possible and each time the court decides about the prolongation it should also consider the measures alternative to detention (article 403). For detention for return procedures, if the authorities state that due to formal or legal reasons it is impossible to execute the return order, the detained non-nationals should be released from the guarded centres. They should be also released if they need medical, physical or psychological assistance. If the person was apprehended or detained in an unlawful manner they may apply for compensation or redress (article 407).

In case of asylum applicants the detention decision is also taken by the court upon the request of the Border Guard (article 88b of the Law on Protection). The period of detention should be at most 60 days. However, it is possible to prolong it based on the Border Guard's request. The period of prolongation depends on individual situation of the applicant; especially whether he or she was detained prior to submitting and asylum application, e.g. for the purposes of executing the return order. The maximum period of stay of asylum applicants in detention should not exceed 6 months (article 89). Release from detention may be decided by the Border Guard (based on reasons mentioned above) and also of the Head of the Office for Foreigners. The latter may decide about the release independently or upon the request from the detained asylum applicant if there is a high probability that the person will be granted

international protection and they do not pose a threat to the state security and public order (article 89b of the Law on Protection). If the asylum procedure of the applicants released from detention centre still lasts; the applicants are obliged to get to the reception centre within two days from the day of release (article 89ca). The Border Guard assures the transport to the reception centres for asylum applicants who are disabled, single parents, pregnant women and the elderly (article 89cb).

Alternative measures to detention may be applied in case the non-national is issued a decision on forced return or there is a need to secure the readmission or Dublin transfer. These measures should be applied if there is no possibility to execute the return or the transfer and readmission immediately. Alternative measures include obliging the foreigner to report in a specified period to the Border Guard Unit, bail, deposit of travel documents or residing in a specified place of residence (article 398 of the Law on Foreigners). Non-custodial measures may be applied in case of asylum applicants with the exception of one measure; the deposit of travel document (article 88.1 of the Law on Protection). More than one non-custodial measures may be applied at the same time. Asylum applicants may be placed in detention only if there is a risk that they will not fulfil obligations based on the non-custodial measures issued (article 88a.1).

According to article 400 of the Law on Foreigners, non-nationals should not be detained if detention could cause a threat to their life or health or when the psychological and physical condition of the person indicates that they experienced violence. According to the Law on Foreigners, pregnant woman may be placed in detention only till the fourth month of the pregnancy. Asylum applicants, should not be detained if they are an unaccompanied minor or a disabled person (article 88a.3 of the Law on Protection).

Since 2018, the Polish legislation includes provisions on social, medical and psychological assistance for persons either released from detention centres, or not detained due to the circumstances mentioned above (article 400a of the Law on Foreigners). The assistance is provided for 6 months from the date of issuance based on the decision granting assistance to persons released from detention or considered to be placed in it (and not placed, eventually). The provision of medical care may be prolonged till the execution of the return order. Non-nationals granted this assistance are expected to execute the return order as assistance does not waive the return order. Persons granted assistance may be obliged to fulfil obligations that are similar to the non-custodial measures with the exception of the deposit of travel documents. In case foreigners do not fulfil these obligations or leave Poland; they may be deprived of this assistance. The decision on granting or withdrawal of the assistance is taken by the Border Guard.

4.4.2 Returns of third-country nationals

The measures proposed in the Return Directive did not bring novelty to the Polish legislation regarding returns of illegally staying foreigners. The expulsion order (similar to the forced return order) existed in all acts concerning foreigners in contemporary Poland. It was called either deportation, or expulsion. Decisions on obliging the non-nationals to leave the territory of Poland were introduced to the Law on Foreigners of 1997, amended in 2001, and later in the Law on Foreigners of 2003. These decisions were similar to the clauses of the voluntary returns introduced by the Return Directive.

The Return Directive was finally introduced to the Polish legislation in 2013 (in force since May 2014). However, part of the provisions from the Directive were already introduced by the 2012 amendment to the Act on Foreigners of 2003⁵⁹. The amendment brought an obligation to specify the date of leaving Poland or executing the expulsion. Moreover, issuing a re-entry ban became obligatory. A decision on expulsion was treated as a more severe administrative sanction. The decision on expulsion could be issued within the separate procedure aimed at expulsion of the person or with another procedure, such as withdrawal of residence permit, a final negative decision on granting refugee status or subsidiary protection and permit for tolerated stay. The obligation to leave the territory of Poland was applied in cases when the authorities had justified belief that the person would leave the country voluntarily. This could be imposed with procedures aimed at refusal or withdrawal of temporary residence permit (see more Narożniak, 2014, pp. 165–166).

Along with the full transposition of the Return Directive, which upon the Law on Foreigners of 2013 came into force, the system of expulsions and orders to leave the territory of Poland was replaced by one procedure aimed at issuing a return order; either with specified term (voluntary return) or without it (obligation to return to be executed immediately). Moreover, the return decision was taken by Border Guard's within separate proceeding (return procedure). Previously return decisions were also taken as a supplementary decision within other procedures, e.g. application for residence permit. Thus, since May 2014 institutions as Voivodes responsible for other procedures (e.g. issuing residence permits) should inform the Border Guard about the final negative decision. This gives a basis for the Border Guard's action, i.e. deciding on the return.

The period for leaving Poland voluntarily specified in the return order is between 15 and 30 days (article 315.1 of the Act on Foreigners of 2013) from the time when the decision is delivered. The minimum period of 15 days is to guarantee that the foreigner can exercise his or her right to appeal against the decision. According to the law this should be done within 14 days. Forced removal (with no specified deadline for leaving Poland in the decision that should be executed immediately) is applied when there is a likelihood that a foreigner will escape, or it is required for reasons of national security or defence, protection of public order and safety (article 315.2). In practice, it is important how the risk of absconding is assessed by the Border Guard. According to the law, the risk is high if the foreigner declares unwillingness to fulfil the return order, has no documents certifying his or her identity, crossed or attempted to cross the border unlawfully, entered the territory of the Republic of Poland during his or her inclusion in the register of foreigners whose stay within the territory of the Republic of Poland is undesirable or is in the Schengen Information System for the purpose of ban of entry (article 315.33).

According to domestic law, the deadline for fulfilling the return order may be postponed by at most one year if the foreigner being obliged to appear in person before the Polish public authority, if his or her presence in Poland is required because of the state interest, in case of exceptional personal situation of the foreigner (linked to e.g. very long stay in Poland, family and social ties in Poland or having children at school age in Poland; article 316.1), or upon foreigner's request (article 316.2). However, until the voluntary return, the foreigner may be obliged to take on certain obligations during the prolonged period of stay in Poland. These

⁵⁹ *Ustawa z dnia 27 kwietnia 2012 r. o zmianie ustawy o cudzoziemcach oraz ustawy o promocji zatrudnienia i instytucjach rynku pracy* (Dz. U. poz. 589).

obligations include reporting in particular time to the indicated institution, paying a security deposit (at least twice the amount of the minimum wage stipulated in the law), depositing travel document at the indicated authority and residing in the place indicated in the decision (article 317). Both money and the travel document are given back to the foreigner upon presenting ticket for return travel to the country specified in the decision order.

The decision on return order includes the ban of re-entry to Poland (and other Schengen countries) for a period from 6 months to 5 years, depending on the reason of issuing a return order. In case of voluntary returns this ban is imposed when the foreigner did not leave Poland in the timeframe specified in the return order or if he or she has crossed the border or attempted to cross the border unlawfully (article 318). It is possible to have a ban of re-entry annulled upon request of the foreigner who demonstrates fulfilling the obligation to leave Poland, having justified reasons (e.g. related to humanitarian grounds) to enter Poland or other Schengen countries, or being assisted in voluntary return. However, if the re-entry or stay of the foreigner may pose a threat to the state security the re-entry ban should not be withdrawn. In addition, if the foreigner was obliged to pay the cost of execution of the return order and this cost was not paid then the re-entry ban should not be withdrawn (article 320). The Border Guard determines the costs of execution of the return order (if it is not voluntary return) and indicates bodies (either foreigner, foreigner's host, employer, or the research unit admitting the foreigner) responsible for covering these costs (article 336). If a foreigner being ordered to return does not leave Poland and remains undocumented on its territory, he or she get the return order to be executed by the authorities (as a forced return). In such cases a foreigner may be detained before the return is executed.

A return order should not be issued if the procedure of granting refugee status or permit for stay due to humanitarian reasons is still pending; if there is a basis to grant permit for humanitarian reasons, the person has been granted a special residence permit for victims of trafficking in human beings (or has a certificate that he or she is such a person) and in case of spouses or family members of Polish/EU citizens the return order shall not be issued (article 330.1). However, in case the applicant for international protection submitted a subsequent application, proceedings concerning the issuance of return order may be initiated (article 330.2).

Since 2014, due to the introduction of the new Law on Foreigners of 2013, the authority issuing a return order is obliged to inform non-nationals about the possibility of applying for international protection (article 304 of the Law on Foreigners). Submitting such an application causes the suspension of the procedure of issuing a return order. However, the issuance of the return order (in this case) will not be suspended if the applicant has already previously lodged applications for international protection (articles 304 and 305 of the Law on Foreigners).

In case of executing return orders imposed on minors it is necessary to ensure that in the country where the minor is returned, he or she will be accepted and looked after by parents or legal guardians in accordance with Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (article 232.1). A return order that is issued to a minor is executed if this non-national has a responsible adult person to take care of them in the country to which they will return. Moreover, the minor should be assisted by a legal representative or they should be referred to a legal representative in the country to which the foreigner is to be returned (article 332 of the Law on Foreigners). All minors staying in

detention are entitled to participate in educational and sports activities appropriate for their age and period of stay (article 416.2 2 of the Law on Foreigners; see also (Szulecka et al., 2018, p. 60.).

According to the law (article 334), assisted voluntary returns are conducted by an entity selected by the Ministry of Internal Affairs and Administration. In Poland, this is the Organisation for International Migration. Only particular categories of foreigners are entitled to benefit from assistance in voluntary return more frequently than every two years; these are unaccompanied minors and victims of trafficking in human beings. Assistance in voluntary return cover travel costs, administrative fees of obtaining a travel document and necessary visas and permits, the costs of food during travel, of medical care, of organising voluntary return by the selected entity and other costs associated with providing safe and humane return for a foreigner (article 335).

The Polish legislation stipulates the presence of representatives of non-governmental or international organisations as observers in activities associated with bringing a foreigner to the border, at the airport or sea port of the state to which he or she is to be transferred (if this is the compulsory execution of return order). State budget should cover the presence of at most two such observers. However, travel costs will be covered when at least five foreigners are to be transferred and when the transfer is to be done by a ship or chartered aircraft (article 333). Observers are entitled to monitor the conduct of all activities involving the foreigner from the beginning to the completion of transfer in order to confirm that the dignity and the rights of a foreigner were respected in the course of these operations. They may also communicate with the foreigner being transferred; if it does not interfere with the operations (article 333.4). They are also informed by the Border Guard conducting the operation how to behave in case of danger or an attempt of foreigner's escape.

5. Key discourses and narratives of migration control

5.1 Main narratives of admitting immigrants and asylum seekers to the Polish territory

The issue of migration and admitting asylum seekers became politicised in 2015. Earlier, both public opinion and politicians were not interested in migration issues to the extent observed in the second half of 2015 and later. Till the 2010s, Poland was an emigration country. Only in mid-2010s, the growing scale of immigrants willing to have short- or long-term work and also to legalise long-term stay contributed to Poland's transition into an immigration country; making immigration a more important issue. For long time, forced migrants had attracted attention of narrow groups; mostly officials and practitioners dealing with the challenges linked to asylum procedures or the functioning of centres for asylum applicants. For years these were mostly Chechens having Russian passports. The biggest number of their applications for international protection was reported in 2013. Although this attracted attention of the media; the small scale of asylum seekers' arrivals to Poland did not make this topic as one that would be eagerly discussed in the parliament or the ministries. The Ministry of Internal Affairs and Administration and the Office for Foreigners that dealt with those applications were the exception (see also Rogala, 2013). The situation changed significantly in 2015, when both border control and the policy of admitting immigrants and asylum seekers became one of the most often discussed topics. To a large extent this discussion was driven by the narratives of so-called refugee/ migration crisis experienced by other EU states (see e.g. Euractiv.com, 2016, 2015)

Both media and the political debates have been often referring to the extent of Poland's openness towards non-nationals, including the permeability of the Polish eastern border and lack of control on its western border (with Germany). Mainly since 2016, the growing number of immigrants living and working in Poland and the Polish government opposing obligatory relocation of asylum applicants within the EU have contributed to the debate whether the country welcomes newcomers or not. Since the Law and Justice Party came to power in 2015, the narrative of highly selective admission policy, with a priority given to persons with Polish roots or 'culturally close' to the Polish nation, has dominated the government and right-wing circles. It was especially visible in September 2018, when the Vice Minister of Investment and Development was dismissed for stating his view on immigration policy that "*receiving immigrants from Ukraine and Asia is cheaper than bringing repatriates*" and attracting attention to immigration as a necessary factor of the economic development at that moment (Wieliński, 2018; Wprost.pl, 2018).

