

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

Gender Equality

Legal and Parliamentary Affairs

Petitions

Obstacles to the right of free movement and residence for EU citizens and their families: Country report for Poland

Study for the LIBE and PETI Committees



DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS
PETITIONS**

Obstacles to the right of free movement and residence for EU citizens and their families: Country report for Poland

STUDY

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizen's Rights and Constitutional Affairs at the request of the LIBE and PETI Committees, analyses the current status of transposition of selected provisions of Directive 2004/38/EC in Poland and identifies the main persisting barriers to free movement for EU citizens and their family members in Polish law and practice. The study also examines discriminatory restrictions to free movement, measures to counter abuse of rights and refusals of entry and residence rights, in addition to expulsions.

ABOUT THE PUBLICATION

This research paper was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs and Committee on Petitions and was commissioned, overseen and published by the Policy Department for Citizens' Rights and Constitutional Affairs.

Policy departments provide independent expertise, both in-house and externally, to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU external and internal policies.

To contact the Policy Department for Citizen's Rights and Constitutional Affairs or to subscribe to its newsletter, please write to:

poldep-citizens@europarl.europa.eu

Research Administrators Responsible

Ottavio MARZOCCHI and Darren NEVILLE
Policy Department C: Citizens' Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@europarl.europa.eu

AUTHORS

Paulina ROICKA, Attorney-at-Law and PhD student at the Institute of Social Policy, University of Warsaw
Under the guidance of Milieu Ltd. (Belgium); Project Managers: Nathalie MEURENS and Gillian KELLY.

LINGUISTIC VERSIONS

Original: EN

Manuscript completed in June 2016
© European Union, 2016

This document is available on the internet at:
<http://www.europarl.europa.eu/supporting-analyses>

DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.
Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

CONTENTS

LIST OF ABBREVIATIONS	5
LIST OF TABLES	6
EXECUTIVE SUMMARY	7
1. OVERVIEW OF THE TRANSPOSITION OF DIRECTIVE 2004/38/EC AND RECENT DEVELOPMENTS	9
1.1. Transposition context	9
1.1.1. Transposition overview as assessed by the European Parliament and the Commission in 2008	9
1.1.2. What has changed since	10
1.2. Current transposition status	11
1.2.1. Overall assessment of the current transposition status in Poland	11
1.2.2. Additional conditions in law or practice for family members (especially third country national family members) to exercise their free movement rights	13
1.2.3. Poland's approach towards the partners of EU citizens	14
1.2.4. Poland's implementation of the Metock ruling	14
1.2.5. Requirements for obtaining the right of residence beyond those contained in Article 7(1) and (2) of the Directive	14
1.2.6. Conditions attached to the right of permanent residence beyond Article 16 of the Directive	14
2. IMPLEMENTATION OF THE DIRECTIVE: DESCRIPTION OF THE MAIN PERSISTING BARRIERS	15
2.1. Main barriers for EU citizens	15
2.1.1. Entry	15
2.1.2. Residence	15
2.1.3. Access to social security and healthcare	16
2.1.4. Others	18
2.2. Main barriers for family members of EU citizens	19
2.2.1. Entry	19
2.2.2. Residence	19
2.2.3. Access to social security and healthcare	20
2.2.4. Others	20
3. DISCRIMINATORY RESTRICTIONS TO FREE MOVEMENT	21
3.1. Discrimination based on nationality	21
3.2. Discrimination based on civil status/sexual orientation	22
3.3. Discrimination based on ethnic/racial origin	24

4. MEASURES TO COUNTER ABUSE OF RIGHTS	25
4.1. Marriages of convenience	25
4.2. Fraud	26
5. REFUSAL OF ENTRY OR RESIDENCE AND EXPULSIONS OF EU CITIZENS AND THEIR FAMILY MEMBERS	27
5.1. Refusal of entry or residence	27
5.2. Expulsions of EU citizens and their family members	30
6. CONCLUSIONS	32
ANNEX I: TRANSPOSITION OVERVIEW TABLE	34
ANNEX II: DATA ON REFUSALS AND EXPULSIONS	39
BIBLIOGRAPHY	40

LIST OF ABBREVIATIONS

CJEU Court of Justice of the European Union

EHIC European Health Insurance Card

PESEL Powszechny Elektroniczny System Ewidencji Ludności (Universal Electronic System for Registration of the Population)

TFEU Treaty on the Functioning of the European Union

ZUS Zakład Ubezpieczeń Społecznych (Polish Social Insurance Institution)

LIST OF TABLES

TABLE 1
Transposition overview **34**

TABLE 2
Data on refusal of entry, refusal of residence and expulsions **39**

EXECUTIVE SUMMARY

Although **transposition** of Directive 2004/38/EC (the Directive) into Polish law is **generally complete** and correct, some crucial **issues remain**.

Poland's transposing measures do **not include all** the **categories of family members** identified in Article 2(2) of the Directive. Poland has **not transposed** Article 3(2) (a) and (b) of the Directive with respect to **facilitating partners or household members** to join an EU citizen. This failure constitutes a significant obstacle in the exercise of the free movement rights of EU citizens and their family members. According to Polish law, **partners** (both different and same-sex) are **not** considered **family members** as per Article 3(2) of the Directive, as Poland does **not legally recognise** any form of **partnership**. As a consequence, Polish Border Guards did not previously recognise the **residence cards of partners** of an EU citizen – whether same-sex or different sex – **issued by another Member State**, due to its own lack of recognition of civil partnerships. Such persons, therefore, do not hold the status of family member under Polish law. In such cases, Border Guards required an entry visa, or other documents, from third country nationals and, in the absence of which, they were refused entry into Poland. Following recent judgments of the Polish Courts, the Border Guards are now obliged to facilitate the entry of these persons. However, as a consequence of the non-recognition by Polish law of same-sex marriages and any form of civil partnership, an uninsured person living in such a partnership **cannot benefit** from the **health insurance of his/her partner**.

Although Polish law on requirements for third country national family members to obtain the right of residence complies with the Directive, in practice some authorities require **excessive documentation** - not provided for by the Directive – from third country national family members applying for a **residence card** (e.g. a document confirming legal entry and legal residence in Poland).

There are serious problems relating to **lack of communication** between Polish social security authorities and social security authorities from other EU Member States, making the determination of the competent state impossible and preventing citizens from obtaining social benefits. This has led to a serious problem across all types of social security benefits in Poland.

With regard to **discrimination based on nationality, higher university tuition fees** are placed on **EU citizens** who have not acquired permanent residency status or are not migrant workers.

The **Roma community** in Poland still faces **discrimination**, including in **accessing residence rights**. In many cases, a lack of resources prevents them from registering their residence in Poland. As a result, the Polish state is unable to provide them with comprehensive support from the social assistance system.

Poland has adopted **measures** to refuse, terminate and withdraw the right to entry and residence based on **marriages of convenience**. However, these measures are rarely implemented, as cases of marriages of convenience occur infrequently in Poland.

The grounds to restrict the right to entry, residence and expulsion under Polish law are vague, with **no clear guidelines** on their implementation. The most common cause for the **refusal of entry** to Poland for family members of an EU citizen was **travelling**

without an EU citizen or with **no definite plans to join the EU citizen** in question. The most common reasons for **refusal** by the competent authorities to register **residence** were that the conditions of residence set out in the relevant law were not fulfilled by the person concerned, residence in Poland of the person concerned posed a threat to Polish defence policy or national security, or for public safety or public order or the conditions for permanent residence were not fulfilled.

Decisions on **expulsion** from Poland occurred when the residence of the person concerned was deemed to pose a threat to Polish defence policy or national security, or a threat to public safety, public order or public health as per the Directive.

1. OVERVIEW OF THE TRANSPOSITION OF DIRECTIVE 2004/38/EC AND RECENT DEVELOPMENTS

KEY FINDINGS

- Transposition of the Directive into Polish law is almost complete and correct.
- Poland has, however, not transposed Article 3(2)(a) and (b) of the Directive with respect to facilitating partners or household members to join an EU citizen.
- There are no provisions on facilitating entry and residence for the direct ascendants of a student.
- Polish transposing legislation makes reference to the retention of the status of residence, rather than that of worker or self-employed person as required by the Directive in Article 7 (3).
- Polish law has no provision stating that recourse to the social assistance system might not automatically lead to expulsion, nor does it have any provision prohibiting systematic checks to verify the economic conditions of residence.
- Poland has not introduced the notion of 'sufficient resources' into national law.

1.1. Transposition context

1.1.1. Transposition overview as assessed by the European Parliament and the Commission in 2008

Poland has transposed the Directive in a single measure: the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members ('**Act on entry**')¹.

As the 2008 Report from the Commission to the European Parliament on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ('**the Directive**') shows, the **transposition** of the Directive into Polish law **in 2008 was almost complete and correct**² with about 15% of the provisions still incorrect and/or incomplete³. Almost 20% of the provisions of the Act on entry provided for more favourable treatment. A small proportion of the transposing provisions were ambiguous, while there were some provisions that had not been transposed at all⁴. The Commission initiated infringement proceedings against Poland for its failure to communicate, on time, the text of the provisions of national law adopted to transpose the Directive⁵.

¹ Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members' (*Ustawa z 14 lipca 2006 roku o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin*), Journal of Laws No. 144, item 1043.

² Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 12.

³ Ibid.

⁴ Ibid.

⁵ Ibid, p. 3.

The report drew attention to some crucial transposition issues.

Firstly, Poland had **not transposed** Article 2(2) (b) or Article 3(2) (a) and (b) of the Directive with respect to **facilitating partners or household members to join an EU citizen**. Poland had not included all categories of family members identified in Article 2 (2) of the Directive in its transposing measures. This failure was considered to constitute a significant obstacle to the exercise of the free movement rights of EU citizens and their family members.