The growing number of arrivals of economic migrants was visible in the statistics and discussions in the media and among interest groups such as employers, trade unions, politicians and representatives of offices responsible for implementing immigration law. Two different notions emerged in this context. On the one hand, the growing scale of economic immigration, mostly from Ukraine, has been seen as losing control over admission, border control and visa policy, weak protection of the labour market in Poland and lack of relevant immigration policy (see e.g. Lis, 2019; Nowak, 2018). On the other hand, the presence of immigrants on the labour market was perceived as a natural consequence of economic and demographic processes and the short-term response to the demands of the economy (see e.g. Górny et al., 2018, pp. 6–30).

While the number of economic migrants has grown significantly since 2014, the number of asylum seekers arriving in Poland has dropped. Nevertheless, the topic of refugees and asylum seekers became more visible in both the media and the political debate, in particular after 2015. This was the consequence of three factors: the arrivals of asylum seekers to other EU countries, the ensuing attempts to respond to this at the EU level, and inciting anti-refugee sentiments by right-wing groups in Poland⁶⁰. The increasing number of arrivals to Poland and the rising number of asylum seekers in Europe have contributed to formation of two main narratives on immigrants and asylum seekers acceptance: the liberal and the conservative one (Brooks et al., 2016), which are presented below.

5.2 Conflicting notions of the fear of threats and humanitarian considerations

The process of polarisation of stands towards immigration and admitting asylum seekers has been triggered by the political declaration that there is a need to control the 'inflow' of foreign workers to the Polish economy and since late 2015 a perceived need to prevent threats to the state security. These threats were depicted as being linked to immigration and the 'inflow' of asylum seekers to Europe. In this context, the opposition declared by the government (appointed in October 2015) to participating in the EU relocation programme attracted international attention. The liberal political actors prioritised humanitarian challenges and the need to respond to them through welcoming people in need – refugees in the broad sense (Hirsfeld and Sulich, 2016). Some of the arguments by the representatives of this group referred to the experiences of Polish people fleeing Poland during the World War II and being admitted by other states in Europe and outside it (e.g. in Canada; see more Kowalski, 2015), as well as Poland's history in which the idea of solidarity and conduct based on it was one of the key features constituting contemporary Polish values. The liberals did not ignore security issues or fears of uncontrolled migration. But they insisted on not exaggerating the fears linked to admitting a relatively small number of refugees. An example of such argumentation was revealed in the statement of one of the Members of the Polish Parliament, representing Civic Platform Party⁶¹, during the debate on Poland's policy in the face of 'migration/ refugee crisis':

We tried to solve the problem in a complex manner. We stated clearly: the first thing is to strengthen the borders of the European Union. Secondly, there is a need to clearly differentiate refugees from economic migrants. If someone comes from a relatively safe country, they should be sent to the country of origin. Additionally, there must be verification centres. That is why we agreed – provided that this is an element of this programme – for one-time, not permanent, relocation of 7 thousands of refugees, since such number was adequate for Poland. This is the number that we could easily accept, nothing bad would happen in Poland. We would be helping people who authentically need this help. And there is no reason to frighten the Poles that something dramatic would happen due to this decision (the Member of the Parliament, Rafał Trzaskowski,

⁶⁰ An example of such activity was the video promoting the Law and Justice political party published in 2018. Due to its anti-refugee and anti-Muslim content the Ombudsman requested the prosecutor to investigate whether the video fulfilled the constitutive elements of public provocation to commit hate crimes on ethnic or religious grounds (Rzecznik Praw Obywatelskich, 2018).

⁶¹ Civic Platform was the governing party in Poland when the decision on the participation in the relocation programme was taken in 2015.

Transcripts from the Parliamentary debate on Poland's migration policy; Sejm RP, 2016d).

The preliminary preparations concerning the admission of refugees from the Middle East and North Africa, within the EU relocation programme, contributed to a heated debate whether and why Poland should be responsible for people who arrived to seek protection in other countries (see e.g. Stolarczyk, 2017). Moreover, it contributed to narratives implying the risk of uncontrolled migration, associated with media coverages of asylum seekers/ migrants trespassing Balkan countries and trying to reach Germany or Austria. It seems that a large number of people gathered at the state borders or railway stations in close countries intensified the debate about threat of uncontrolled masses of migrants that could also approach Poland's border (see e.g. Jagieża, 2015).

The conservative group often emphasised the need to prioritise the security of the state, the society, and warned against potential threats that may be brought by migrants and asylum seekers (see e.g. dziennikarzobywatelski, 2018; Strzałkowski, 2018; Wrzosek, 2016). It has contributed to a new direction in the Polish migration policy, namely the politics of fear linked to the expected threats that may be caused by 'uncontrolled' migration. However, while this narrative was used by the government, it was not necessarily reflected in the policies actually implemented. The growing number of economic migrants legally arriving to Poland has contradicted the declared policy of 'closed doors' for immigrants. However, with regard to asylum seekers, this policy has been definitely confirmed by the minimal number of people taken in and the rejection to admit refugees within the EU emergency relocation scheme. In one of the speeches given by the Minister of Foreign Affairs in the Polish Parliament in 2017; the conflicting ideas of 'closing' and 'opening' the gates were presented as the cohesive policy satisfying both the need to ensure public safety and the need to provide humanitarian aid:

In the face of the migration crisis, we are convinced that the solution to the current problems should be found not in the compulsory relocation programme, not in a forceful resettlement, but in solving problems in the places where they appear and in more effective protection of the external EU borders. The river of immigrants flowing to the Western Europe will not change its direction in result of the EU directives. The chances for wide agreement stem from the concept of effective solidarity proposed by the Slovakian presidency⁶². Poland is not an idle. In 2016, the Polish border guards supported their colleagues from Macedonia, Bulgaria, Greece, Slovenia and Hungary. Polish humanitarian aid goes to migrants and refugees in Jordan and Lebanon. This year we will increase this aid significantly.

Another issue is noticing by part of the politicians from Western Europe what is the Polish contribution to the management of the migratory pressure from the East. More than one million of people, mainly the citizens of Ukraine suffering from war and economic crisis, stay and work in our countries. This huge number shows that the policy in this respect is effective, although we achieve our goal applying other measures [than granting protection status]. In this light, attempts to enforce the relocation of refugees with the threat of reducing the EU subsidies for Poland and other Central Eastern European countries are totally unjustified. (the plan for 2017

⁶² Initially, the name of the proposed programme was 'flexible solidarity'. Over time the adjective has been changed to 'effective'. The idea assumed optional participation in the relocation programme (Zachová et al., 2018).

communicated by the Minister of Foreign Affairs, Witold Waszczykowski, in the Polish Parliament; Sejm RP, 2017)

The decision of not admitting asylum seekers from other EU member states within the relocation mechanism was justified by the security threats that Poland could have experienced by accepting non-nationals who cannot be fully verified (see also Jakubaszek and Walczak, 2016). However, to mitigate this stand, politicians highlighted the readiness to help asylum seekers in the direct neighbourhood of the countries they escaped from. Such an approach has been questioned by the left-wing and central political parties. They opposed the strong rejection to admit asylum seekers and refugees. They also insisted on not associating the arrivals of asylum seekers with threats to security and especially with terrorist threats because the latter are driven by other mechanisms, and not mobility or asylum seeking as such.

Importantly, large part of the discussion related to potential threats concerned mostly Muslim asylum seekers and thus representing religion very different from the one (declaratively) dominating the Polish society (Christianity). The issue emphasised in connection with the threat to Polish identity was religion; namely Islam seen as a religion based on lack of tolerance towards followers of other religions and criminal ways of solving problems (see Dudek, 2017). In general, as the main narratives indicated, in Poland being confronted with arrivals of people from other countries, cultures and religion (especially Muslims) was associated with the threat to security of the state and safety of individuals (see e.g. Rogojsz, 2017; see also Górak-Sosnowska and Pachocka, 2019; Pędziwiatr, 2019). Thus, threats to security became associated with the religion by some whereas others emphasised the need to avoid stereotypes and to focus on the humanitarian aspects and international commitments. The latter became very important in the discussions regarding the policy of 'closing doors' at the eastern border where asylum seekers were denied both entry and the right to apply for protection (Klaus, 2017).

5.3 Narratives on asylum seekers at the eastern border

Admitting asylum seekers in Poland has been strongly connected to the issue of border control. Many asylum seekers experienced the same situation while attempting to cross the Belarussian- Polish border by train – they had been often refused entry several times before their applications for international protection were finally submitted at the border. In this context, one crossing point at the Polish-Belarusian border, namely the border crossing point in Brest/ Terespol, became a symbol of the state's approach towards asylum seekers and the (non)respect for international commitments. Some politicians and officials perceived the 'push backs' at the Polish-Belarussian border as the only effective measure to prevent migratory risks. The procedures applied in the case of people appearing at the border, including the refusal of entry, have been described as necessary step to respond to migratory pressure. Simultaneously, people appearing at the border, seen as 'candidates' for asylum seekers, were described as persons learning how to 'navigate' the border control and asylum system. In the same time, border guards were presented as effective in detecting migratory threats (Ambroziak, 2017; TVN24.pl, 2016; see also Szulecka, 2016a). However, no attention was paid to the core problem, which is the purpose of attempts to enter Poland. During one of the parliamentary discussions dedicated to threats at the borders at the end of 2015, the Chief

Commander of the Border Guard reflected on the situation of persons refused entry to Poland and submission of application for asylum in the following words:

As far as the Belarusian border and Terespol are concerned, I would say that there are big, important numbers. I told about everyday train that arrives in Terespol from Brest. Today there are 150-200 foreigners (and it happened that there were even 500 foreigners) attempting to apply for international protection, to get the status. Approximately 80% of them do not convince us to receive this application, they get refusal of entry and are returned to Belarus. They come back again, after they learn [how to behave at the border] and at the 4th or 5th time they are effective in submitting the application. (...) There were 7.400 applications this year. I must say that this is very important that 40% of all refusals, that increased by more than 90%, mean almost 45 thousand of refusal of entry into the European Union. They are issued in one division, at one border crossing point. This is a huge effort in responding to migratory threats. (Dominik Tracz, the Chief Commander of the Border Guard during the debate within expert parliamentary commission for internal affairs; Sejm RP, 2015)

Other politicians or high rank practitioners indicated the harm caused to people in need, forced to live at the border, justified by the authorities as a necessary activity preventing potential migratory threats. In particular, this harm was noticed in the context of families with children, as proved by numerous parliamentary discussions. The Spokesman for the Children Rights asked about his activity in the area of securing fundamental rights of people trying to enter Poland to seek for asylum, replied in the following way:

One of the issues raised was the border crossing point in Brest/ Terespol and the children remaining for months at the station in Brest, usually with their mothers, attempting to cross the border and enter Poland. This is the border of their dreams. And this is the topic of our embarrassment. This is not 20 times, they try to cross the border 40, 50 times; these are mothers with 7 or 8 children, who cannot return to their home country. (...) I have controlled this border, I intervened many times with regard to this issue and I find a big insensitivity of the Polish border service. Unfortunately, we cannot check the details of how the border guards speak with foreigners, because the talks are not recorded. We have different information from people who attempted to cross the border [different from the statements of the Border Guard]. We have to be aware of this. They do not come here to earn money. They come to get help, avoid persecution. These are people who know that they will be killed upon returning to their home country and their children will be taken away. I suggested to the Minister of Internal Affairs the solution, to monitor this problem, to place a video monitoring, as it is in the case of other officers, to be able to investigate the case⁶³. Unfortunately I encountered the refusal to do so. This is our shame, I have to admit this. These people are knocking at our doors. (Marek Michalak, the Spokesman for Children Rights during the debate within expert parliamentary commission for social, family and education issues; Sejm RP, 2018)

The narratives concerning the admission or non-admission of asylum seekers at the Belarusian-Polish border reflected several problems noticed in the asylum system and lack of

⁶³ For instance, the Polish Police use video monitoring in case of interventions (police body-worn cameras).

relevant migration policy. Among others, it reflected the dual role of the Border Guard at the border: protection of the border and preventing irregular migration as well as receiving the asylum applications. The latter task should be only technical, whereas the situation at the border, as presented in the above narratives, proved that in practice the task involved making decisions who deserves to apply for international protection at the border, and who does not.