The Commission also highlighted that Article 7(3) of the Directive, which provides for the retention of the status of worker or self-employed person, was not correctly transposed by Poland. This was due to the fact that the law provides for the **retention of the right of residence**, but **not of the status of worker or self-employed** person, which is a wider concept⁶.

Poland had also **not correctly transposed** its obligation to **facilitate entry and residence** for the direct ascendants of a student in accordance with Article 7(4) of the Directive⁷.

In Polish law, there is **no provision** stating that recourse to the social assistance system might **not automatically lead to expulsion** (Article 14(3) of the Directive) **nor** a provision prohibiting **systematic verification of economic conditions** (Article 14 (2) and (3) of the Directive). Poland has not introduced the notion of 'sufficient resources' (Article 8 of the Directive) into national law.

Although Poland has not transposed any specific provisions on equal treatment, as provided for by Article 24 of the Directive, the principle of equal treatment stems from the general principles of the legal system through the relevant provision of the Constitution.

1.1.2. What has changed since

The Act on entry was amended in 2014 to make reference to Article 3(2)(a) and 3(2)(b) of the Directive (see Table 1 in the Annex below). Article 31(1a) of the Act on entry, as amended by the Law of 2014, provides that 'in cases when the requirements to legalise the right to residence are not fulfilled, the competent authority may not issue a decision of refusal to register the **right to residence** or refusal to issue the residence card, in the case of a Union citizen who is a family member of a Union citizen or a Polish citizen:

- **who is not:** (a) the spouse of these persons, (b) the descendant of the Union citizen or his/her spouse, who is under the age of 21 or living in the common household with the Union citizen or his/her spouse, (c) dependent direct relatives of the Union citizen in the ascending line or his/her spouse who is living in the common household with the Union citizen or his/her spouse;
- **who joins** him/her or resides with him/her on Polish territory, **due to:** financial dependency or due to remaining with him/her in the same household, or due to serious health reasons requiring personal care by a Union citizen or a Polish citizen'.

Similarly, with regard to Article 27 of the Directive (restriction on the freedom of movement and residence of EU citizens and their family members on the grounds of public policy,

⁶ Ibid.

⁷ Ibid, p. 6.

public security or public health), reasons for refusal of entry were amended in 2009 to include situations where the residence of an EU citizen, or a family member who is not an EU citizen, in Poland, constitutes a threat to defence or State security or protection of public security or public order (see Table 1 in the Annex below)⁸.

A 2014 amendment brought the transposition of Article 6 of the Directive (right of residence for up to three months) into line with the CJEU case law. The amended provision now provides that jobseekers are entitled to reside in Poland for a period of up to six months. After that period, they may stay longer if they prove that they are actively looking for a job and have a genuine chance of being employed. This reflects the findings of the CJEU *Antonissen* case, in which the CJEU held that a Member State may 'provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged'⁹.

The jobseeker may prove that (s)he continues to seek employment and has genuine chances of being engaged using any kind of valid evidence. According to the legislation, anything which is not contrary to the law and which is of assistance in clarifying a case is admissible as evidence¹⁰. Accordingly, evidence may include: documents, the evidence of witnesses, the opinions of experts and inspections. It means that, in the proceedings carried out under the Act on entry, the competent authority takes into consideration any document or explanation made in the course of the procedure demonstrating that the person concerned is actively looking for a job, documents confirming job applications, acquired education and/or professional qualifications and/or experience.

Also, in relation to Articles 7(1) and 7(2) of the Directive (right of residence for more than three months), the 2014 amendments to the Act on entry introduced the option to have private health insurance – in addition to public health insurance – to cover all of the expenses that may arise during residence in Poland (see Table 1 in the Annex below)¹¹.

1.2. Current transposition status

1.2.1. Overall assessment of the current transposition status in Poland

In the author's opinion, Poland may be considered to have transposed approximately 80% of the Directive, as some loopholes remain in Polish law that may hinder the free movement of EU citizens and their family members. Despite previous criticism, Poland has still not transposed Article 2(2)(b) or Article 3(2) (a) and (b) of the Directive with respect to facilitating partners or household members, to join the EU citizen. This causes numerous practical problems, as described in section 2.2 below.

There are still no provisions on facilitating entry and residence for a student's direct ascendants (Article 7(4) of the Directive). In the current legal status, reference is still made to the retention of the status of 'residence', rather than of a 'worker' (Article 7(3) of the Directive).

⁸ Article 11 of the Act on entry.

⁹ CJEU Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* [1991] ECR I-00745.

¹⁰ 14 June 1960 Code of Administrative Procedure (Kodeks postępowania administracyjnego).

¹¹ Article 16 of the Act on entry.

Poland has **not transposed the notion of 'sufficient resources'** (Article 8 of the Directive) into Polish law. The notion of 'sufficient resources' is not defined in the Act on entry. However, in accordance with Article 8(4) of the Directive, Polish law does not specify the minimum amount that constitutes 'sufficient resources'. Some guidance in this area, however, is contained in the Act on entry and the Ordinance of the Ministry of the Interior and Administration of 24 August 2006 on application forms and documents regarding the right of residence on the territory of the Republic of Poland of citizens of the EU Member States and their family members (**'Ordinance on application forms'**)¹². According to the Ordinance, persons to whom the Act on entry applies are obliged to prove that they possess the financial means sufficient to support themselves and their family members in Poland without the need for social assistance.

Some Voivodeship offices¹³ (i.e. offices of the Department for Citizenship and Foreigners) consider funds to be sufficient if they exceed the amount of income per household member specified in the Act on social assistance of 12 March 2004¹⁴, i.e. when a person's income is higher than the threshold for social assistance in Poland. Other authorities, in order to determine whether the condition of 'sufficient resources' has been met, use the relevant provision of the Act on social assistance (on income criteria)¹⁵. Other Voivodeship offices indicate that, since the Act on entry does not specify the notion of 'sufficient resources', each case is considered individually, based on the collected documents¹⁶. In one Voivodeship office, it is believed that the EU citizen must specify the total of their resources¹⁷.

Despite the lack of a definition of 'sufficient resources' in Polish law, the authorities report that this does not hinder proceedings. Some institutions only require a statement from the person concerned that he/she possesses sufficient resources to cover the costs of residence in Poland (or a document confirming that he/she is in possession of sufficient resources, e.g. (i) a credit card, (ii) a confirmation of possession of legal tender from a bank or another financial institution, confirmed by a stamp and a signature of an authorised employee of the bank or the institution, issued no later than one month before the submission of the application for registration of residence)¹⁸.

There is no explicit provision relevant to Article 14 of the Directive on the retention of residence rights as long as EU citizens and their family members do not become an unreasonable burden on the social assistance system. In Poland, neither the law nor

¹² Ordinance of the Ministry of the Interior and Administration of 24 August 2006 on application forms and documents regarding the right of residence on the territory of the Republic of Poland of citizens of the EU Member States and their family members (*Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin*), Journal of Laws of 2006r., No 154, item. 1105, as amended.

¹³ In Poland, the matters regulated by the Act on entry are within the competence of the Voivodeship offices - Department for Citizenship and Foreigners (*Urzędy Wojewódzkie - Wydziały Spraw Obywatelskich i Cudzoziemców*).

¹⁴ Act of 12 March 2004 on social assistance' (*Ustawa o pomocy społecznej*), Journal of Laws of 2004r., No 64, item. 593, as amended; Information obtained through consultation with stakeholder (Wielkopolski Voivodeship Office, Wielkopolski Urząd Wojewódzki, April 2016).

¹⁵ Information obtained through consultation with stakeholder (the Office for Foreigners (Urząd do Spraw Cudzoziemców); Wielkopolski Voivodeship Office; Silesian Voivodeship Office (Śląski Urząd Wojewódzki), March 2016).

¹⁶ Information obtained through consultation with stakeholder (the Office for Foreigners, March 2016).

¹⁷ Information obtained through consultation with stakeholder (Silesian Voivodeship Office, March 2016).

¹⁸ Information obtained through consultation with stakeholder (Wielkopolski Voivodeship Office; Kujawsko-Pomorski Voivodeship Office (Kujawsko-Pomorski Urząd Wojewódzki); Mazovian Voivodeship Office (Mazowiecki Urząd Wojewódzki); Office for Foreigners; Silesian Voivodeship Office; Warmińsko-Mazurski Voivodeship Office (Warmińsko-Mazurski Urząd Wojewódzki, March 2016).

administrative practice specify how the notion of 'being an unreasonable burden on the social assistance system' might be applied in practice.

The Voivodeship offices state that, when a person is in receipt of social assistance, the Office takes into consideration all relevant circumstances in assessing whether or not the use of social assistance constitutes 'an unreasonable burden on the social assistance system'¹⁹.

There is no provision prohibiting systematic verification of the economic conditions attached to the right of residence (in contrast to Article 14 (2) and (3) of the Directive). Nor is there any provision stating that an expulsion measure must not be the automatic consequence of recourse to the social assistance system (in contrast to Article 14(3) of the Directive).

According to the Act on entry, the permanent residence card of an EU citizen's family member is valid for 10 years from the date of issue. However, it is not automatically renewable every 10 years (contrary to Article 20(1) of the Directive).

Moreover, Poland has not yet transposed any specific provisions on equal treatment in the transposing measures, as provided for by Article 24 of the Directive.

1.2.2. Additional conditions in law or practice for family members (especially third country national family members) to exercise their free movement rights

Poland has failed to transpose Article 3 (2) of the Directive into Polish law, as no provision is made for the family members listed in Article 3(2) of the Directive. However, Polish law on the requirements for third country national family members to obtain the right of residence complies with the Directive, with no additional conditions imposed on them in the exercise of their right to free movement.

Some authorities, however, require excessive documentation in the residence applications of family members who are not nationals of a Member State (which is not provided for in the Directive), including a document confirming legal entry and legal residence in Poland, as well as proof of sufficient resources to cover their expenses during their residence and to show that they will not be reliant on the social assistance system²⁰.