In a broader sense, which relates not only to the situation of asylum seekers at the border with Belarus, the issue of admitting asylum seekers and the need to revise Poland's readiness to provide social assistance and protection to all those in need became discussed more frequently after the Russian aggression in the eastern part of Ukraine in 2014. The military conflict in Ukraine also raised security concerns which had an impact on migration and asylum policies in Poland. In 2014, Ukrainian citizens became the second group of persons applying for international protection (the first place was occupied by citizens of Russia; mostly from Chechnya). The number of applicants for international protection arriving in Poland from Ukraine remained relatively small (it accounted to 7,000 between 2014 and 2018; Urząd do Spraw Cudzoziemców, 2019); especially in comparison to the numbers expected. Nevertheless, Ukrainians as asylum seekers in Poland appeared in the political debate.

Citizens of Ukraine were presented as those who are the first to get support from the Polish state due to geopolitical reasons. And in the time of the greatest tensions regarding Poland's participation in the EU relocation programme, taking in thousands of 'refugees' from Ukraine was given as a justification of Poland's objection. During the debate in the European Parliament in January 2016, Beata Szydło, that time the Prime Minister of the Polish government, was commenting on the Polish affairs within the EU and referred to the government's stand on migration: *You are talking about migrants – it is a serious problem. Poland has admitted approximately one million refugees from Ukraine. People who nobody wanted to help. This is something we also need to talk about* (Kancelaria Prezesa Rady Ministrów, 2016). In fact, the given number could not mean the number of refugees; since at that time Poland granted the international protection status to only singular cases of asylum seekers from Ukraine, and the number of applicants (mentioned above) was tens times lower than the declared million.

Nevertheless, this quote became a symbol of Poland's narrative concerning approach to support for asylum seekers 'knocking' at the eastern border and a symbol of Poland's contribution to managing migratory pressure from the East (as it was already stated above). A similar narrative was presented by the next Prime Minister, Mateusz Morawiecki, who said that thousands of refugees from Ukraine are not refugees in formal terms only because the Polish state offered them a legal path to apply for work and residence permits (see Prończuk, 2018). Even with the time passing and the increasing scale of immigration to Poland, the repeated information on Poland's openness towards asylum seekers from Ukraine could not be confirmed by the official numbers of persons applying for asylum or granted any kind of protection (see Szulecka et al., 2018, pp. 15–18). These numbers could be assigned to economic migrants benefitting from quite liberal system of accessing the labour market in Poland, and thus having a relatively easy access to visas as documents allowing them to cross the border.

5.4 Concluding remarks

The reality of migrants' inflow to Poland was dominated by citizens of Ukraine coming to work. Meanwhile, the public debate was focused on the arrivals of migrants from the Middle East or Africa, namely citizens of countries almost non-existent in Poland's immigration statistics (e.g. Syria, Iraq⁶⁴). Thus, the imagined inflow to Poland rather than the real one attracted attention. To some extent this was the result of the media coverage of the 'migration/ refugee crisis' in Europe. The increased level of negative attitude towards immigrants, reported cases of aggression between natives and foreigners and the spreading fear of uncontrolled inflow of asylum seekers compelled some public institutions (such as the Ombudsman, the Office of Foreigners) and social organisation to intensify efforts in raising societies' awareness and demonstrating solidarity with people in need (especially victims of the Syrian war) as well as warning against migration policy built on politics of fear (see Urząd do Spraw Cudzoziemców, 2015). However, in practice the initiatives assuming welcoming attitude towards asylum-seekers (such as the initiatives of several cities aimed at admitting refugees⁶⁵) were not accepted by the government and part of the society. Probably, due to the polarisation of stands towards immigrants and asylum seekers and politicisation of this issue, each initiative linked to admitting asylum seekers was immediately criticised as irresponsible and leading to uncontrolled increase of the number of asylum seekers in Poland. At the same time, initiatives aimed at dealing with humanitarian challenges and migration pressure through solving problems outside Poland or keeping them away from Poland's territory were often deemed inhuman and a breach of solidarity.

Asylum seekers appeared in the narratives in different roles: as those in need 'knocking' at the Polish 'gates' (meaning here the eastern border) and refused entry or those refused admission despite previous commitments within the EU relocation programme. Since 2015, the narratives coming from the right-wing circles have been dominated by anti-refugee and also anti-immigrant sentiments. The moral obligation to help those in need has been perceived as conditional. The necessity to protect the society and prevent arrivals of persons that may pose a threat to the state security, public order, welfare system or national identity has been seen as more important than humanitarian concerns (see e.g. Wrzosek, 2016).

⁶⁴ For the statistics and main overview of migration situation in Poland see the previous RESPOND report for Poland (Szulecka et al., 2018).

⁶⁵ In 2017, presidents of several main Polish cities (11 cities out of 16 cities that are capitals of voivodeships), including Warsaw, Gdańsk, Wrocław, Łódź, Kraków, Białystok, Lublin, Poznań, declared their openness towards cooperation with the state authorities and social organisations in admitting migrants (in general), in order to prevent separation, ghettoization and assure social cohesion (Portal Samorządowy, 2017).

6. Implementation

The following part of the report reflects on practices in application of national and EU laws in the area of border management and migration control. It presents the key actors, main areas of their activity and cooperation, as well as the issues identified as crucial in implementing the law. It is mostly based on the result of previous studies and on the analysis of 26 qualitative interviews conducted both at meso and micro level within the RESPOND project (see also Appendix 1).

6.1 Key actors

The institution responsible for the border control is the Border Guard which also conducts controls within the territory of Poland (with regard to the legality of work and stay of foreigners). The Border Guard conducts border controls at land border crossing points (BCPs), monitors border areas and border lines outside BCPs at the external EU border, and carries out border control at airports and seaports (with regard to travels both within the Schengen/EU and from/to non-EU territory). At the border, the Border Guard and the Custom Service perform control tasks regarding the transport of goods. Nevertheless, travellers crossing external border are also checked by the Custom Service. This also relates to persons who come to BCPs with the intent to apply for international protection. At airports, passport/ ID checks are conducted by the Border Guard. The security check is performed by a security company belonging to the company managing the airports, responsible for protection of the airport (Airport Security Guard – *Służba Ochrony Lotniska*), and supervised by the Border Guard.

The Border Guard is responsible for control activities as well as prevention of unlawful border crossing or execution of return orders, Dublin transfers and readmission. Within the return procedure it decides about granting permit for stay due to humanitarian reasons or permit for tolerated stay. It runs and supervises detention centres (there are 6 centres of this kind in Poland) and the pre-trial facilities for foreigners. Decisions on placing non-nationals in detention are taken by the regional courts.

The National Labour Inspectorate controls the legality of work performed by migrants. However, competencies of this institution are limited to checks at employers' place which in the Polish legal context means persons or companies that have at least one worker with a work contract signed (no commissioned work). Thus, the inspectorate is in general absent in private households employing domestic workers, small businesses or agriculture, where the forms of hiring workers remain often outside the formal economy.

The controls of the legality of stay may be also conducted by other institutions responsible for the public security and public order which is the Police and municipal guard (*straż miejska*). These institutions may control the legality of foreigners' stay within the scope of other activities performed in order to reveal offences, identify offenders and victims, prevent offences or other threats to public security and legal order. When these institutions reveal infringements to the administrative law (e.g. lack of valid residence permit or of visa authorising to stay in Poland), then they pass the given case to the Border Guard. If penal provisions are concerned, such as those on false documents, then both the Police and the Border Guard may continue proceeding with the person involved. With regard to border management and migration control this is mostly the Border Guard who performs control activities and executes sanctions. The

other mentioned institutions may only support control activities for which the Border Guard is responsible.

The Voivodes' offices operating at the regional level, supervised by the Ministry of Internal Affairs and Administration with regard to foreigners' issues, are responsible for processing applications for residence and work permits. The mentioned Ministry supervises the Border Guard and the Police. A special department within this Ministry is also responsible for coordination of work aimed at elaborating migration policy and – after 2015 – the reform of the asylum law. The Ministry of Foreign Affairs is in turn responsible for implementing visa policy and the supervision of the Polish embassies and consulates abroad. Also, it establishes international cooperation with other countries. This cooperation is aimed at the improvement of readmission procedures or facilitating the issuance of visas for the citizens of certain countries.

The main responsibility of the Ombudsman is the protection of fundamental rights and requesting relevant institutions to change laws or practices in order to improve the standards of fundamental rights guarantees. The activity of the Ombudsman office became visible in the 2010s, along with the growing number of migrants coming to Poland and challenges with assuring access to fundamental rights at the eastern border. In the context of problems experienced by foreigners attempting to enter Poland and apply for international protection; actions taken by the Ombudsman became more visible and more frequent in response to growing tensions at the border linked to refusals of entry issued to foreigners declaring their will to apply for international protection. Due to the fact that Poland is a destination also for migrant children and minor asylum seekers (usually guarded by their parents or at least mother); the Ombudsman for Children's Rights is also an important institution in the monitoring of the procedures applied towards children. However, in the public discourse the role of this institution is seen as insufficiently noticeable.

There are several social organisations – NGOs, active in Poland, providing migrants, refugees and asylum seekers with legal advice and assistance in everyday adaptation in Poland. They also conduct studies of certain issues identified as troublesome (such as restricted access to the submission of applications for international protection at the border). Among the main organisations active in providing asylum seekers and refugees with advice or involved in the monitoring of how immigration and asylum laws are implemented the following organisations should be mentioned: Helsinki Foundation for Human Rights, Association of Legal Intervention, Ocalenie Foundation, Institute of the Rule of Law Foundation, The Halina Nieć Legal Aid Centre, Refugee.pl Foundation, and Caritas Poland. The latter one in 2018 became the partner of the Border Guard in providing assistance to persons requiring support, e.g. those released from the detention centres. Both non-governmental bodies and the Ombudsman Office have been involved in the monitoring of the way international and EU law is applied in Poland during the border control, return procedures or Dublin transfers, how fundamental rights of migrants and asylum seekers are guaranteed, and how public bodies act in the area of migration management. In some cases, this activity contributed to changes in practices (see more in part 6.2).

Institutions as European Asylum Support Office or the Fundamental Rights Agency and Frontex take part in sharing or building knowledge⁶⁶ and training for practitioners. The involvement in the monitoring of implementation of the law and other standards should be also mentioned in the context of the UNHCR Office's activity in Poland. In turn, the International Organisation for Migration is more active in providing information on migratory phenomena and practical information for migrants, employers, receiving societies, trainings etc. It has also provided support within the assisted voluntary return programmes.

6.2 Key issues with implementing border and migration controls

This part may be treated as the representation of the challenges linked to the implementation of policies and laws in the area of border management and migration control. However, it does not cover all the practical issues regarding the application of laws described above. It is rather focused on the topics that have been more thoroughly discussed either in the interviews with experts and asylum applicants within the RESPOND project or in the practice-oriented reports published by NGOs or public institutions.

6.2.1 Pre-entry

Visas

In the context of pre-entry measures, the role of visa policies in admitting third-country nationals and in preventing irregular migration should be discussed. One of the issues mentioned by both experts and asylum seekers are problems with obtaining visas by citizens of particular countries of origin; associated with a 'high risk'⁶⁷ of irregular migration in the Polish or EU context. Citizens of most Central Asian and Southeast Asian countries (e.g. Vietnam, India and Pakistan) in particular find it difficult to obtain visas allowing them to enter Poland. The worsening social, economic or political situation in such countries as well as the development of recruitment networks (with already established links with partners in Europe) seem to convince the Polish authorities that there is a need for strict control of arrivals from these countries (such statement was confirmed by the interviews of representatives of the Border Guard).

According to the Border Guard's statements, the practice of issuing visas by other EU/Schengen countries does not help in preventing irregular migration. Third-country nationals apply for visas in the consulates where they think or know their application will be successful, and not in the consulates of the countries which are their planned destination. Having Schengen visas, they may travel to other countries, and thus they reach the planned

⁶⁶ The studies on the treatment of persons at the external border in Poland and on respect for human rights are some examples of the involvement of the Fundamental Rights Agency in gathering evidence that should serve the purpose of creating migration and asylum law and practice, see e.g. Fundamental Rights Agency of the European Union, 2018.