In addition, in practice, when processing the application for a residence card of a family member of an EU citizen, some authorities require applicants to appear in person to clarify the relevant facts necessary to issue a decision. They also require the submission of documents other than those required by law, giving the authority the power to make a decision considering both the public interest and the legitimate interest of a party (a stipulation not provided for by the Directive). This practice also applies to an EU citizen claiming his/her residence rights in Poland. This stipulation seems to be discretionary and contrary to the Directive. It seems to give the competent authority the power to refuse to issue a residence card or to register the residence of an EU citizen solely on the grounds of such discretionary premises which are not provided for either in the Act on entry or in the Directive. However, it has to be noted, that – as it follows from the information obtained

¹⁹ Ibid.

¹⁹ 'Registration of residence of EU citizens and their family members', the website of Voivodeship office in Warsaw, available at: <http://bip.mazowieckie.pl/cases/content/405>; 'Residence of third country family members of a Union citizen over three months', the website of the Voivodeship office in Łódź, available at: <http://www.paszporty.lodzkie.eu/page/2529,pobyt-czlonka-rodziny-obywatela-ue-niebedacego-obywatelem-ue-powyzej-trzech-miesiacy.html>.

through consultation with a stakeholder – so far no decision has been issued on the basis of those premises.

1.2.3. Poland's approach towards the partners of EU citizens

According to the Act on entry, partners (both different and same-sex partners) are not considered family members, in contrast to Article 3(2) of the Directive. In Poland, civil partnership is not legally recognised in any form.

However, where the conditions of residence set out in the Act on entry have not been fulfilled, an EU citizen may not be refused registration where he/she is leading a family life within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms, with an EU citizen or a Polish citizen whom the EU citizen joins or with whom he/she resides in Poland (i.e. this includes a partner). In such cases, the competent authorities determine whether such relationships are real and permanent.

1.2.4. Poland's implementation of the Metock ruling

The Act on entry does not impose any specific requirements not provided for by the Directive for third country national family members to obtain the right of residence. Therefore, there is no requirement for third country national family members to have been previously lawfully resident in another Member State in order to obtain the right of residence in Poland.

1.2.5. Requirements for obtaining the right of residence beyond those contained in Articles 7(1) and 7(2) of the Directive

Neither the Act on entry nor the Ordinance on application forms include any additional requirements to obtain the right to residence which may be contrary to the Directive.

However, as part of the procedures and registers maintained in relation to the Act on entry, an applicant might be asked to submit information not required under the Directive (e.g. father's name, mother's name, place and country of birth, physical description: (a) height in centimetres, (b) colour of eyes, (c) distinguishing marks, etc).

The Act on entry also requires that any documents in a foreign language appended to applications must be submitted together with their certified translations in Polish.

1.2.6. Conditions attached to the right of permanent residence beyond Article 16 of the Directive

Polish law complies with Article 16 of the Directive (i.e. the transposing legislation includes no conditions on the right of permanent residence beyond five years that may be considered contrary to the Directive).

2. IMPLEMENTATION OF THE DIRECTIVE: DESCRIPTION OF THE MAIN PERSISTING BARRIERS

KEY FINDINGS

- There are many **persistent obstacles** for EU citizens in exercising their free movement rights in Poland. For example, residence application forms and official documentation must be completed in Polish. Many Romanian Roma cannot register their residence in Poland due to their lack of sufficient resources.
- As **Roma children** often do not have a national identification number, they may be denied health care benefits. Polish citizens, on their return to Poland after having exercised their free movement rights in other Member States, do not meet the statutory criteria for obtaining unemployment benefits provided by Polish law.
- Medical staff registering patients for medical treatment may not be aware that EU citizens holding **S1 forms** are entitled to free medical treatment in Poland.
- There are serious problems in the communication between Poland and other EU Member States in matters concerning the **coordination of social assistance**.
- There are persistent obstacles for family members of EU citizens in exercising their free movement and residence rights. **Bureaucratic issues** are encountered in obtaining visas (e.g. extra documentation requirements and confusing information is often received regarding visas). Visas for persons in a civil partnership with an EU citizen (whether same-sex or different sex) are not free, as these persons are not recognised as family members under Polish law.

2.1. Main barriers for EU citizens

2.1.1. Entry

While one petition²¹ has been made to the European Parliament highlighting that Polish authorities did not recognise a border crossing card issued by German authorities and held the petitioner's son for questioning, banning him from future entry to Poland, there is no other evidence of refusal of recognition of a border-crossing card by the Polish authorities. Moreover, no other barriers for EU citizens in exercising their entry rights to Poland have been found.

2.1.2. Residence

The authority responsible for the registration of residence of an EU citizen pointed out to the Polish Ministry of the Interior and Administration (*Minister Spraw Wewnętrznych i Administracji*) that the certificate of registration of residence of an EU citizen (*zaświadczenie o zarejestrowaniu pobytu obywatela UE*) is not always sufficient for banks and other financial

²¹Petition No. 0038/2014 to the European Parliament.

institutions to determine the identity of a person and to determine the legality of his/her residence in Poland²².

For **residence application forms and official documentation** provided for by the Act on entry, Poland requires that such applications are **completed in Polish** and submitted using the relevant forms in Polish. Additionally, documents drawn up in a foreign language and appended to applications must be submitted together with their certified translations into the Polish language. This is an obstacle to non-Polish speaking EU citizens.

Romanian citizens of Roma origin living in Poland **cannot**, in many cases, **register their residence** in Poland due to their lack of sufficient resources. As a result, the Polish state is not able to provide them with comprehensive social assistance support. The Polish authorities are planning to amend the Ordinance on application forms in order to enable them (and others in a similar situation) to participate in the European Union programmes devoted to combatting social exclusion and strengthening the social integration of marginalised groups. This initiative is strongly supported by the Polish Ombudsman for Human Rights.

2.1.3. Access to social security and healthcare

In 2014 the Institute of Labour and Social Affairs and the University of Ghent organised an international conference, 'Re-emigration of Polish citizens — legal and social issues'. Part of the conference was devoted to the return of Polish citizens from other Member States and the legal aspects and issues of such returns²³. This conference revealed some issues with the transfer of unemployment benefits from the UK.

It highlighted that a surprisingly small number of unemployment benefits were transferred from the UK. For example, in 2014, only 155 unemployment benefits were transferred (approximately 3% of the total number of transferred benefits), despite some 7,000 Poles returning to Poland. According to case law, **Polish workers returning from the UK** often do not meet the statutory criteria for granting **unemployment benefits** as set out by Article 65(2) of the Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems²⁴. The representative of the Ministry of Labour and Social Policy (*Ministerstwo Pracy i Polityki Społecznej*), in presenting this issue at the conference, said that such persons often say that they were informed by the competent institution in the country of their last employment about the possibility of claiming Polish unemployment benefits after returning home instead of receiving such unemployment benefits from the Member State where they last worked and to which they are entitled.

Issues for Polish citizens in obtaining pre-retirement benefits from working abroad have also been highlighted. For example, the Polish Social Insurance Institution (*Zakład Ubezpieczeń Społecznych-ZUS*) incorrectly refused to grant a pre-retirement benefit (*świadczenie przedemerytalne*) (provided for in Article 3(1)(i) of Regulation 883/2004) to a Polish citizen who had worked abroad. The employment contract was terminated due to the bankruptcy of the British employer, and the ZUS stated that the claimant did not meet the

²² Statement of the Voivod of Malopolska of 21 October 2010, presented in a letter to the Ministry of the Interior and Administration in connection with the draft amendments of 2010 to the Act of entry.

²³ See more at: <https://www.ipiss.com.pl/?wydarzenia=reemigracja-obywateli-polskich-skutki-dla-systemu-zabezpieczenia-spolecznego>.

²⁴ See, for example, the judgment of the Supreme Administrative of 13 June 2013, I OSK 729/13, available at: <http://orzeczenia.nsa.gov.pl/doc/9C467BD434>.

statutory criteria of the Act on Employment Promotion and Labour Market Institutions of 20 April 2004 (the '**Act on employment promotion**') related to - inter alia - the termination of an employment contract for reasons related solely to the employer²⁵. The ZUS argued that this condition would only be fulfilled if the termination of an employment contract was from a Polish employer. They felt that Article 5 of Regulation 883/2004 (equal treatment of benefits, income, facts or events) did not apply to pre-retirement benefits. They held that there was no legal basis to assume that termination of an employment contract in a Member State other than Poland was due to the employer, even if the reasons for the termination amounted to termination by the employer. The termination of an employment contract, therefore, was only relevant where made by a Polish employer.

The Appellate Court in Gdańsk, in its judgment of 7 December 2015, questioned the interpretation by the ZUS, stating that no legal rule excludes the application of Article 5 of Regulation 883/2004 to pre-retirement benefits. In the opinion of the Court, Article 5 (b) of the Regulation was applicable to the case²⁶.

There is also a recurring problem of long waiting periods for obtaining the PD U1 form (previously the E301 form) that confirms periods of employment and insurance in another Member State from other foreign institutions.

With regard to healthcare, **staff in medical facilities** who register patients for medical treatment are **not always aware that EU citizens holding S1 forms are entitled to free medical treatment** in Poland. It can often be quite complicated for holders of the S1 form to demonstrate their right to free health care in Poland²⁷.

In one case, a Polish oncologist refused to see a patient with an Irish European Health Insurance Card (EHIC), fearing that the cost of treatment would not be refunded. The patient had been diagnosed with cancer during a short visit to Poland and travel with the illness was impossible until treatment was received. Fortunately, the citizen managed to get the required treatment in another oncological hospital in Poland. The hospital's staff, however, admitted that they had not been trained on the acceptance and use of EHICs²⁸.

Another example of problems with using the EHIC is demonstrated by the case of a Polish citizen, permanently resident in the UK, who came to Poland on holiday. He became ill and went to a clinic where the EHIC was not honoured and he was required to pay for both the clinic visit and the medication he received²⁹.

The Polish Ombudsman for Human Rights (*Rzecznik Praw Obywatelskich*) has investigated the situation of **Romanian Roma children**, who, although born in Poland, often **do not have a national identification number** (PESEL) and are, therefore, often **denied health care benefits**. This is contrary to Polish law, as the Act of 27 August 2004 on health care benefits financed by public funds ('**Act on healthcare benefits**') states that medical treatment does not require a PESEL number provided that a passport or any other document

²⁵ Act on Employment Promotion and Labour Market Institutions of 20 April 2004 (*Ustawa o promocji zatrudnienia i instytucjach rynku pracy*), Journal of Laws of 2013 No. 674, with further amendments.

²⁶ Judgment of the Appellate Court in Gdańsk, III AUa 1127/15, available at: [http://orzeczenia.ms.gov.pl/content/Koordynacja\\$0020System\\$00f3w\\$0020Zabezpieczenia\\$0020Spo\\$0142eczne go/151000000001521_III_AUa_001127_2015_Uz_2015-12-07_001](http://orzeczenia.ms.gov.pl/content/Koordynacja$0020System$00f3w$0020Zabezpieczenia$0020Spo$0142eczne go/151000000001521_III_AUa_001127_2015_Uz_2015-12-07_001).

²⁷ The issues has been reported on the Polish Migrant Forum Foundation on its website, available at: <http://www.forummigracyjne.org/pl/faq.php>.

²⁸ Your Europe Advice, Quarterly Feedback Report, April-June 2015, p.35.

²⁹ Your Europe Advice, Quarterly Feedback Report, October-December 2013, p.47.

confirming the person's identity can be used, including a school identification card in the case of a minor³⁰.

National social security authorities are **failing to communicate and cooperate** with each other to an adequate extent, making determination of the competent state impossible and creating obstacles for citizens in obtaining social benefits. This is a serious problem experienced by all of the social security branches in Poland³¹. Most problems seem to be experienced by Polish citizens who become, or who should be, entitled to a particular benefit in the country of their insurance and find themselves unable to continue claiming that benefit when they move back to Poland³².

In particular, the French and Polish authorities do not cooperate on the issue of the application of a Polish citizen working in France for childcare allowance in France. Neither country has declared itself competent (N.B. France should be the competent Member State)³³.

2.1.4. Others

According to the Act on social assistance of 12 March 2004, **cash benefits** to cover expenses connected with **learning the Polish language** may be granted only to foreigners who have obtained refugee status in Poland, or who have been granted subsidiary protection or a temporary residence permit under the Act on foreigners of 12 December 2013³⁴. Thus, persons to whom the Act on entry applies, e.g. EU citizens, cannot benefit from these provisions.

Some Polish banks require **higher security for repayment** from non-Polish residents in Poland when taking out a mortgage in Poland³⁵. There are also banks which do not give credit to foreigners with income abroad.

Problems are encountered in Poland in **conducting proceedings in a Polish court when the citizen resides abroad**. Polish procedural rules require all litigants to have an address for service of documents in Poland, posing a particular problem for citizens who have no legal representation. In one reported case, the citizen has post delivered to a Polish address but the delay experienced in receiving letters made it impossible to comply with the seven-day procedural deadline. This is a recurrent problem experienced by EU citizens in Poland³⁶.

³⁰ 'Act of 27 August 2004 on health care benefits financed by public funds' (*Ustawa o świadczeniach opieki zdrowotnej finansowanej ze środków publicznych*), Journal of Laws of 2004 No 210, text 2135 as amended.

³¹ Your Europe Advice, Quarterly Feedback Report, January-March 2013, p.26.

³² Ibid, p. 27.

³³ Your Europe Advice, Quarterly Feedback Report, April-June 2013, p.30.

³⁴ 'Act on foreigners of 12 December 2013', (*Ustawa o cudzoziemcach*), Journal of Laws of 2013, item 1650, as amended.

³⁵ Your Europe Advice, Quarterly Feedback Report, July-September 2014, p. 59.

³⁶ Your Europe Advice, Quarterly Feedback Report, January-March 2013, p.45.

2.2. Main barriers for family members of EU citizens

2.2.1. Entry

A number of practical obstacles exist for family members to obtain an entry visa in Poland, including the requirement for third country nationals who have been granted a residence card in another Member State to apply for a national visa³⁷.

There are some reports to suggest that **extra documentation is required to obtain a visa**³⁸.

Citizens have continued to receive **conflicting information** from Polish embassies and consulates abroad, or border officers, on the obligation to obtain a visa and the type of entry visas their non-EU spouses/family members require³⁹.

2.2.2. Residence

Prior to a change of practice by Border Guards in Poland, (see section 3.2. for more details), there were cases where Border **Guards did not recognise the residence card** held by the partner of an EU citizen – whether same-sex or different sex couples in a civil partnership – due to the fact that neither same-sex marriages nor civil partnerships are recognised by Polish law. In such cases, Border Guards also requested an entry visa or other document allowing them to enter Poland, and in the absence of which, refused entry⁴⁰. These or similar cases have been the subject of judgments of the Polish Administrative Courts (described in further detail in section 3.3 below)⁴¹. Due to the fact that the Act on entry does not recognise either same-sex or different sex couples in a civil partnership as a family member of an EU citizen, the Court decided to apply Article 3 (2) (b) of the Directive directly, stating that there would otherwise be no opportunity to enter Poland for persons not covered by the definition of a family member within the meaning of the Act on entry, as Poland has not transposed Article 3 (2) into national law. Since that judgment, Border Guards in Poland are obliged to facilitate the entry of civil partners, for example by issuing a visa through an accelerated procedure. However, such **visas are not free of charge**.

The Voivodeship Administrative Court in Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie*) heard a case⁴² in which a foreigner – Mrs M.T. - applied in 2014 to a competent authority with an application for permission to settle (*zgoda na osiedlenie się*) in Poland under the provision of the Act on aliens of 13 June 2003, on the grounds of her marriage to a Polish citizen⁴³. The authority refused to grant such permission on the ground that she did not meet any of the conditions specified in the Act on aliens according to which she was required to, inter alia: (i) have been married to a Polish citizen for at least three years, if

³⁷ Your Europe Advice, Quarterly Feedback Report, January-March 2014, p.26.

³⁸ Your Europe Advice, Quarterly Feedback Report, October-December 2014, p.18.

³⁹ Your Europe Advice, Quarterly Feedback Report, April-June 2015.

⁴⁰ Judgment of the Voivodeship Administrative Court in Warsaw of 22 May 2013, IV SA/Wa 2093/12, available at: <http://orzeczenia.nsa.gov.pl/doc/3690C2A6BA>; and the judgment of the Voivodeship Administrative Court in Warsaw of 15 March 2013, IV SA/Wa 154/13, available at: <http://orzeczenia.nsa.gov.pl/doc/6DB8ABC90E>.

⁴¹ Judgment of the Voivodeship Administrative Court in Warsaw of 15 March 2013, IV SA/Wa 154/13.

⁴² Judgment of the Administrative Supreme Court in Poland, Wojewódzki Sąd Administracyjny w Warszawie, available at the website of the Administrative Supreme Court in Poland: <http://orzeczenia.nsa.gov.pl/doc/297E6A767B>.

(ii) directly before submitting the application he/she had resided continuously on the territory of the Republic of Poland for at least two years on the basis of the residence permit for a fixed period (zezwozenie na zamieszkanie na czas oznaczony) in the meaning of the Act on aliens⁴⁴. Mrs M.T. had not resided continuously in the territory of Poland for at least two years on the basis of the residence permit for a fixed period but on the basis of the residence card of a family member of an EU citizen, which had been issued in 2010.

As regards the second requirement, the Administrative Court disagreed with the competent authority's assertion that - despite the wording of the Act on aliens - the residence permit for a fixed period is the only basis on which a person might be entitled to obtain the permission to settle. The Court ruled that the conditions set out in Article 64 of the Act on aliens must be interpreted broadly in accordance with the Directive, especially with Article 10. In the opinion of the Administrative Court, both the residence permit for a fixed period and the residence card for a family member play a similar role, which is not limited to the issue of registration of residence.

2.2.3. Access to social security and healthcare

The Act on Employment Promotion and Labour Market Institutions recognises only a descendant of a Polish or EU citizen, or a person married to a Polish citizen or EU citizen - provided that such marriage is recognised by Polish law - as a family member. As a consequence of the non-recognition by Polish law of same-sex marriages or civil partnerships between same-sex or different sex couples, **an uninsured person living in such a partnership cannot benefit from the health insurance of his/her partner** (see section 3.2 below for more details).

2.2.4. Others

No other recurring practical obstacles to free movement and residence rights for family members of EU citizens have been found.

⁴³ 'Act on aliens of 13 June 2003' (*Ustawa o cudzoziemcach*), Journal of Laws of 2003, No 128, item 1175. This Act was replaced by the Act on foreigners of 12 December 2013.

⁴⁴ Article 64 of the 'Act on aliens of 13 June 2003' (*Ustawa o cudzoziemcach*), Journal of Laws of 2003, No 128, item 1175. This Act was replaced by the Act on foreigners of 12 December 2013.

3. DISCRIMINATORY RESTRICTIONS TO FREE MOVEMENT

KEY FINDINGS

- With regard to discrimination based on nationality, **higher university tuition fees** are placed on EU citizens who have not acquired permanent residency status or are not migrant workers.
- As a consequence of the **non-recognition of same-sex marriages** or civil partnerships by Polish law, an uninsured person living in such a partnership cannot benefit from the health insurance of his/her partner, in contrast to a spouse of a different sex who is entitled to such insurance.
- The **Roma** community still face discrimination in Poland, for example in accessing residence rights, and they experience hostility and rejection from ordinary people and institutions.