⁶⁷ This is usually assessed based on the statistics of the apprehensions for unlawful border crossing or revealing the illegal stay within the territory of Poland. Also, the analysis of the situation in the countries of origin as well as of the patterns of mobility and of legal adaptation in Poland of persons originating in these countries may be taken into account in such assessment. Such assessment is made by the Border Guard; based on data provided by various institutions, including consulates.

destination where they apply for residence permits. In such cases visas are treated as 'tickets' to the EU; not as documents confirming the real purpose of the migrants' stay. Although such strategy applied by migrants is lawful, by the Border Guard of Poland it is perceived as an abuse, first step to irregular migration. An example of such perception was given in the interview with the representative of control institutions:

(...) one can notice the phenomenon of the so-called visa tourism here. In short, it looks like this: these foreigners, citizens of India apply for tourist visas in the French embassy, and they come to Poland and in a very short time they apply for a permit for temporary stay and work in Poland. We noticed this a few years ago and we try to counteract these abuses. But this group [of foreigners using visas issued by other countries to come to Poland and applying for residence permits] is more and more noticeable. And it will grow, the scale of illegal foreigners from these countries such as Nepal, India and Bangladesh.

Are these necessarily abuses?⁶⁸

These are abuses. At least we interpret it this way due to a simple reason. A foreigner applying for a tourist visa for two or three days at the French embassy, and he is coming to us [Poland] on the first day of his presence in the EU, and is going to a Voivode, and is submitting an application for a permit for temporary stay and work, and indicating the economic element as the main one – we interpret this as an abuse. This is the use of visa channel for completely other purposes than declared. In these cases, we react, annul this visa and withdraw it. There is a certain decision issued and we initiate the return procedure. (PLMZBG1)

Importantly, the quite liberal law on accessing the Polish labour market by the citizens of the neighbouring non-EU countries (mostly Ukraine) allows for visas to be issued based on declarations of intent to employ foreigners. Although such visas also guaranteed easy access to the Polish labour market, they were not always used for this purpose. Migrants travelled with them to other EU countries for work or accepted jobs other than the ones they were allowed to perform. In Poland, migrants still could have a chance to stay lawfully based on these visas and perform work other than declared, provided that the new employers registered the declarations of employing them (Szulecka, 2016b).

It seems that the law enforcement agencies assess the probability of misuse of the visa procedures taking into account the countries of origin. If they are associated with 'high risk' of irregular migration (and potential problems with executing return orders), then visa applications are likely to be rejected. Moreover, it is also probable that migrants will find an alternative way of getting to Poland or the EU, in case the visa channel is 'blocked'. An interviewee from Syria, granted international protection reflected on difficulties regarding obtaining a visa at the beginning of his journey to Europe:

It is very hard to get the visa which means travelling in a legal way (...) my (relative) is living here. He tried to send us invitations to the embassy, but you know that the Polish embassy was closed and is still closed in Syria because of the war. So, for all Syrians, if they want to travel somewhere, they should travel to Lebanon and go to the embassy in Lebanon to get a visa or invitation cards. So, he tried to send us: for me, my sister

⁶⁸ Expressions in bold are questions asked by the interviewer.

and my mother invitations. (...) every time, they didn't accept that, after so many interviews and visits in this embassy of Lebanon. So, after this, we were thinking that for all Syrians (...) tried to find other ways, illegal ways, in the sea through Turkey, Croatia or Italy. It depends on the way, illegal way. (PLMISy25)

Importantly, for the citizens of some countries it may be easier to get visas from the embassies of non-EU states, such as the Russian Federation. Thus, they have part of the journey relatively safe and compliant with the law due to obtained visa. However, if the travel to the EU is continued in an unlawful manner this usually requires high cost and efforts. In the case of the Vietnamese, there is very scarce possibilities to get visas to Poland. At the same time their determination to leave their country of origin and head to Europe (also driven by recruiters and smugglers' networks) causes many citizens of Vietnam to enter the EU illegally. However, the beginning of their journey is often compliant to the law; due to visas issued by non-EU countries (Dąbrowski, 2014; see e.g. Iglicka and Gmaj, 2008, pp. 11–12). Then they usually get to Poland from the territory of Lithuania, which they reached after trespassing the Russian Federation (see e.g. Szulecka, 2016a). The unlawful entry makes the stay irregular, and this may contribute to a high dependence on co-ethnics who can provide both support and contribute to the risk of exploitation (see e.g. Dąbrowski, 2014; Szulecka, 2012).

Another issue linked with visas worth indicating is the insufficient capacity of consular offices. This results in long queues to submit a visa application or delays in getting decision regarding this application. In case visa applicants have concrete plans regarding work or study, the administrative process of visa issuance may cause that these plans cannot be realised (see also Górny et al., 2018, pp. 89–125). In some countries, there is the problem of the number of applications exceeding the capacity of the consular offices. For many years it has concerned mostly Ukraine. However, since 2018 it refers to India and the embassy in Delhi serving other countries, such as Nepal (Cedro, 2018). Such situation has two different consequences. Firstly, reflecting mostly the situation in the Polish consulates in Ukraine is the lack of proper control within the process of visa issuance. This may mean lack of time for verification of documents or mistakes that can later bring problems at the border. The expected solution to weaknesses of verification procedures and capacity is the interoperability of various information systems (see also Szulecka, 2016a). As far as those EU large-scale databases (SISI II, VIS) are concerned, no problem has been identified in the RESPOND study. However, the interoperability of the national databases and access to them for various public institutions require improvement.

PNR data

Although the law transposing the EU directive regarding PNR data was introduced; its full implementation requires time. According to the law on PNR, the carriers were given time to adjust their technical means to the conditions stated in the regulations. They have been obliged to report to the Border Guard to be enlisted as air carriers covered subjected to the law on PNR data. The time for adjusting the systems for the transfer of PNR data amounts to six months. Poland informed the European Commission on applying the Directive 2016/681 to intra-EU flights⁶⁹.

⁶⁹ See the list of countries that have taken the same decision in *Passenger Name Records (PNR) — List of Member States who have decided the application of the PNR Directive to intra-EU flights as referred to in Article 2 of Directive (EU) 2016/681 of the European Parliament and of the Council on the*

Carrier sanctions

The fact that they refer also to international road carriers in practice of applying the provisions should be emphasised. As it stems from the study carried out with the border guards in Poland, the law on carrier sanctions and giving the competence for executing them to the Border Guard can be seen as a potentially effective legal measure aimed at preventing irregular migration from Ukraine. This country is an important country of origin and transit country of many non-nationals coming to Poland. The fine is quite high in the context of the economic situation of international road carriers based in Poland or Ukraine. Moreover, the law allows for the seizure of the vehicles in case the fine is not paid (in the way of administrative execution process); which is a severe sanction for smaller companies⁷⁰. However, many Ukrainian citizens do not travel with formal international carriers, but with small, local companies or informal carriers⁷¹, which means that the administrative fine is not applicable.

6.2.2 ‘At the border’

Changes in the legislation and in practice

In the recent period, the issue that raised concerns with regard to border control was the change of the Schengen Border Code in 2017 assuming the thorough checks of third country nationals also at the exit, and of EU citizens at both entry and exit direction. It contributed to the fears among both border services and passengers concerning potentially too long waiting periods for border check; especially at the airports (Komenda Główna Straży Granicznej, 2017). All the improvements in border control require good operability of databases and absence of technical problems. Only this can mitigate the effects of the restrictions introduced because the check against the databases is a key element of border control.

Access to asylum procedure at the land border

As far as the access to the territory is concerned, the restricted access for asylum seekers should be mentioned. It concerns in particular the already mentioned border crossing point in Terespol/ Brest (Polish/ Belarusian border), and to some extent in Medyka/ Shegynie (Polish/ Ukrainian border). The reported ‘push backs’ at the border, issuing refusals of entry for persons coming to Poland without valid visas, mean in practice the denial of the right to apply for international protection. The problem had been observed since at least 2016, and had

use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (If a Member State decides to apply this Directive to intra-EU flights, it shall notify the Commission in writing. A Member State may give or revoke such a notification at any time. The Commission shall publish that notification and any revocation of it in the Official Journal of the European Union) (OJ C 196, 8.6.2018, p. 29–29).

⁷⁰ Information based on fieldwork conducted in 2015 within the project titled ‘SIC – Module Multi-task System of Identification of Foreigners with a Module on risk analysis of victims of trafficking’ conducted between 2014 and 2016 by the Institute of Law Studies, Polish Academy of Sciences with the Law Faculty of University in Białystok and Medcore company, financed by the National Centre of Research and Development in Poland; main results of the study focused on irregular migration are available in: Szulecka, 2016a).

⁷¹ Informal carriers are private drivers using mini-buses to offer their services. Their services are not registered as formal companies. Providing services is based on informal, flexible arrangements with persons interested in using this means of transport to cross the EU border.

attracted attention of the Commissioner for Human Rights as well as NGOs and attorneys⁷² who tried to improve the situation of asylum seekers denied entry to Poland and being at risk of removal to countries where they may face violence or torture. They also led to the involvement of the European Court of Human Rights (ECtHR) through asking for issuing interim measures on the prohibition of removal of asylum seekers who were 'pushed back' to Brest and could not submit an application for international protection despite the intent to do so, expressed during the border control. However, despite several interim measures imposed by the ECtHR on the Polish authorities the practice at the border has not changed. Moreover, the involvement of the social organisations or the attorneys that contributed to the judgments of the national courts questioning the refusal of entry and bringing the cases to ECtHR has not led to the change of this practice. It can be said that judgements or decisions that could lead to the decrease of issuing refusals of entry are ignored by the Border Guard and the ministry supervising it. This contributed to the problem of asylum seekers' belief that contacting an NGO may improve their situation (see also Helsinki Foundation for Human Rights, 2019, p. 10).

The problems at the border relate to the fact that the Border Guard is the key institution in the asylum system as well as border management and migration control. It receives applications for international protection at the border (air, sea or land). At the same time, this institution is responsible for border control. Thus, the Border Guard plays a dual role at the border; it controls persons crossing the border (and their documents) and receives applications from those who declare seeking protection. Importantly, the Border Guard with regard to asylum applications is not supposed to assess the declarations of intent to apply for asylum or the applications themselves. However, in practice the Border Guard decides on who is or is not allowed to apply for asylum. During border checks they ask non-nationals about their reasons for coming to Poland without visas or other documents allowing them to enter Poland. If they are informed about the will to apply for asylum, they make the decision whether to admit these persons or not. If the asylum seekers are not allowed to apply for international protection, they are refused entry and sent back to Belarus. According to statements provided by the Border Guard representatives, the officers have reasons to issue refusals of entry if there are no clear indicators that the person intends to apply for international protection:

These reasons are not expressed in the way which directly implies "I want to apply for international protection" but they are expressed in completely different ways. And the officers do not ask the person who declare that they want to join their families or get medical treatment etc. whether their intent is to benefit from international protection.
(PLMZBG1)

The above quote illustrates the stand of the Border Guard that the officers at the border are not obliged to clarify whether the persons want to apply for protection or not. Such an approach could explain the decisions to refuse entry to all those who do not clearly ask for asylum during the border check. However, there is evidence given by both asylum seekers and lawyers or social activists supporting them that the declarations of the will to submit an asylum application are expressed during the border check, but they are simply 'not heard' or ignored by the officers (see e.g. Chrzanowska et al., 2016; Górczyńska and Szczepanik, 2016).

⁷² From the Warsaw Bar, see also Helsińska Fundacja Praw Człowieka, 2017b.

The problems of 'hearing' or no declarations of the will to apply for international protection can be officially confirmed only by the Ombudsman office whose representatives are the only ones (since 2015) who were allowed to watch the second line check for persons with no visas⁷³. Thus, they could hear what both the border guards and the non-nationals say during this check. Since at the border crossing point in Terespol/ Brest there has been no written protocol⁷⁴ summarising this check signed by the person controlled; there is no possibility to find out what was said and how it was heard by the officers. The decision on who is allowed to enter Poland and apply for asylum is taken during the activity which is not transparent⁷⁵. If refusals of entry had been issued to particular foreigners, this could have been more understandable that the Border Guard perceive the person as undesirable on the Polish territory due to the lack of documents authorising him or her to enter Poland and stay on its territory. However, so far many accounts of social activists or asylum seekers prove that people are 'pushed back' many times until they are finally let in and their applications for international protection are received. According to the Border Guard, they are let in because they finally ask for asylum. According to the Ombudsman, social activists and asylum seekers asking for protection at the border it is hard to find a reason why some potential asylum seekers are let in; whereas others are refused entry if they repeat the same reasons for seeking protection every time they appear at the border.

One of the asylum seekers; who entered Poland with a visa with other travellers by car through the road border crossing point in Terespol, stated that the situation of all those who wait for their 'turn' to be let in at the railway border crossing (chosen by the majority of asylum seekers coming to Poland) is very difficult:

In Terespol people have great stress and are waiting for months to cross the border. In our case it was much easier; though more expensive. We just got from one point to another by car and did not have to get nervous. People who try to cross the border in Terespol sometimes feel desperate. They cannot go back home, and they have a certain sum of money with them. They spend all the money on their attempts to cross the border. They run out of money and start calling home to ask relatives to send them more money or they go to another country; where they had not planned to go. People have such terrible fate in connection with this. (PLMICH05)

Importantly, at the border crossing point in Terespol/ Brest the procedures related to receiving asylum applications by the border guards are adjusted to the time table of the local trains between Brest and Terespol. For years, the asylum seekers have been choosing the morning train that arrives at Terespol border crossing point at around 8 a.m. and departs to Brest

⁷³ The Ombudsman office is very active in responding to the growing tensions at the border regarding reduced access to asylum procedure. It monitors the situation and invites other parties to discuss possible solutions, see e.g. an account of the meeting of experts focused on the discussion of the necessary steps to be taken at the border crossing point in Terespol: Biuro Rzecznika Praw Obywatelskich, 2017.

⁷⁴ The written protocols were used at the border crossing point in Medyka/ Shegynie. However, after appeals to introduce such protocols as obligation at the border crossing point in Terespol/ Brest, the Border Guard decided to waive this obligation at other crossing points because it did not find any legal basis for obliging border guard officers to prepare such protocols.

⁷⁵ Not recorded in any written or official form; only in the form of notes that are not available for foreigners, lawyers etc.

around noon.⁷⁶ In this time, the border guards check the documents of all the visa holders and talk to those who came without visas and declare that they want to apply for international protection. There may be several hundreds of passengers in this train every day. The border guards carry out short informal interviews to learn what the reasons are for entering Poland. After this they decide who is refused entry and who will be allowed to apply for asylum (see also Dziedzina and Stryjek, 2013). The Border Guard organize their activities in a way to take all the decisions before the local train departs. Thus, those who are refused entry are sent back to Belarus on the same day by the local train. They wait for the train in the waiting room of the terminal which is closed for the time of border control for those who do not possess visas. According to various sources including the discussions at the Migration Governance Network meeting in December 2018 (MGN1); the time devoted for the control duties is too short to allow for the individualized approach and fair procedures. Especially if the number of potential applicants is very large; as it has been in the past e.g. in 2013, 15,000 applicants were reported in Poland. Since 2017, the number of applicants has been decreasing (in 2017, there were 5,000 applicants; see more Szulecka et al., 2018, p. 16). In practice, nowadays, a few families appear at the border to apply for asylum each day. Although the space where the border control is conducted has been enhanced significantly, it is still considered improper in terms of serving passengers. Each day, the terminal is closed for few hours and inaccessible for passengers. This is caused by the fact that the Border Guard tries to secure the return of the persons refused entry on the same day. Also, initial phase of the second line border check conducted in common space, in the presence of other people, is seen as not allowing for a respectful manner of treating persons willing to apply for international protection.

According to information delivered by NGOs the persons being refused entry in Terespol are sent back by train to Brest; they stay there until another attempt at border crossing. In December 2018, there were approximately 150 (200 at maximum) persons who were refused entry to Poland and were waiting for another attempt to cross the border and apply for asylum again. This number was lower than the number of persons trying to get to Poland to apply for asylum in the previous two years (Human Constanta, 2019, p. 3). People seeking asylum and refused entry to Poland stay in Brest for at least a couple of days. Some of them stayed there for two months. According to the Belarusian non-governmental organisation providing legal and humanitarian aid in Brest, in February 2019, there were two families in Brest who stayed there for five months and from time to time tried to cross the border to apply for asylum in Poland. The number of attempts to get to Poland and to submit an application for international protection depends on the period of stay. Usually asylum seekers try to cross the border every two or three days and some of them do it every day. The maximum number of attempts recorded between September and December 2018 among asylum seekers interviewed by the Belarusian NGO was 40 (Human Constanta, 2019, pp. 9–10). Importantly, the Belarusian NGO reported in the second half of 2018 that the Belarusian authorities decided on shortening the permitted stay in Belarus; especially for those who had more than 10 unsuccessful attempts to get to Poland and apply for asylum. In some cases, persons with the shortened period of the permitted stay in Belarus were forced to return to Russia by the authorities of Belarus (Human Constanta, 2019, p. 12).

⁷⁶ The timetable has been changing seasonally. However, it was always the morning train that was chosen by asylum seekers. Those who were refused entry were sent back to Brest in Belarus by the same train departing Terespol around noon.

Since 2016, despite the involvement of the Ombudsman, professional lawyers and social organisations, the situation at the border crossing point has not changed significantly. The main observation, not raising any controversies, is that the number of asylum seekers coming through this border crossing point has decreased visibly. The practice of border check towards persons coming without visas has not changed. The Border Guard claims that it acts in compliance with the law concerning border control and obligations for non-nationals who want to enter Poland. Other bodies indicate infringements to the law and no respect for international commitments for Poland as a signatory of the 1951 Geneva Convention. In particular, the rule of non-refoulement is not respected; as emphasised by the human rights defenders.

The results of attempts to make a legal or social intervention at the border were published⁷⁷ and shared with competent authorities, at the EU level, and the society in general. These attempts were also aimed at influencing the legislation or institutional practice, in the form of letters to the Ministry of Internal Affairs and Administration calling for the introduction of the obligation to use written minutes (*protokoły*) during the second line check of persons without visas appearing at the border crossing points with the intent to apply for asylum. This was also a suggestion for the Ministry to introduce an institution for 'making an asylum application' (according to article 6 paragraph 1 of the Asylum Procedures Directive⁷⁸), since the Polish legislation refers to the registering of the application and does not regulate the phase of 'making' an application for international protection. However, the Polish authorities claim that the legislation in force (the Law on Protection) sufficiently regulates the process of applying for international protection as the application and submitting is simultaneous process (Białas et al., 2019, pp. 16–17).

As far as the legal consequences of the mentioned interventions are concerned, in December 2018, there were four cases pending before the ECtHR communicated to the Polish authorities. The cases related to refusing entry to asylum seekers at the border crossing point in Terespol. Three of them concerned Chechen nationals, and one a citizen of Syria. In these cases, the ECtHR granted interim measures indicating to Poland's authorities that the applicants should not be sent to Belarus. However, as the NGOs and lawyers that know the cases confirm that the interim measures were ignored at the border and asylum seekers were not let in to Poland. According to the Ministry of Foreign Affairs, removal of a person from Polish territory is possible only when this person was previously allowed to enter. Thus, for the Ministry the interim measures requesting the Border Guard not to remove persons who were refused entry are not applicable. After the intervention of the Ombudsman, asylum seekers covered by one of the cases were allowed to enter Poland and submit an application for international protection (Helsinki Foundation for Human Rights, 2019, p. 15). For the Border Guard and the Ministries responsible for internal and international affairs, the court decisions have not revealed a clear statement that the practice at the border is unlawful. The case law

⁷⁷ In order to draw attention of international bodies and shed some more light on the situation of admitting asylum seekers at the eastern EU external border, the information was usually published in Polish and English. This concerns for instance the reports by the Association of Legal Intervention and Helsinki Foundation for Human Rights, summarising observations collected through travelling by train across the border and undergoing border control at the railway border crossing point in Terespol/ Brest, and indicating practices of the Border Guard applied there (Chrzanowska et al., 2016; Górczyńska and Szczepanik, 2016) or the initiative of attorneys from the Warsaw Bar undertaken in Terespol in March 2017 (see Helsińska Fundacja Praw Człowieka, 2017b)

⁷⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60–95).

does not bring one binding direction of conduct, as the interviewed representative of the Border Guard stated. For the bodies involved in monitoring the access to asylum procedure, the legal interventions brought the clear statement that the practice should be changed (see e.g. Białas et al., 2019). However, participants of the Migration Governance Network meeting in Poland and individual interviewees argue that this has not significantly improved the situation of asylum seekers at the land border as the authorities are abusing the asylum procedure, which to some extent may be true. They equally argue that all people have the right to apply for protection, and this right should not be violated, especially in cases there is evidence that people may experience violence or persecution in their countries of origin or transit countries that are not safe for them.

6.2.3 Internal controls

Control of the legality of work and stay

With regard to work, internal controls may be also conducted by the National Labour Inspectorate. However, the scope of Inspectorate's competences allows only for the control of employers who hire workers on work contract basis. Thus, immigrants running their own businesses, self-employed or working on other basis than work contracts (e.g. commissioned work contract or specific task contract) may be only⁷⁹ controlled by the Border Guard. Sometimes the above-mentioned institutions cooperate with each other, especially if the expected number of migrants working at a given workplace is big or the Inspectorate needs to guarantee security of control activities. The Police also serves as the institution assuring safety of control activity performed by labour inspectors. However, the presence of the Police is connected mostly with security reasons⁸⁰, whereas in case of controls carried out in cooperation with the Border Guard, the latter institution also actively conducts control activities (and has proper equipment and access to relevant databases to do this). For migrants, it means that revealing work not compliant with the law or conditions of documents possessed by non-nationals may result in a return order being issued. For migrants from the neighbouring countries, the return seems not as troublesome as lack of legal possibility to re-entry Poland or the EU countries.

According to experts and asylum seekers interviewed, internal controls are often conducted on public transport (especially trains) that go from Poland to Germany or the Czech Republic. Further, the Polish border guards also conduct controls on ferries connecting Poland with the Scandinavian countries. However, these are random controls of the legality of stay. They are not connected with the reintroduction of border control on internal borders by Sweden in 2015. Within the monitoring of the roads, private cars, taxis as well as other means of road transport (mini buses, international buses) may be checked. Based on the press releases published by the Polish Border Guard, apprehensions near the internal border concern mostly the border with Germany. This section of the border is crossed by both asylum seekers trying to get to Germany and irregular migrants entering Poland from the East (often from Lithuania).

⁷⁹ However, if at a particular workplace there are non-nationals who have different kinds of contracts, the National Labour Inspectorate will also control their legality of work and the compliance of their conditions of work and type of contract with the law in force.

⁸⁰ Police serves only as an institution securing the place of control, preventing escape of persons to be control or other problems, such as potential arguments or use of force.

Taxis or private road transport are used usually by families. Individuals try public means of transports, such as trains or long-distance buses (see more in Szulecka, 2016a). One of the asylum seekers interviewed, having Russian citizenship and Chechen origin, was travelling alone through Poland after he submitted an application for international protection at the Polish-Belarusian border in Terespol. He wanted to get to Germany and decided to go there by train.

I came to Warsaw by train and there I bought a ticket to Berlin. (...) I left for Berlin and at the border, one hour before I would have reached Berlin, I was taken off the train. (...) They didn't arrest me but told me to go back to my camp. I came back to Warsaw. Then I had to go to Biała Podlaska. (...) After you cross the border, they give you two days in Poland [to get to the centre]. (PLMICH12)

With regard to forced migrants it seems that the check of the legality of stay is most often carried out in the border areas, and on the main roads connecting Poland with the countries where asylum applicants would like to go or are encouraged to go (by friends, relatives or by paid intermediaries), e.g. Germany. Such check is also conducted in the areas of the stay and reception centres for asylum seekers. And this activity is mostly aimed at detecting asylum seekers who did not leave Poland despite negative decision to their asylum application and obligation to leave Poland within a month.

Detention of people from vulnerable groups

Although the law states that migrants who experience violence or trauma should not be detained for administrative purposes, in practice victims of violence and post-traumatic disorders are detained. This may have serious consequences for their well-being and psychological condition. One of the cases communicated to the European Court of Human Rights concerned a Tajik family (parents with two children) who attempted to apply for international protection in Poland. After several refusals of entry, eventually the family entered Poland from the territory of Ukraine and submitted an application for international protection, and immediately was placed in the detention centre. The authorities refused to grant international protection and decided about issuing a return order for the family. During these procedures, the family remained in the detention centre. The psychosocial condition of the female asylum seeker was very poor (due to serious stress experienced upon apprehension in the home country) and was worsened in the detention centre. Neither the Border Guard nor the court did not take into account opinions of psychologists stating: 'that detention in the closed facility was impeding the realisation of the basic developmental needs of the applicants' children and was a stress factor that disturbed their sense of security' ("M.Z. AND OTHERS v. POLAND" n.d.). This led to the recommendation of placing the family in an open facility. Despite the suicidal thoughts of the woman, the Border Guard requested prolonging the detention period. The court refused this and after 10 months of detention the family was released. However, before that, both the mother and children were affected negatively by conditions linked to detention. This could have avoided if the procedure of identifying victims of torture and serious violence was properly conducted by the Border Guard and its results taken into account by the court. Also, the risk of absconding should not be exaggerated (Helsińska Fundacja Praw Człowieka, n.d.).