3.1. Discrimination based on nationality

With the accession of Romania and Bulgaria to the EU, Romanian and Bulgarian citizens received full access to the labour market in Poland (i.e. no transitional measures were imposed). No cases of discrimination have been found in this respect.

According to the Act of 17 July 2005 – Law on Higher Education, Poland applies **different tuition fees for nationals and non-nationals**, with Polish authorities imposing higher university tuition fees on EU citizens who are not eligible to pursue their education in compliance with the rules applicable to Polish nationals⁴⁵. The origin of the problem lies in the regulations (unidentified) drawn up under Articles 43 and 44 of the Law on Higher Education of 17 July 2005 (as amended by the Act of 18 March 2011), which create a fee structure that requires EU students, who pursue education on a fee-paying basis, to pay fees between EUR 2,000-3,000, while the same studies for Polish students remain free⁴⁶. In addition, education conducted in English or another foreign language is not free of charge⁴⁷. This issue has been the subject of several complaints⁴⁸.

As mentioned in section 2.1.4 above, Polish banks can require higher security for repayment from non-Polish residents who wish to take out a mortgage in Poland⁴⁹.

There was a complaint received by Your Europe Advice that the organisers of the Warsaw Marathon on 28 September 2014 provided a reduced fee for those either resident in Poland or of Polish nationality. While the first ground (residence) can be justified, applying different rates to Polish nationals and the nationals of other EU Member States who live in a

⁴⁵ 'Act of 17 July 2005 – Law on Higher Education' (*Ustawa – Prawo o szkolnictwie wyższym*), Journal of Laws of 2005, No.164, item 1365, as amended.

⁴⁶ Your Europe Advice, Quarterly Feedback Report, July-September 2014, p. 37.

⁴⁷ Information from website of Ministry of Science and Higher Education :

<http://www.nauka.gov.pl/podejmowanie-i-odbywanie-przez-cudzoziemcow-nauki-w-polskich-szkolach-wyzszych/podejmowanie-i-odbywanie-przez-cudzoziemcow-nauki-w-polskich-szkolach-wyzszych,akcja,print.html>

⁴⁸ Your Europe Advice, Quarterly Feedback Report, June 2014, September 2012.

⁴⁹ Your Europe Advice, Quarterly Feedback Report, July – September 2014, p. 59.

Member State other than Poland, contravenes Article 18 of the Treaty on the Functioning of the European Union (TFEU), and constitutes discrimination on the ground of nationality⁵⁰.

According to the Law of 5 January 2011 – Electoral Code,⁵¹ citizens of other EU Member States are not entitled to vote or to stand as candidates in elections to the district/powiat councils (*rada powiatu*) and Voivodeship parliament (*sejmik województwa*), though they are entitled to stand for election to the municipal council (*rada gminy*).

3.2. Discrimination based on civil status/sexual orientation

As previously mentioned, neither same-sex marriages nor civil partnerships between same-sex or different sex couples are recognised by Polish law. In Poland, the state only recognises marriage between two persons of a different sex⁵².

In 2012 a group of Members of Parliament (MPs) tabled a draft law on the rules for the conclusion and termination of a partnership and on the rights and obligations of couples in such a partnership, but it was rejected by Parliament.

As a consequence of the non-recognition by Polish law of same-sex marriages and civil partnerships, whether between same-sex or different sex couples, an uninsured person living in such a partnership **cannot benefit from the health insurance of his/her partner** (see section 2.2.3 above). This was the subject of a parliamentary question of former MP, Robert Biedroń⁵³. As an MP, he received complaints from Polish citizens who had entered into same-sex marriages or civil partnerships (both same-sex and different sex) abroad, before coming back with his/her spouse/partner to Poland. In the case where one of the spouses/partners is insured and the other is not (e.g. because he/she is unemployed), he/she does not have the right to free treatment or the right to benefit from the health insurance of his/her spouse/partner. For different sex spouses, however, the unemployed spouse has the right to be covered by the health insurance of his/her employed wife or husband. This discriminatory situation is a consequence of the definition of a family member of an insured person within the Act on healthcare benefits financed by public funds⁵⁴.

Competent Polish authorities and Administrative Courts hold that partners of an EU citizen – whether same-sex marriages, same-sex couples or different sex couples in a civil partnership – have no legal entitlement to the health insurance of his/her spouse/partner,

⁵⁰ Your Europe Advice, Quarterly Feedback Report, July-September 2014, p.54.

⁵¹ 'Law of 5 January 2011 – Electoral Code' (*Ustawa z dnia 5 stycznia 2011 roku – Kodeks wyborczy*), Journal of Laws No. 21, item. 112.

⁵² Pursuant to Article 18 of the Polish Constitution, a marriage is considered to be a union only between a woman and a man.

⁵³ Nowosielska K., 'People living in partnership do not benefit from the healthcare insurance of their partners' (*Osoby żyjące w związkach partnerskich nie skorzystają z ubezpieczenia zdrowotnego swojego partnera*), Rzeczpospolita 2013, available at: <http://www.rp.pl/arttykul/1071947-Osoby-zyjace-w-zwiazkach-partnerskich-nie-skorzystaja-z-ubezpieczenia-zdrowotnego-swojego-partnera.html>.

⁵⁴ A family member – for health care insurance purposes – is considered:

- (i) own child, the spouse's child, adopted child, grandchild, child for whom custody has been established, until it reaches 18 years old, and if it continues education – up to 26 years old, or if it is disabled – regardless of age;
- (ii) spouse;
- (iii) ascendant who lives with the insured person in the same household.

as they do not fall within the scope of the Act on health care benefits financed by public funds⁵⁵.

Another example of discrimination based on sexual orientation/civil status concerns two lesbian women, one Polish and one British, living in Poland, who brought an action (case still pending) against Poland before the European Court of Human Rights in Strasbourg, after the Polish authorities refused to issue a Polish birth certificate to their child⁵⁶. The daughter of the women, Maria M., was born in 2011 in the United Kingdom. In her British birth certificate, Katherine M. was entered as 'mother' and Sophia M. as 'parent'. The Head of the Registry Office (*Kierownik Urzędu Stanu Cywilnego*) in Łódź in Poland refused to register the British birth certificate of Maria M. into the Polish record. Authorities at all levels concluded that Polish law does not recognise same-sex partners, and that binding law in Poland supports a traditional family model. The higher authority added that transcription of such a British birth certificate into the Polish record would contradict the fundamental principles of the legal order in Poland, a view upheld by the Polish Administrative Courts.

Furthermore, another case concerned a Chilean citizen who was in a civil partnership with a Polish citizen. He wanted to buy property in Gdansk. Due to the fact that Gdansk is near the border, as a foreigner he needed the permission of the local authorities. He claimed that, as he is a family member of a Polish citizen, he is eligible to purchase an apartment. However, the local authorities refused him permission on the basis that he is not a family member⁵⁷.

Article 3(2) (b) of the Directive is not applied to the right of entry to Poland for individuals in same-sex or different sex civil partnerships. In 2012 the Border Guard in Katowice-Pyrzowice in Poland refused entry to a citizen of Peru, who was in a civil partnership with an EU citizen, contracted in the UK⁵⁸. Similarly, a Chinese man who was in a civil partnership with a Polish citizen was refused entry to Poland in July 2015 (despite providing his Irish residency card) on the grounds that Poland does not recognise same-sex civil partnerships⁵⁹. As a result, the Chinese man had to apply for a visa at the airport which took a very long time to issue⁶⁰. The Border Guards are slowly changing these practices, however - influenced by two judgments of the Polish Administrative Courts. The cases concerned a citizen of the Philippines and a citizen of the Dominican Republic, both in lawfully registered partnerships in the UK with EU citizens, and who travelled with them to Poland⁶¹. At the airport in Poland they were refused entry, on the basis that they were not family members of an EU citizen within the meaning of Polish law. As a result, both parties brought an action before the Polish Administrative Courts. In both cases, the Administrative Courts ruled that the dispute allowed for the direct application of Article 3(2) (b) of the Directive, stating that there would otherwise be no opportunity for persons not covered by the definition of a family member within the meaning of the Act on entry to enter Poland, as it had not transposed Article 3(2) into national law. In connection with these rulings, the Border Guards in Poland have adopted guidelines for the application of the provisions in

⁵⁵ Judgment of the Administrative Court in Warsaw of 25 November 2014, VI SA/Wa 1733/14, available at: <https://sip.legalis.pl/document-full.seam?documentId=mrswglrtgi3denjygaztg>.

⁵⁶ Newsweek Polska, 'Why can 4-year old Maria not obtain a birth certificate?' (*Dlaczego 4-letnia Maria nie może otrzymać aktu urodzenia?*) available at: <http://polska.newsweek.pl/dziecko-lesbijek-nie-moze-otrzymac-w-polsce-aktu-urodzenia,artykuly,365352,1.html>.

⁵⁷ Information obtained through consultation with stakeholder (KPH, May 2016).

⁵⁸ Administrative decision No. 93/2012/KGSG of 23 November 2012.

⁵⁹ Information obtained through consultation with stakeholder (ILGA Europe, May 2016).

⁶⁰ Ibid.

⁶¹ Judgment of 15 March 2013, IV SA/Wa 154/13 and of 22 May 2013, IV SA/Wa 2093/12.

similar cases⁶². According to this judgment, in the absence of the relevant Polish provisions obliging the authorities to facilitate entry and residence of third country nationals remaining in a partnership with an EU citizen, the provision of the Directive is directly applicable. When such a person appears at the Polish border without a visa or other document authorising him/her to enter into the territory of Poland, the Border Guard will issue that person a visa of up to 15 days. However, such a visa is not required to be free of charge. The guideline also specifies how the Border Guard should proceed in order to determine whether such a person remains in a durable and duly attested relationship – the Border Guards must, in this instance, rely on the statement of the person and must verify the documents certifying the partnership.