The calls for the improvement of the procedures aimed at identification of victims of torture and violence at the border and in the detention centres have been repeated for a long time by the NGOs, UNHCR, and the Ombudsman. There is a need for timely identification that could

prevent detention or apprehension in the circumstances that may cause trauma for people already having experienced violence or torture. There is a special procedure of identification of victims of violence used by the Border Guard. However, it does not allow for immediate release of the identified persons from the guarded centres (Helsinki Foundation for Human Rights, 2019, p. 10).

Detention of children is a highly criticised issue. All NGOs dealing with asylum seekers emphasise the problem of detaining children, and the harm this may cause for all families or unaccompanied minors (see e.g. Centrum Pomocy Prawnej im. Haliny Nieć, n.d.; Sieniow, 2016). Despite common consent (especially between social actors and the control institutions) that children should not be placed in detention; both courts and the Border Guard see detention of parents with minors as a necessary step to secure certain procedures (confirming the identity, executing return order or executing transfer to another EU country). Both the planned legal changes, and investments in the infrastructure of the detention centres assume that children will still be detained.

Unaccompanied minors are placed in the centres that are not prepared to deal with minors from other countries, speaking foreign languages etc. In the past, there was one place in the capital city, Warsaw, where the unaccompanied minors were placed, and the personnel were prepared to work with such persons. According to NGO activists, if there is no specialised centre, minors are placed in random care centres. If such centres lack experienced personnel or personnel with language competences, there is a risk that minors will feel no interests in their situation and they will escape such centres. Thus, their asylum procedure is discontinued. In 2018, unaccompanied minors were usually placed in the intervention centres in Kętrzyn or in Warsaw. Afterwards they were released from the detention centres in these localities due to their age (Helsinki Foundation for Human Rights, 2019, pp. 35–36).

Conditions in the detention centres

Conditions of detention centres for foreigners are relatively good. Nevertheless, they have prison-like character (in terms of security measures and rules of stay), whereas persons detained there are not offenders that should be isolated from the society. After protests by detainees in 2012, guarded centres for foreigners were visited by social organisations and the Ombudsman. Following the conclusions from the visits and reports by social organisations, the Ministry of Internal Affairs and Administration decided to invest in the infrastructure and to reorganise work of these centres in order to decrease their prison-like character. It specified the profiles of the centres (for families and for men only). In the regulation concerning the detention centres accepted in 2015⁸¹, there was a provision that till the end of 2017 the infrastructure of detention centres built till 2015 would be changed to eliminate the prison-like character. However, in 2017⁸², after the shift in political powers and change of the agenda in migration policy, this provision was annulled. In addition, the amendment of 2017 introduced the possibility of placing migrants and asylum seekers in special containers in case the existing detention centres do not have adequate space. Both the proposal of the amendment and the amendment finally accepted started a discussion about the restrictive direction of the Polish

⁸¹ *Rozporządzenie Ministra Spraw Wewnętrznych z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców* (t.j. Dz. U. z 2018 r. poz. 1576).

⁸² *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 3 listopada 2017 r. zmieniające rozporządzenie w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców* (Dz. U. poz. 2113).

state in treating foreigners (see e.g. Helsińska Fundacja Praw Człowieka, 2017a). Also, the Ombudsman for Children's Rights in reaction to the proposed solutions turned to the relevant Ministry with concerns regarding potential trauma caused to children, placed in the detention centres with their families (Rzecznik Praw Dziecka, 2017). Importantly, most asylum seekers in Poland are families with children, which increases the risk of causing harm to children in the course of applying detention.

6.2.4 Dublin transfers, return and deportation

The Return Directive brought many improvements in the legislation concerning issuance and execution of return orders. However, its transposition rendered the work of the main institution responsible for issuing return orders became more complicated. In the Polish case, issuing a permit for stay due to humanitarian reasons, or permit for tolerated stay and issuing return orders became a new obligation of the Border Guard. Importantly, for years this institution has been primarily a security agency responsible for border protection. Since at least 2014 it has also become involved in issuing administrative decisions regarding foreigners' stay in Poland (see also Szulecka, 2016a, p. 213). Nevertheless, in order to increase protection of human rights of foreigners whose stay in Poland was found unlawful, it was necessary to introduce the obligation to consider humanitarian grounds to prevent the issuance of return order in justified cases (see also Narożniak, 2014, pp. 186–187).

Risk of absconding as justification of detention for return purposes

An important issue in the return procedure is the assessment of the risk of absconding. Among experts on the law on returns, there are doubts whether not possessing documents or entering Poland while being included in the SIS database for refusal of entry purposes is inevitably connected with the risk of absconding. Documents could be stolen or lost, and the foreigner may be interested in getting them back or renewing them. Also, non-nationals may not be aware that their data is included in the SIS database. This means that it does not necessarily lead them to choose absconding rather than following the return order (Narożniak, 2014, pp. 171–172).

In the Polish context, the detention of foreigners is imposed if the authorities (Border Guard) believe there is a risk of absconding within the return procedures. The fact that detention is applied in such cases results in a very high rate of executed returns in Poland. According to the assessment by the Border Guard, more than 90% of the executed returns is very high, compared to other EU states. However, the reason for satisfaction of the Border Guard remains an issue of concern for the social organisations involved in providing legal aid to migrants and asylum seekers. This directly stems from the problem that the Polish legislation, although including the transposed Return Directive, does not contain the provisions guaranteeing access to legal aid in return procedures. One of the experts described this problem in the following way:

It's all okay. The only thing is that Poland is terribly effective when it comes to return procedures, because it is probably above 90% (rate of execution of return orders); whereas the European Union has 36-40%. This means that persons who fall into these modes (and who are also in the course of asylum procedure) have no opportunity to explain their situation in the usual way, that they are in two different procedures. There is no access to legal aid at the stage of the first procedure because this legal aid has been cancelled.

AMIF funds are not used, so these people only have the option of using legal assistance from a few survivors [social actors] who can sometimes try to do something. (Such as) Students of the law faculty.... therefore, these people (asylum seekers or persons issued a return order), when they are in this procedure are really very vulnerable. And one more important thing (should) be added, it must be emphasised, the return procedure does not provide free legal assistance which is an obligation of the EU states. We do not have a systemic solution to (guarantee) access to legal assistance at this stage, so there is no legal aid financed at the state's level, which should have been our obligation for almost ten years now (...) Here is the most important point of our system of accepting foreigners because they have no means of defence.(...) Foreigners who are in the return procedures do not have access to the court actually. (R9_MG1)

Both representatives of social organisations and control institutions admit that the high rate of effective returns stems from two facts. The first is linked to the countries of origin of foreigners issued a return order. If these are citizens of the neighbouring countries, especially Ukraine, voluntary returns are effective since the way back to home country does not require special arrangements and funds. Moreover, a voluntary return gives chances for re-entry sooner than a return executed by the authorities. The problems with voluntary returns appear in the case of citizens of more distant countries. In such situations, an assisted voluntary return may be a solution. It includes financial support and support in arranging travel documents for returning migrants. If it is not possible to offer assistance in leaving Poland voluntarily; the return will be executed by the state authorities.

Another factor contributing to the effective returns from Poland is imposing detention to secure the execution of the return order. This practice is highly criticised by social organisation; especially when detention concerns families with children. However, the Border Guard perceives detention as the only way to guarantee the high rate of executed return orders. According to the Border Guard representative, there are no financial or technical problems in organising forced returns. The role of Frontex in this respect is important for other EU countries. In the Polish case, it is not that significant because the main destination countries of the joint flights organised by Frontex are different from the main countries of origin of foreigners, staying illegally in Poland. Therefore, Poland uses either regular, or less often charter flights to execute return orders, as it was confirmed by the interviewed representative of the Border Guard.

Dublin requests and Dublin transfers

According to the information provided by experts during the first Migration Governance Network meeting in Poland in December 2018, the rate of asylum applicants not appearing at the centres within two days became lower in the years 2017 and 2018. This may be the result of the reduced access to asylum procedure at the border. However asylum seekers who come to the centres sometimes decide to leave the centres or do not stay in contact with the Office for Foreigners at the later stages of the procedure. This also results in the decisions on discontinuance of the procedures. Previous studies, the interviewed experts, and the interviewed asylum seekers confirm the secondary movement attempts to get protection or other forms of support in other countries, such as Germany, the Netherlands, and Sweden. Secondary mobility mostly resulted in transferring asylum seekers to Poland under the Dublin regulation.

Recent trends in Dublin transfers indicate that the asylum seekers are not the only ones targeted by the Dublin regulation. In recent years, the representatives of the Office for Foreigners and the Border Guard have noticed that more and more persons who came to Poland with any kind of visa were apprehended in other countries and transferred to Poland based on the Dublin regulation. Importantly, these visas are usually short-term, issued by the Polish consulates. However, migrants use these visas to go to other EU states than Poland to apply there for international protection. According to the interviewed experts, this concerns citizens of Iraq and Armenia, applying for protection in France or Germany after their visas expire. Also, the data analysed by practitioners responsible for Dublin procedures prove that in the last two years, foreigners enjoying visa-free travels tend to overstay the permitted period of stay in the EU and ask for protection in one of the EU countries, which is then followed by initiating Dublin procedure.

According to statements by the representatives of the Border Guard and the Office for Foreigners, the numbers reflecting transfers under the Dublin regulation only concern those who were eventually apprehended and escorted to the receiving country. The number of non-nationals who could be potentially transferred under the Dublin regulation (because they applied for international protection in another country or came there with visas issued by this country) is much higher. According to these experts, it is higher by five or six times than the number of persons eventually transferred. Persons supposed to be transferred to other countries from Poland are often apprehended and placed in the detention centres as this secures the execution of the Dublin transfer. As far as outgoing procedure is concerned, in 2018; half of the Dublin requests ended with a transfer from Poland (95 transfers against 16 requests). In case of incoming transfers, the persons eventually sent to Poland constituted less the 20% (877 transfers against 4301 requests; Helsinki Foundation for Human Rights, 2019, p. 23) This is the result of practices linked to organising the Dublin transfers by other countries; they usually do not detain migrants before the transfer.

According to the Border Guard and the Office for Foreigners' representatives, the low effectiveness in executing the incoming Dublin transfers could result in lack of infrastructural problems. If all the requests from other countries ended with transfers, and Polish authorities would be consequent in applying detention, there could be a problem with places in the existing detention and reception centres. More often, the transferred asylum seekers placed in detention or reception centres requires personnel for both receiving them at the border, and transferring them (if they do not go there willingly). If other EU countries were successful in transferring all those who were to be transferred, Poland would be at risk of shortage of places at the reception centres or, of personnel in the Border Guard outposts to serve the transfers.

Polish officials responsible for conducting Dublin procedures (representatives of the Office for Foreigners) indicate that the policy and practices in the Dublin procedures have changed since 2015. Practitioners involved in Dublin procedures contact all the countries that may be responsible for non-nationals to determine the responsible state. In the past, experiences indicating no answers from the potentially responsible state or the fact that the country potentially responsible for the foreigner's case did not meet the standards allowing Polish authorities for the transfer caused that these countries were not taken into account as countries that would take the responsibility. This applied to the transfers from Poland to Greece (no standards guaranteed) or transfers from Poland to Hungary (no answers).

In the study, one of the interviewed experts claimed that Poland also may be treated as a country which does not guarantee full respect for human rights. This could be an argument for giving up transfers of asylum seekers from other countries to Poland under the Dublin regulation:

I think about this situation at the border and all procedural violations, where the protection system is a façade. It is a nice moment to write an article on the subject (for a journal) abroad. This could become the basis for withholding Dublin transfers based on these earlier judgments of the Court of Justice of the European Union that show that there is a problem with the Polish justice system. (It did not refer) to refugees, but for example, transfers under the European arrest warrant. Recently, something like that was in Ireland. It seems to me that in the refugee matters this⁸³ is a much more serious issue than in the case of protection of suspects' or perpetrators' rights, because these people (asylum seekers) are not criminals who are turned back here and they really have less defence opportunities due to the lack of knowledge of the language than Polish citizens who are transferred here under the European arrest warrant. (PLMZSO3)

Perception of Dublin transfers among asylum seekers and experts

Accounts of persons seeking asylum in the EU (whose interviews were analysed for the purpose of this report) referred to apprehensions and Dublin transfers with regards to the treatment received from the police or the border guards. Although asylum seekers were aware that fingerprints taken for the application for the Schengen visa or for submitting asylum application may reveal the countries that they have entered; they claimed to be surprised with the apprehension and immediate transfer to Poland. In particular, the pace of these activities has been underlined. Usually, they were transferred from other countries to Poland because they entered the EU with visas issued by the Polish consulates. According to the opinions of interviewed asylum seekers, the treatment they received at the airport in Poland after the transfer was quite good. Especially asylum applicants (interviewed in the project) who had some experience with the German police (or the border police) found the behaviour of the Polish border guards at the airport to be neutral or even nice. They claimed to have received information about the next steps, and emphasised the important role of interpreters during the process of submitting an application. According to asylum seekers' experiences, other countries, especially Germany, try to be more effective in return procedure, or transfer migrants for whom responsibility is assigned to Poland. This refers mostly to Chechens who trespass Poland after submitting an application for international protection and head for other countries, such as Germany, Austria, or France.

An issue worth emphasising in relation to Dublin transfers is the lack of proper information about who is transferred, and what is the condition of the person. The information on the number of persons to be transferred to Poland on a given day does not solve the problem. In particular, in case of transfers through the land border, the Polish Border Guard reports more or fewer people than were envisaged for the given day. Additionally, if any of the persons eventually escorted to the border has disability or suffers from an illness that requires special treatment, the Border Guard may not be prepared for admitting such a person without

⁸³ The problem with the Polish system of justice has been recognised by the courts abroad, e.g. in Ireland (as it was mentioned by the quoted interviewee). See more e.g. Deutsche Welle, 2018.

information on special needs communicated in advance. Thus, the exchange of full information is crucial in securing proper provision for the foreigner. One of the experts interviewed claimed:

It seems to me that if they (the Border Guard) have already accepted the transfer, then 'the game is over'. (...) This raises some problems. But even the transfer to Cieszyn⁸⁴ of someone who needs dialysis today, and you do not know about it.... These are costs, there are technical and organisational problems, and everyone gets annoyed then. Especially when there is a situation in which a minor is involved. Then we are all put 'on our feet'. (PLMZOF1)

For example, there was a case when a teenage girl was returned under Dublin regulation from Sweden. She was sent to Poland with her parents and siblings. In Poland, the family applied for asylum. The documentation of the girl included information that she did not eat and drink, but no information about the fact that the girl was unconscious. The Border Guard was not prepared to take proper care of her and the place in the reception centre arranged for this girl was definitely not adequate. The child required special means of transport and special medical treatment. Additionally, the parents did not agree for medical exams (Urząd do Spraw Cudzoziemców, 2018). In fact, this girl should have not been transferred because of her health condition. However, the Swedish state decided to send this family to Poland. According to the interviews, there were more cases like this one concerning transfers from Germany or Sweden. Poland's authorities agreed to take the responsibility of the foreigners and to arrange the transfer, but they learnt about serious condition of foreigners only during the transfer. As the interviewed expert claims, in deciding on taking the responsibility for an asylum seeker under the Dublin regulation, humanitarian concerns such as health, older age, pregnancy, and the need for medical treatment that may be not guaranteed by another EU state, are taken into account. As one of the interviewed practitioners emphasised, if the authorities have information about such issues in advance, they may take these issues into consideration and decide either not to transfer the persons, or not to admit them. If there is no precise information prior to the transfer, the situation for both the migrant and the officials may become very challenging.

Detention after Dublin transfers

The Dublin transfer may be followed by placing non-nationals in detention centres. This may happen when asylum seekers asked for asylum in other countries; despite having the possibility to apply for protection in Poland, where they came first. As one of the interviewees emphasised, describing deportation from Germany to Poland, their concerns referred to potential detention, not deportation itself:

The deportation itself was not so awful, but we were not aware that we were breaking the law. We had no idea. We were afraid to be placed in a closed camp. This is depriving you of your freedom like a criminal. We were afraid of that most. (...) We told them (the border guards after being escorted to the Polish border) that we didn't want to leave Poland, we

⁸⁴ The Polish town at the border with the Czech Republic, where persons transferred usually from Austria are escorted and passed to the Border Guard of Poland.

wanted to apply for asylum. We were not put in a prison⁸⁵ to my great happiness. It was the happiest day of my life.

Who told you that you could have been put to prison?

Border guards. It depends on the border guards. I don't know what it depends on. Some people are put to prison, others are not. We didn't have passports with us. (PLMICH05)

Interviews with asylum seekers have led to the conclusion that the decisions on detention are not always fully transparent. Despite declarations (especially by the authorities), persons transferred to Poland are aware that even families with children may be placed in detention centres. As one of the Chechen asylum seekers concluded:

(...) here they have their own system as I understand. They just look at a person and make an arbitrary decision: "this one should be detained, that one should be sent to the open facility". There is such a system. They just looked at me and my family, assumed that maybe we behave normally, so "okay, let's send them to Dębak"⁸⁶. (PLMICH13).

According to both asylum seekers with the experience of Dublin transfers and social activists with the experience of supporting asylum applicants, persons who have experienced violence or imprisonment in their home country find the perspective of being placed in a detention centre frightening. Also, the time spent in closed facilities at the border, or the time of apprehension could cause psychological problems. Nevertheless, these are the circumstances in which the applications for international protection are either renewed or submitted; which affects the procedure and choices of foreigners.

The involvement in monitoring of returns

State funding is not available if the return orders are executed by regular flights (not ships or chartered aircrafts) there are no state funds for the representatives of non-governmental organisations. If the observers cannot support their travel cost from their own sources (special programmes), it is impossible for them to conduct their observations. Due to the lack of the fund for the organisations involved so far in the monitoring of execution of return decisions, the involvement of the representatives of non-governmental organisations is hardly possible. Even if the tickets are paid by the executive body (the Border Guard), the work time of the observers should be also paid. Without EU funds, organisations are usually not able to cover this cost; this means that they do not participate in the monitoring. Thus, the monitoring of return done by NGOs hardly function, as confirmed by the experts contributing to RESPOND project.

⁸⁵ Non-nationals are placed in the guarded centres for foreigners that may be also called in English 'detention centres', 'closed centres' and less often 'closed camp' (as in the quote). The character of the centres is associated by migrants with prisons due to lack of possibility of leaving the centre freely. The use of the word 'prison' in the interview and thus in the quote may be the result of using different languages in the interview and the subsequent translation. Nevertheless, in the context of other information provided in this interview, it can be concluded that the asylum seeker knew that migrants are placed in closed centres run by the Border Guard.

⁸⁶ 'Dębak' is the short name for the reception centre for asylum applicants in Podkowa Leśna-Dębak, run by the Office for Foreigners, in the suburbs of Warsaw.

6.3 Co-operation among sub-national, national and supranational actors

There are many fields of co-operation and exchange of information between different bodies involved in border management and migration control in Poland. Several examples of the involvement of the NGOs have been already discussed on the occasion of describing specific topics, such as legal intervention linked to guaranteeing access to the asylum procedure at the border. Another example of cooperation worth mentioning is the cooperation between the UNHCR Office in Poland and the Halina Nieć Centre for Legal Aid. The latter one is the implementing partner of the UNHCR in the project 'Border Management and Protection of Asylum Seekers'. The tasks include legal aid provided in the guarded centres for foreigners, and the monitoring of the situation at the border crossing points most often chosen by asylum seekers coming to Poland; namely the border crossing points in Brest/ Terespol and in Medyka/ Shegynie. In cooperation with the UNHCR, the mentioned organisation monitors also the guarded centres for foreigners, run by the Border Guard. The aim of the monitoring is to guarantee proper access to asylum procedure both at the border and in the guarded centres ('Centrum Pomocy Prawnej im. Haliny Nieć » Działania-en,' n.d.). Training for the border guards are also offered.

At the Ombudsman Office there are meetings of the group of experts in migration and asylum issues. These meetings have a consultative character; they serve to discuss problems, possible solutions, and confront persons from various institutions and organisations. The problems identified at the eastern border in Poland, regarding restricted access to submit asylum applications, constituted the topic of discussion during these meetings and were followed by relevant requests to the responsible institutions (see e.g. Biuro Rzecznika Praw Obywatelskich, 2017).

Experts interviewed in the RESPOND project emphasised the role of liaison officers from other Member States present on a regular or even daily basis at Polish immigration offices (within the Border Guard or the Office for Foreigners). This facilitates contacts with the relevant office in another country and makes the cooperation more effective and smoother. This cooperation is often aimed at dealing with consequences of irregular migration or other mobility-related issues. Liaison officers from countries with whom cooperation is frequent, due to the structure of migratory flows, are highly appreciated. This concerns for instance cooperation between Poland and Germany with regard to Dublin transfers or between Poland and Vietnam with regard to confirming identity and executing return orders.

One issue that requires more attention is linked with the documents of non-nationals and confirmation of their identity. The Polish Border Guard cooperates with the Ministry of Foreign Affairs in this respect to use the visa system for the purpose of facilitation of cooperation with third countries whose citizens are found without proper identity or travel documents in Poland. As the interviewed representative of the Border Guard claimed, the key challenge is to find institutional partners in some countries of origin that will be ready to cooperate with the Polish Border Guard in the process of confirming identity, or issuing ID or travel documents for their citizens. This refers particularly to Asian countries such as Bangladesh. The effectiveness of cooperation with these countries is based on long-lasting mutual contacts, visiting each other and convincing them on the necessity to cooperate. As the Border Guard representative

stated, after years of working on cooperation, now there are partners in Vietnam who respond to request regarding migrants' identity or documents.

According to experts who participated in individual interviews or the meeting of the RESPOND Migration Governance Network (MGN), there are no serious problems in cooperation between different bodies at the national level. Problems stem from a lack of awareness of the problems⁸⁷, or the conflicting perspectives in perceiving certain issues. The most often repeated example is linked to the restricted access to submission of application for international protection. As one of the participants of the round table discussion summed it up, it would be enough if the institution responsible for receiving applications for international protection did not consider whether this application is justified or not, since this is the task of another institution. Without a change in practice, which is seen as an infringement of the law, there is no possibility to cooperate. The tensions, referring to the situation at the Polish eastern border almost completely closed the channel of communication between the Border Guard and social organisations, opened before 2015. This is reflected in the restricted access for the representatives of social organisations to the border crossing point areas to conduct observations or interviews. The only way to monitor the border crossing is through a participant observation; this allows for observing the limited scope of facts due to security procedures at the border. It is possible for the observers to be present when the application is being submitted. However, it is not possible to be present when the border check is conducted. The biggest controversies are connected with the instance of asking people about the reasons of coming to Poland, which is treated by the Border Guard as a part of the document check.

Despite the occasions for meetings with the representatives of other institutions and organisations, and interventions or requests for legislative initiatives, in some aspects (especially the issue of access to asylum application at the border) no improvement has been noticed (Białas et al., 2019). Representatives of public bodies interviewed within the RESPOND project admit that sometimes they are unable to undertake relevant steps due to lack of permission from the heads of the offices or even ministries. The atmosphere, and character of contacts between representatives of different organisations and institutions has changed at the end of 2015. The impact of this change has been visible in the consecutive years. To some extent, it was the result of the migratory situation observed in other EU states; dealing with relatively big numbers of incomers applying for asylum in a short period. The media coverage regarding the mentioned situations could have indirectly influenced the approach towards cooperation with regard to migration and asylum issues in Poland. However, this approach has also been shaped by the consequence of the political change in Poland and a visible turn to anti-immigrant sentiments spreading in public and political discourse in Poland.

⁸⁷ For instance, the knowledge and awareness of judges deciding about detention of foreigners has been mentioned by the experts interviewed as a point worth addressing.

7. Conclusion

The Polish legal framework in the field of border management and migration control (understood as 'law in the books') can be evaluated as relatively comprehensive and compliant with the EU law. However, Poland's attitude towards transposition of the most EU directives was usually based on assumption that only the required minimum must be done. Usually, not transposing certain rules was the result of a decision assuming no need to include new provisions or change the existing ones, since domestic legislation seemed to sufficiently address particular issues. Minor inconsistencies have been successively addressed if application of particular domestic laws reveal insufficient protection of values indicated in the EU directives (such as the right to appeal). However, the development of the domestic legislation, resulting from domestic proposals or from the adopted EU law, did not prevent gaps in the legislation that in practice may lead to violations of human rights. With a growing number of non-nationals coming to Poland, and the increasing number of tasks linked to control activities (more databases to be used, more spheres of social or economic life to be controlled due to political will to control them), the inadequacies of the Polish legislation or improper practices based on it are identified. As the previous experiences have shown, the revealing of inadequacies may be followed by legal or institutional changes after the EU courts' decisions. Importantly, the apparently relevant legislation does not guarantee that the practice based on it will be adequate and respectful for human rights, as indicated by the example of reduced access to the asylum procedure at the eastern border of Poland (the 'push-backs' practice).