3.3. Discrimination based on ethnic/racial origin

The **Roma community** is one of the ethnic minorities in Poland and **continue to face discrimination**. As mentioned in section 2.1.2 above, Romanian citizens of Roma origin living in Poland **cannot register their residence** in Poland due to their lack of sufficient resources. As a result, they are discriminated against by the Polish authorities who are not able to provide them with comprehensive support from the social assistance system.

People of Roma origin experience **rejection, contempt, hostility and even aggression**, both from ordinary people and from institutions. In addition, people of Roma origin are often treated as thieves and criminals by judicial staff and law enforcement authorities⁶³.

According to the report of the Union of Polish Roma on the situation of the Roma community in Poland, the police often do not want to thoroughly investigate cases in which the suspects are Roma, instead presuming that the Roma in question are guilty⁶⁴.

⁶² Information obtained through consultation with stakeholder (the Border Guards unit, April 2016).

⁶³ Union of Polish Roma 'The Report on the situation of Roma Community in Poland' 2012 (*Raport o sytuacji społeczności romaskiej w Polsce 2012*) available at: http://www.romowie.com/the_report.pdf.

⁶⁴ Ibid.

4. MEASURES TO COUNTER ABUSE OF RIGHTS

KEY FINDINGS

- The Act on entry includes measures to combat marriages of convenience, although such measures are rarely implemented in practice. Disclosed cases of marriages of convenience result almost exclusively in the refusal to grant the right to residence. Competent offices, in dealing with cases of marriage of convenience, do not practise discrimination, nor do they hinder the free movement rights of the persons concerned.
- The Act on entry provides that residence cards, as well as documents certifying the right to permanent residence, must be cancelled where the card has been issued on the basis of **forged** or **doctored documents** or **false information**. No issues have been reported to suggest that these measures affect free movement and residence rights, and such measures are only infrequently implemented in Poland.

4.1. Marriages of convenience

According to the Act on entry, an EU citizen's third country national family members must be refused a residence card in the case of a **marriage of convenience**. The residence card of an EU citizen's third country national family member is cancelled in cases where an authority determines that the marriage was a marriage of convenience.

With respect to the right to permanent residence, the Act on entry indicates that an EU citizen's third country national family member must be refused a permanent residence card in the case of a marriage of convenience. A permanent residence card held by an EU citizen's third country family member must also be cancelled when the marriage was one of convenience.

A marriage of convenience, within the meaning of the Act on entry, is one that has been entered into in bad faith. The law makes no distinction between this kind of marriage and the situation in which a marriage took place in good faith but which broke down after some years, leading the spouses to *de facto* live separately. Foreigners in these situations are often forced to hide the fact of their separation, as their stay in Poland legally depends on them remaining married. The Act on entry should, therefore, make a clear distinction between these two very different situations.

Experience at the level of the Voivodeship Offices shows that there are few cases of marriages of convenience in Poland. Disclosed cases of marriages of convenience result almost exclusively in refusal to grant the right to residence. In rare cases, the people involved are prosecuted, for example for making false statements. Convictions in this matter are, however, rare.

The information obtained from the Voivodeship offices shows few cases of marriages of convenience. Only the Mazovian Voivodeship office indicated that it has encountered situations where the office has **refused to issue residence cards in cases of marriages**

of convenience⁶⁵. Thus, despite the fact that Poland has adopted measures to refuse, terminate and withdraw the right to entry and residence based on marriages of convenience, these measures are **not frequently implemented**.

Competent offices do not discriminate in their practices with respect to marriages of convenience and do not hinder the free movement rights of the persons concerned. In addition, a person may appeal such a decision to a higher authority if he/she believes a decision to be unfair.

4.2. Fraud

According to the Act on entry, residence cards and documents certifying the right to permanent residence of an EU citizen's family member must be cancelled where the card or document was issued on the basis of **forged or doctored documents or false information**.

No complaints or issues have been reported by the authorities in Poland to suggest that this measure has affected free movement and residence rights. The information obtained from stakeholders shows that this measure is **rarely implemented** in Poland.

⁶⁵ Information obtained through consultation with stakeholder (Voivodeship offices, March 2016).

5. REFUSAL OF ENTRY OR RESIDENCE AND EXPULSIONS OF EU CITIZENS AND THEIR FAMILY MEMBERS

KEY FINDINGS

- Poland has adopted restrictions on the right to entry and residence on the grounds of public policy, security or health in a manner consistent with the Directive.
- According to the Act on entry, a threat to public health is not a ground for refusing to issue a residence card or document certifying the right of permanent residence for a family member of an EU citizen.
- The Act on entry does not provide a procedure for expulsion on purely economic grounds.
- The most common reason for the decision to refuse a foreigner the right to residence was his/her failure to fulfill the requirements of the Act on entry.

5.1. Refusal of entry or residence

Refusal of entry

According to the Act on entry, a family member who is not an EU citizen must be **refused a visa** if:

- His/her personal data is listed in the register of foreign nationals whose stay in Poland is not welcome on the grounds of Article 434 of the Act on foreigners of 12 December 2013⁶⁶.
- His/her residence in Poland constitutes a threat to defence policy or national security, or to public safety, public order or public health.

In such situations, visas must not be issued by the consul or a commander of the Border Guards immediately on receipt of the application.

EU citizens or a family member who is not an EU citizen **may be refused entry** into Poland in cases where:

- His/her personal data has been entered into the register of foreign nationals whose stay in Poland is not welcome⁶⁷.

⁶⁶ The Act on foreigners in its article 434 states that: "A list of foreigners whose stay within the territory of the Republic of Poland is undesirable, hereinafter referred to as "the list", shall be kept by the Head of the Office".

⁶⁷ According to the Act on foreigners, the data of a foreigner shall be entered into the list and stored in it if at least one of the following premises has been fulfilled: 1) a decision on imposing the return obligation on a foreigner has been issued, and a prohibition on re-entry into the territory of the Republic of Poland or a prohibition on entry into the territory of the Republic of Poland and other countries of the Schengen area has been issued; 2) a foreigner has been convicted by a final judgement in: a) the Republic of Poland – for an intentional crime or a tax crime to pay a fine or serve a prison sentence, or b) a country other than a Schengen country – for an offence constituting a crime under Polish law, or c) the Republic of Poland or another Schengen state – for an offence to serve a prison sentence for more than one year; 3) the foreigner's entry into or stay within the territory of the Republic of Poland is undesirable due to obligations arising from the provisions of ratified international agreements applicable to the Republic of Poland; 4) it is justified by national security or defence, the protection of public order and safety or the interests of the Republic of Poland; 5) a foreigner has been transferred to a third country on the basis of an

- His/her residence in Poland constitutes a threat to defence policy or national security, or to public safety, public order or public health.
- He/she does not have a valid travel document or other valid documents confirming his/her identity and citizenship or visa, unless he/she proves unquestionably that he/she is entitled to the right to free movement.

Article 3(2) of the Directive has been applied directly since two judgments of the Administrative Courts in Poland (see section 2.2. above). Prior to these judgments, there were cases where a civil partner was refused entry into Poland on the basis that he/she is not a 'family member of an EU citizen' within the meaning of the Act on entry. With the direct application of Article 3(2) of the Directive, the Border Guards are obliged to facilitate entry to these persons into Poland.

In some units of the Border Guards, the most common reason for the refusal of entry for family members of an EU citizen was travelling without the EU citizen in question, or with no plans to join him/her⁶⁸.

In several cases, the Border Guards have discriminated against family members of EU citizens by refusing entry to such persons who are in possession of a residence card issued by a Member State outside of the Schengen Area⁶⁹.

Restrictions to the right to entry into Poland under the Act on entry are in line with the Directive.

Decisions on refusals of entry cannot be arbitrary. The Act on entry specifies two procedures, including for entry into Poland, giving every individual dissatisfied with the decision the right to appeal to the relevant higher authority.

Refusal of residence

According to the Act on entry, EU citizens may be refused registration of residence and third country national family members **may not be issued a residence card** in the following circumstances:

- If the conditions of residence are not fulfilled.
- If the residence of an EU citizen or a family member who is not an EU citizen within Poland constitutes a threat to defence or State security, or to the protection of public security or public order.
- In the case of a marriage of convenience.

According to the Act on entry, the document certifying the right of **permanent residence or residence card of the EU citizen's family member** must not be issued in the following circumstances:

international agreement on the transfer and acceptance of persons after detention because of border crossing in violation of legal regulations.

⁶⁸ Information obtained through consultation with stakeholder (Border Guards units, April 2016).

⁶⁹ Information obtained through consultation with stakeholder (Border Guards units, April 2016).

- If the conditions regarding permanent residence were not fulfilled.
- If the residence of the EU citizen or the EU citizen's family member within Poland threatens the defence or public security of the State, or the protection of public security and public order.

Restrictions on the right to residence under the Act on entry are in line with the Directive. However, Polish law also restricts this right on the grounds of **state security** and **state defence**. There is no legal definition of the notions of 'state security' and 'state defence' in Polish law. Based on the literature, 'state defence' means the practical possibilities of the State to resist aggression and to prepare the State, its military and social structures for defensive activities⁷⁰. 'State security', in broad terms, means the actual state of internal stability and the sovereignty of the State, which reflects the lack of any internal and external threats (in the sense of satisfying the basic existing needs of society and the sovereignty of the State in international relations)⁷¹. 'Public security' is defined as a desirable state of things guaranteeing the undisturbed functioning of public institutions and the safety of life, health and property of citizens⁷². In the literature, all mentioned definitions are characterised as rather vague, thus it is difficult to provide such a precise definition. However, it can be said that the notions of 'state security' and 'state defence' are used to describe the freedom of the State from external threats, whereas in the case of public security the emphasis is on the safety of citizens.

According to the Act on entry, **a threat to public health is not sufficient to refuse** to issue a residence card or document certifying **the right of permanent residence** to a family member of an EU citizen.

The information obtained from some of the Voivodeship Offices shows that the **most common reason** for the decision to refuse foreigners the right to residence was their **lack of fulfillment of the requirements** of the Act on entry. A common problem is EU citizens' lack of knowledge of their obligations under the Act on entry, and the lack of any legal basis for registration of residence of EU citizens for humanitarian reasons.

According to the data provided by the Office for Foreigners (*Urząd do Spraw Cudzoziemców*) and by some of the Voivodeship Offices, refusals of registration of residence of **EU citizens** mostly concerned cases where:

- Personal data of the person concerned has been entered onto the register of foreign nationals whose stay in Poland is not welcome.
- Residence in Poland of the person concerned constituted a threat to defence policy or national security, or to public safety or public order.

⁷⁰ K. Górską-Rożej, The Defence of Poland and its risks as the foundation of national defence (*System Obrony Rzeczypospolitej Polskiej i jego zagrożenia jako fundament obronności państwa*), Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach, available at :

http://www.tstefaniuk.uph.edu.pl/zeszyty/archiwalne/104-2015_6.pdf

⁷¹ M. Ciszek, The theoretical basis of the national security (*Teoretyczne podstawy bezpieczeństwa państwa*), available at :

https://repozytorium.uph.edu.pl/bitstream/handle/11331/104/Doc_9.Ciszek.Teoretyczne_podstawy_bezpieczenstwa_panstwa.pdf?sequence=1

⁷² I. Szeląg, Protection of a public order and security as a task of local government (*ochrona porządku i bezpieczeństwa publicznego jako zadanie własne samorządu lokalnego*), The Central European Journal of Social Sciences and Humanities.

- The person concerned did not have a valid travel document or other valid documents confirming his/her identity and citizenship or visa, nor did he/she prove unquestionably that he/she is entitled to the right to free movement.
- The conditions of the residence set out in the Act on entry were not fulfilled.

Decisions on refusals of registration of residence of **family members of EU citizens** most often concerned situations in which:

- The conditions of residence set out in the Act on entry were not fulfilled.
- Residence in Poland of the person concerned posed a threat to defence policy or national security, or to public safety or public order.
- The conditions for permanent residence were not fulfilled⁷³.

Decisions on refusals of registration of residence cannot be arbitrary. The Act on entry specifies two proceedings, including for the registration of residence, giving every individual dissatisfied with the decision the right to appeal to the higher authority (i.e. the Head of the Office for Foreigners).

5.2. Expulsions of EU citizens and their family members

According to the Act on entry, EU citizens and their third country national family members, who do not enjoy the right of permanent residence, may receive an expulsion decision in cases where their residence in Poland constitutes a threat to defence policy or national security, or to public safety, public order or public health. Under the Act, diseases occurring after a three-month period from the date of arrival of an EU citizen or a third country national family member in Poland must not constitute grounds for expulsion from the territory on grounds of public health. According to the Act on entry, EU citizens or their third country national family members, who enjoy the right of permanent residence, may receive an expulsion decision in cases where their residence in Poland constitutes a serious threat to defence policy or national security, or to public safety or public order⁷⁴.

Chapter 5 of the Act on entry is generally in line with the Directive. However, some provisions impose additional grounds (see Table 1 in the Annex below), e.g. Article 68 determines the conditions allowing an expulsion decision to be issued against EU citizens residing in Poland for more than 10 years if the decision is based on imperative grounds of **national defence, national or public security, by means of constituting a threat to peace, humanity, independence or defence of Poland, or due to terrorist activity**. Those appear to merely specify what can be considered as 'imperative grounds of public security' and, therefore, to be in line with the Directive.

The decision on expulsion must take into account the principle of proportionality and **should be based solely on the conduct of a given person** which constitutes a genuine, current and sufficiently serious threat to the public interest. Previous criminal convictions must not constitute the only basis for the decision on expulsion, nor can a serious threat to the public interest be invoked on economic grounds.

⁷³ Information obtained through consultation with stakeholder (Office for Foreigners, March 2016).

⁷⁴ Article 67 of the Act on entry,

The Act on entry **does not provide a procedure for expulsion on purely economic grounds** (i.e. as a consequence of failure to satisfy the conditions set out in Article 7 of the Directive, namely when a person becomes an unreasonable burden on the social assistance system). The issue of expulsion from Poland is regulated by Chapter 5 of the Act on entry, 'Expulsion from the territory of the Republic of Poland'. The relevant provisions do not provide for the possibility of expulsion where it has been established that a family member of an EU citizen is an 'unreasonable burden on the social assistance system'. The Voivodeship Offices responding to this question had not recorded any cases of expulsion for this reason⁷⁵.

Pursuant to the Act on entry, a **child EU citizen** cannot receive an expulsion decision, except:

- When his/her residence in Poland constitutes a threat to national defence, national or public security, by means of constituting a threat to peace, humanity, independence or defence of Poland, or due to terrorist activity.
- Where the expulsion is deemed to be in the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989 (Journal of Laws of 1991, no 120, item 526, and of 2000, No 2, item 11).

Decisions on expulsion from Poland usually took place in situations where the residence in Poland of the individual concerned posed a threat to defence policy or national security, or to public safety, public order or public health⁷⁶.

The grounds described for the restriction of **the right to entry into Poland, residence and expulsion** - as general clauses - are quite vague, and there are no clear guidelines in law. Each case is decided on an individual basis, allowing for considerable administrative discretion. Decisions, however, cannot be arbitrary. The Act on entry specifies two procedures, including for the right to entry into Poland, the right to residence and the decision on expulsion from Poland, allowing an individual dissatisfied with the decision the right to appeal to the relevant higher authority (i.e. the Chief Commandant of the Border Guard or the Head of the Office for Foreigners, depending on the case).

⁷⁵ Information obtained through consultation with stakeholder (Voivodeship Offices, Office for Foreigners, March 2016).

⁷⁶ Information obtained through consultation with stakeholder (Office for Foreigners, March 2016).

6. CONCLUSIONS

The transposition of the Directive into Polish law is almost complete and correct, although some transposition issues remain that may hinder the free movement of EU citizens and their family members. Poland has not transposed, *inter alia*, either Article 2(2) (b) or Article 3(2) (a) and (b) of the Directive with respect to facilitating partners or household members to join an EU citizen. This failure often constitutes a significant obstacle to the exercise of the free movement rights of EU citizens and their family members, as described in this report. In Poland, neither same-sex marriages nor civil partnerships – whether same-sex or different sex – are recognised by Polish law, which has certain practical consequences for family members of EU citizens.

Although Polish law on the requirements for third country family members to obtain the right of residence complies with the Directive, in practice some authorities require excessive documentation from third country national family members, in addition to that provided for by the Directive. However, stakeholder evidence suggests that such a practice is the exception rather than the rule.

As part of procedures and registers maintained under Polish law, an applicant might be asked to submit information that is not required under the Directive. In addition, Polish law requires that documents in a foreign language and appended to all kinds of applications must be submitted together with their certified translations in Polish.

There are serious and recurrent problems with communication between Poland and other EU Member States, particularly for social insurance, which makes determination of the competent state extremely difficult, thereby hindering citizens seeking to obtain their social benefits.

Several problems were reported with visas for family members of EU citizens. Previously, Border Guards refused entry to third country nationals in a civil partnership with an EU citizen, as they were not recognised as family members under Polish law. Recent Court judgments, however, have led to a change in this practice, with Border Guards now obliged to facilitate entry of this group of people.

There are documented cases of discrimination on the grounds of nationality, sexual orientation/civil status and racial/ethnic origin. With regard to discrimination based on nationality, higher university tuition fees are placed on EU citizens who have not acquired permanent residency status or are not migrant workers.

The Roma community in Poland still face discrimination, for example in accessing residence rights. In many cases, they cannot register their residence in Poland due to the lack of sufficient resources, as a result of which the Polish state is unable to provide them with comprehensive social assistance, given their lack of legal resident status. Cases of this kind have been highlighted and investigated by the Polish Ombudsman for Human Rights.

Cases of marriages of convenience are rather rare in practice. Although Poland has adopted measures to refuse, terminate and withdraw the right to entry and residence in such cases, these measures are only infrequently implemented.

The most common reason for the refusal of entry into Poland for the family member of an EU citizen was travelling without the EU citizen in question, or without any plans to join him.

Decisions on expulsion from the territory of Poland most often occurred in situations where the residence in Poland of the persons concerned posed a threat to defence policy or national security, or to public safety, public order or public health.

The most common reasons for refusals of registration of residence concerned situations in which:

- The conditions of residence set out in the Act on entry were not fulfilled by the person concerned.
- The residence in Poland of the person concerned posed a threat to defence policy or national security, or to public safety or public order.
- The conditions for permanent residence were not fulfilled.

The Act on entry does not provide for expulsion when a person becomes an unreasonable burden on the social assistance system, nor does it provide a procedure for expulsion on purely economic grounds. No examples of expulsion for such economic reasons have been reported by the stakeholders consulted.