Despite many efforts to change the situation at the main crossing points reached by persons declaring to seek for asylum, and to increase the safety for persons in need of protection in Poland, the practice of 'push-backs' has been present since at least the mid-2016. This concerns first of all the border crossing point in Brest/ Terespol, at the Belarusian–Polish border. Even the legal measures undertaken to change this practice (the involvement of professional lawyers, cases brought to the courts, the involvement of the European Court of Human Rights through issuing interim measures) did not contribute to visible improvement. Eventually, the number of asylum seekers decreased significantly. However, in the meantime the number of problems related to (lack of) access to the asylum procedure, reported by both the Ombudsman and non-governmental organisations, remained stable or increased. Some foreigners were at risk of being persecuted or tortured due to sending them back to the country of origin (mainly Russia). Importantly, due to the lack of respect by the Polish authorities for the court verdicts, or interim measures resulting from the involvement of non-governmental organisations, the trust towards social activists and the law decreased among asylum seekers trying to enter Poland. The problem of the restricted access to asylum procedure may not be solved easily, because of the disagreement on the legality and rightness of the decisions on the refusal of entry. The expected solution may be formulated with the change of law on granting protection to non-nationals. However, as it is discussed in the report, the expected changes are not very welcome by all those institutions or organisations that call for respect of fundamental rights, timely identification of vulnerable persons and addressing their needs.

Therefore, although the existing legislation as such was evaluated as relatively good, the practice of implementing the laws and addressing infringements of the basic rights of foreign nationals and of the principle of non-refoulement remains a controversial issue, especially, in the context of the access to the asylum procedure. The process of harmonisation of the

domestic law with EU standards is an ongoing process, requiring continuous adjustments (which is reflected in relatively frequent amendments to the main laws regarding migration management and admitting asylum seekers). It raises expectations that new laws may contribute to solving the existing problems in the law implementation. However, it also gives basis for concern that the new provisions will pose even more risks for forced migrants reaching the EU countries. The period of 2017-2018 was characterised by waiting for amendments in both EU law and the domestic provisions. Experts interviewed within the RESPOND project paid special attention to prospective changes in the Dublin regulation (content still not agreed upon till January 2019) and amendments to the Law on protection, claiming that these changes will significantly affect practices in the area of migration control and managing asylum applications in Poland. Some of the interviewed experts assumed that after the law amendment, placing persons in detention within the border procedure will become the main practice, especially, at the border crossing point in Brest/ Terespol, where majority of the potential asylum applicants were so far refused entry. However, the application of border procedure will depend on the final content of the provisions with a particular emphasis on the content of the lists of the safe third countries and safe third countries of origin.

In the discussion regarding admission and non-admission of non-nationals, the two border crossing points, namely the Terespol/ Brest (at the Polish-Belarusian border), and the Medyka/ Shegynie (at the Polish-Ukrainian border) became symbols of Poland's policy targeting forced migrants. Although the border crossing points are served by one institution, the Border Guard, different practices have been observed at these units for some time (in particular, referring to the minutes of the second line check of persons willing to apply for international protection). For public institutions (in particular the Border Guard and the Ministry of Internal Affairs and Administration) and part of the Polish society, the practices at the border reflect the priority of control and prevention of potential threats and abuses. They are in compliance with the existing law specifying the conditions of crossing the border and the required documents or exemptions from these requirements. The numbers of persons crossing the border every day confirm that the border is not 'closed'. At the same time, for the Ombudsman, social and international organisations, and part of the Polish society, the observed practices at the external border mean 'closing the gates' to potential asylum seekers (despite increasing appeals for respect of fundamental rights of migrants and international commitments) and 'opening gates' to economic migrants (sometimes under huge pressure of employers, without sufficient control over the procedures addressed to employers of migrant workers and migrant workers themselves). Dividing the institutions and the society into two groups depending on how they evaluate the practices of border control might be seen as an oversimplification. However, in recent years Poland's approach to admitting non-nationals seems to contribute to the polarisation of attitudes towards migrants and refugees. The state's policy approach towards asylum seekers is quite opposite than the approach towards economic migrants. Despite the declared will to control and restrict the arrival of economic migrants, policies facilitating their immigration prove that the state is open for migrant workers. However, the same cannot be said about people asking for international protection in Poland.

The core problem indicated by the interviewed experts concerns the competencies of the Border Guard, and its dual role at the border. This institution is responsible for the border control and issuing refusals of entry in justified cases. This means it decides on allowing or refusing entry, and at the same time on giving access to submission of applications for international protection. However, this access is a basic right, which should not be debated at

the border. Meanwhile, it is the state's responsibility to protect the border, and guarantee the safe conditions in both the border areas, and within the territory of the country. If restrictions at the border stemmed from the existing law and were not abused, then the border checks would probably not raise so many concerns (as it was claimed, among others, during the Migration Governance Network within the RESPOND project).

Although both irregular migration (linked with irregular entry), and the arrival of asylum seekers is a marginal phenomenon, in comparison to immigration driven by economic factors (growing demand of the Polish economy for migrant workers), the debate about migration policy, and implementation of immigration law and border control seems to be focused on the first mentioned phenomenon. The representatives of control agencies, and administrative institutions dealing with non-nationals for a long time have indicated this paradox. They also added that Poland with such migratory experiences (marginal scale of irregular migration, known identity of asylum seekers) is in a good position, since it has effective control over migratory processes. One of the experts participating in the RESPOND Migration Governance Network discussion stated:

At different meetings at the international level, usually 'in the corridors', we often hear even expressions of jealousy because of the character of immigration to Poland. Although it has become a mass phenomenon now because Poland is becoming a country of immigration; our immigrants chose the legal path, they enter Poland with visas. The laws are relatively liberal. And the share of asylum procedures in the total number of procedures involving foreigners amounts to 2%. This is a fraction only. (R9_MGN2)

The above quote indicates the way Polish migratory situation is perceived by officials in the country. This perception refers to the wider context of the EU and challenges faced by other member states due to mass inflow of migrants and asylum seekers. Contrary to the situation of other countries where the increase of migrants was seen as uncontrolled (as in case of Balkan states or Germany in 2015), in Poland, the significant increase of immigrants was caused by the introduction of quite liberal policies. Giving the legal possibilities for crossing borders was attributed to having the control over people crossing borders. According to the expert cited above, the marginal scale of uncontrolled migratory processes may be something that officials in other countries lack, because they struggle with preventing unlawful border crossings or determining the identity of persons who entered the country clandestinely.

Despite no serious reasons for fear of mass irregular migration, or threats to security or public order, the amendments to the legislation and especially changes in related practices seem to stem directly from the security concerns declared as priority in the state's policy. Meanwhile, both fundamental rights and (at least declaratively) economic interests have become less important. Security concerns cannot be neglected. However, taking into account the reality of migration, and the tensions resulting from more imagined problems than the real experiences, more attention should be paid to the cohesion of the law and practice. A thorough revision of how the law in the area of border control, and management of forced migration is implemented should become a priority. Taking into account the issue of vulnerability amongst the forced migrants; these topics require special measures. More and more advanced IT systems, surveillance, and well-trained practitioners must be accompanied by reasonable reactions to observed abuses of asylum or economic migration systems. At the same time the mentioned factors must be accompanied by respect for the fundamental rights of migrants and asylum seekers, and practice compliance with the international commitments.

Another issue worth addressing is raising knowledge and awareness about immigration and asylum realities and laws among practitioners and the Polish society. Since 2015, the topics of migration and asylum have been present within political discussions, media releases, and everyday dialogue of ordinary people. As not many Polish people have had a direct contact with forced migrants, the discourse is mostly a result of the discussion on these topics in popular media. Since 2016, the probability of Polish citizens coming into contact with migrants has increased, as their number has grown visibly. Nevertheless, the content of the mentioned discussions indicates that there is a greater need to ground them in objective data. The aim should be to increase the awareness of the nuanced migratory contexts, and to separate the declarations serving only political goals from the ones aimed at addressing the objective challenges. Within the RESPOND project activities; the issues of raising awareness and attempts to spread awareness based on facts instead of sharing myths has also been discussed. This has led to a common agreement that it is a huge challenge. However, it is also an important step to be taken to avoid tensions and fears of imagined threats, and to elaborate adequate responses to the observed challenges.

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Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders OJ L 74, 18.3.2017, p. 1–7.

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Ustawa z dnia 10 czerwca 2016 r. o działaniach antyterrorystycznych (t.j. Dz. U. z 2018 r. poz. 452 z późn. zm.).

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Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (t.j. Dz. U. z 2018 r. poz. 1109 z późn. zm.).

Ustawa z dnia 15 czerwca 2012 r. o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej (Dz. U. poz. 769).

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Ustawa z dnia 25 czerwca 1997 r. o cudzoziemcach (t.j. Dz. U. z 2001 r. Nr 127, poz. 1400 z późn. zm.).

Ustawa z dnia 27 kwietnia 2012 r. o zmianie ustawy o cudzoziemcach oraz ustawy o promocji zatrudnienia i instytucjach rynku pracy (Dz. U. poz. 589).

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Ustawa z dnia 30 czerwca 2011 r. o zmianie ustawy - Prawo lotnicze oraz niektórych innych ustaw (Dz. U. Nr 170, poz. 1015).

Appendices

Appendix 1: Qualitative data collected and analysed within the RESPOND project

List of qualitative interviews and opinions collected within the RESPOND project, analysed for the purpose of the report focused on border management and migration control.

I. Interviews with experts (12)

- Representatives of non-governmental organisations (PLMZSO2, PLMZSO3, PLMZSO4, PLMZSO5)
- Representative of the Border Guard (PLMZBG1)
- Representative of the Office for Foreigners (PLMZOF1, PLMZOF2)
- Representatives of local governments (PLMZLG1, PLMZLG2)
- Practitioners dealing with immigration issues (PLMZP1, PLMZP2, PLMZP3)

The interviews were conducted between June 2018 and February 2019.

II. Interviews with asylum seekers and refugees (14)

- Citizens of Syria: 4 men and a woman (PLMISy21, PLMISy22, PLMISy23, PLMISy24, PLMISy25)
- Citizens of Russia with Chechen origin: a woman and 2 men (PLMICH5, PLMICH12, PLMICH13)
- Citizens of Iraq: 2 men and a woman (PLMIIr26, PLMIIr27, PLMIIr28)
- Citizen of Ukraine: a man (PLMIUk17)
- Citizen of Kazakhstan: a woman (PLMIKa30)
- Citizen of Yemen: a male (PLMIJe29)

The interviews were conducted between August 2018 and January 2019.

III. Expert opinions expressed during the I meeting of the Migration Governance Network in Poland (materials named as 'MGN1', 'MGN 2', 'MGN3')

The meeting was held on 10 December 2018 in Warsaw and it was attended by 18 experts representing different institutions and organisations, including:

- the Office of the Ombudsman,
- the Office for Foreigners,
- the Border Guard,
- governmental and local institutions involved in integrative programmes,
- non-governmental and international organisations,
- local authorities,
- the academia.

Appendix 2: Main sources of documents analysed for the purpose of identifying key narratives of border management and migration control

- 1 The archives of the Polish Parliament:
 - Parliamentary interpellations and responses to them (mostly related to the activity of the Ministry of Internal Affairs and Administration, Ministry of Foreign Affairs) delivered between 2015 and 2018; referring to the following issues:
 - o Prevention of irregular migration
 - o Poland's stand towards
 - o Refusals of entry issued to foreigners
 - The scripts of parliamentary discussions (between 2015 and 2018) within the expert commissions on:
 - o the internal affairs
 - o the EU affairs
 - The speeches of the key officials responsible for border and migration control issues during debates in the Polish Parliament or the European Parliament between 2015 and 2018:
 - o Speeches of Prime Ministers of Poland
 - o Speeches of the representatives of the Ministry of Foreign Affairs
 - o Speeches of the representatives of the Ministry of Internal Affairs and Administration.
- 2 Press releases concerning migration and border published in various sources, including euractive.eu, defence24.pl, oko.press – websites publishing analytical text concerning current issues.