ANNEX I: TRANSPOSITION OVERVIEW TABLE

Table 1: Transposition overview

Directive's provisions	National provisions	Assessment	Changes since 2008
<p>Article 3(2) Beneficiaries:</p> <ul style="list-style-type: none"> • Family members • Partners 		<p>Gap in transposition. Poland has failed to transpose this provision into Polish law.</p>	<p>Although Poland has failed to transpose this provision, it has to be noted that there is some reference in Polish law to beneficiaries mentioned in Article 3(2) of Directive.</p> <p>Article 31(1a) of the Act on entry, as amended by the Law of 2014, provides that 'in case of non-compliance with the requirements to legalise the right to residence, the decision of refusal to register the right to residence or refusal to issue the residence card, is not applicable in the case of a Union citizen who is a family member of a Union citizen or of a Polish citizen, and who is not: 1(a) the spouse, (b) the descendant of the Union citizen or his/her spouse, who is under the age of 21 or living in the common household with the Union citizen or his/her spouse, (c) dependent direct relatives of the Union citizen in the ascending line or his/her spouse who is living in the common household with the Union citizen or his/her spouse and who joins him/her or resides with him/her on Polish territory due to: financial dependency or due to remaining with him/her in the same household, or due to serious health reasons requiring the personal care by a Union citizen or a Polish citizen'.</p> <p>However, where the conditions of residence set out in the Act on entry have not been fulfilled, an EU citizen may not be refused registration where he/she is leading a family life within the meaning of the European Convention for the Protection of</p>

Directive's provisions	National provisions	Assessment	Changes since 2008
			Human Rights and Fundamental Freedoms, with an EU citizen or a Polish citizen whom the EU citizen joins or with whom he/she resides in Poland (i.e. this includes a partner). In such cases, the competent authorities determine whether such relationships are real and permanent.
<p>Articles 5(1) and 5(2) Right of entry</p> <ul style="list-style-type: none"> No entry visa or equivalent formality may be imposed on Union citizens To facilitate granting third country family members the necessary entry visas 	Articles 9, 10(3) and 12 of the Act on entry	In line with the Directive	No change.
Article 6 Right of residence for up to 3 months without any conditions or any formalities than an ID	Article 15 of the Act on entry	In line with the Directive Article 6 was correctly transposed into Polish law.	A 2014 amendment brought the legislation into line with the Directive regarding jobseekers. They are now entitled to reside in Poland for a period of up to six months, after that period, they must prove that they are actively looking for a job and have a genuine chance of being employed. This approach, in fact, reflects the CJEU Antonissen case C-292/89.
Articles 7(1) and 7(2) Right of residence for more than 3 months for EU citizens and their family members based on employment, sufficient resources or student status	Articles 16 and 18 of the Act on entry	In line with the Directive	Article 16 was amended in 2014 to introduce the option to have private health insurance covering all medical or hospital expenses that may arise during residence in Poland as the Act previously only referred to public health insurance. It is now fully in line with the Directive.

Directive's provisions	National provisions	Assessment	Changes since 2008
<p>Article 14 Retention of residence rights as long as they do not become an unreasonable burden on the social assistance system</p>	<p>Article 15(1) point 2 of the Act on entry</p>	<p>Incomplete.</p> <p>The transposition of Article 14 is largely incomplete. The Act on entry does not transpose Article 14(1) of the Directive.</p> <p>There is no provision on the possibility of verification of the fulfillment of conditions laid down in article 7, 12, 13 of the Directive. Article 24 of the Act on entry states only that the authority which conducts the proceedings concerning the registration of residence must establish whether the obligation to possess sufficient financial resources referred to in Article 16 (1) (2) or (3) has been fulfilled.</p> <p>There is also no provision that an expulsion measure must not be the automatic consequence of a Union citizen's or his/her family member's recourse to the social assistance system of Poland. To be precise, as it was mentioned above, the Act on entry does not provide for expulsion when a person becomes an unreasonable burden on the social assistance system, nor does it provide a procedure for expulsion on purely economic grounds.</p> <p>The transposition of Article 14(4) of the Directive is incomplete. Article 15(1) point 2 of the Act on entry provides that jobseekers are entitled to reside in Poland for a period of up to six months, after that period, they must prove that they are actively looking for a job and have a genuine chance of being employed. Thus, they can not be expelled if they prove that they are actively looking for a job and have a genuine chance of being employed.</p> <p>The Act on entry does not also directly provide for a provision as referred to in section 4 point a) of article 14 of the</p>	<p>No change.</p>

Directive's provisions	National provisions	Assessment	Changes since 2008
		Directive. However, chapter 5 of the Act on entry lists the grounds for expulsion from the territory of Poland, and does not provide for the possibility for expulsion in the case of employees and self-employed because of failure to comply with the provisions referred to in Article 7,12,13 of the Directive.	
Article 16 Right of permanent residence	Articles 42, 43,47 and 60(3) of the Act on entry	In line with the Directive	No change.
Article 24(1) Equal treatment		Gap in transposition. Poland has failed to transpose this provision into Polish law.	No change.
Article 27 Restriction on the freedom of movement and residence of Union citizens and their family members, on grounds of public policy, public security or public health	Articles 11, 11a, 26, 31(1), 35, 36, 56, 60, 66, 67, 68a of the Act on entry	In line with the Directive While, there is no general provisions, such as Article 27 of the Directive, the Directive's requirements are reflected across several provisions throughout the Act on entry.	On 1f January 2009 the Act on entry was amended by introducing Article 11a, which lays down the proportionality principle. It states that a decision on refusal of visa for a third country family member of EU citizen or a decision on refusal of entry for an EU citizen shall respect the proportionality rule and may be issued only if an individual's behaviour represents genuine, present and sufficiently serious threat affecting the interests of society. Previous criminal convictions shall not in themselves constitute grounds for taking such decisions. Moreover, such decisions shall not be issued for economic reasons. The Act on entry was amended in 2014 to make reference to Article 3(2)(a) and 3(2)(b) of the Directive. Article 31(1a) of the Act on entry provides that 'in cases when the requirements to legalise the right to residence are not fulfilled, the competent authority may not issue a decision of refusal to register the right to residence or refusal to issue the residence card, in the case of a

Directive's provisions	National provisions	Assessment	Changes since 2008
			<p>Union citizen who is a family member of a Union citizen or a Polish citizen:</p> <ul style="list-style-type: none"> - who is not: (a) the spouse of these persons, (b) the descendant of the Union citizen or his/her spouse, who is under the age of 21 or living in the common household with the Union citizen or his/her spouse, (c) dependent direct relatives of the Union citizen in the ascending line or his/her spouse who is living in the common household with the Union citizen or his/her spouse; - who joins him/her or resides with him/her on Polish territory, due to: financial dependency or due to remaining with him/her in the same household, or due to serious health reasons requiring personal care by a Union citizen or a Polish citizen'
<p>Article 28 Protection against expulsion</p>	<p>Articles 67, 68,69, 70 of the Act on entry</p>	<p>In line with the Directive Chapter 5 of the Act on entry is in line with the Directive. Articles 67 and 68 of the Act on entry impose additional grounds for expulsion: national defence, national or public security, by means of constituting a threat to peace, humanity, independence or defence of Poland, or due to terrorist activity. Since these grounds merely specify what are considered grounds of public security, they appear to be in line with the Directive.</p>	<p>No change.</p>
<p>Article 35 Abuse of rights</p>	<p>Articles 31(2),35(1), 36(1) point 2 and 3,56(2), 60(1) point 1, 60(2) point 1 and 60(2) point 3 of the Act on entry</p>	<p>In line with the Directive The Act of entry provisions provide for abuse, marriage of convenience and forged or false documents/information.</p>	<p>No change.</p>

ANNEX II: DATA ON REFUSALS AND EXPULSIONS

Table 2: Data on refusal of entry, refusal of residence and expulsions

Data	2012	2013	2014	2015	Reasons
Refusal of entry	EU citizens:14	EU citizens:3	Not available	Not available	Personal data of an EU citizen has been entered onto the register of foreign nationals whose stay in Poland is not welcome
Refusal of residence	1. EU citizens:233 2. Family members of EU citizens:7	1.EU citizens:244 2. Family members of EU citizens:9	1. EU citizens:131 2. Family members of EU citizens:10	1. EU citizens:128 2. Family members of EU citizens:2	Personal data of an EU citizen or of a family member of an EU citizen has been entered onto the register of foreign nationals whose stay in Poland is not welcome. Residence of an EU citizen or of a family member of an EU citizen in Poland posed a threat to defence policy or national security, or to public safety or public order. The applicant enclosed documents without a Polish translation. The applicant resided outside the territory of Poland.
Expulsion	EU citizens: data not available	EU citizens:24	EU citizens:31	EU citizens:35	The residence in Poland of the individual concerned constitutes a threat to defence policy or national security, or to public safety, public order or public health

Source: Data provided by the Department of Foreigners

BIBLIOGRAPHY

Table of Legislation

European law

- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States 30.04.2004 OJ L 158, OJ L 229.

National law

- Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members (Ustawa z 14 lipca 2006 roku o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin)
- Ordinance of the Ministry of the Interior and Administration of 24 August 2006 on application forms and documents regarding the right of residence on the territory of the Republic of Poland of citizens of the EU Member States and their family members (Rozporządzenie Ministra Spraw Wewnętrznych i Administracji w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin)
- Act of 12 March 2004 on social assistance (Ustawa o pomocy społecznej)
- Act of 27 August 2004 on health care benefits financed by public funds (Ustawa o świadczeniach opieki zdrowotnej finansowanej ze środków publicznych)
- Act on Foreigners of 12 December 2013 (Ustawa o cudzoziemcach)
- Act on Employment Promotion and Labour Market Institutions of 20 April 2004 (Ustawa o promocji zatrudnienia i instytucjach rynku pracy)
- Law of 5 January 2011 – Electoral Code (Ustawa z dnia 5 stycznia 2011 roku – Kodeks wyborczy)
- Banking Act of 29 August 1997 (Ustawa – Prawo bankowe)
- Act on the recognition of professional qualifications acquired in Member States (Ustawa o zasadach uznawania kwalifikacji zawodowych nabytych w państwach członkowskich Unii Europejskiej)

Petitions

- Petition No. 0038/2014 to the European Parliament.

Your Europe Advice Service Quarterly Feedback Reports

- Your Europe Advice, Quarterly Feedback Report, April-June 2015

- Your Europe Advice, Quarterly Feedback Report, October-December 2014
- Your Europe Advice, Quarterly Feedback Report, January-March 2014
- Your Europe Advice, Quarterly Feedback Report, October-December 2013
- Your Europe Advice, Quarterly Feedback Report, July-September 2013
- Your Europe Advice, Quarterly Feedback Report, January-March 2013

Publications

- Górska-Rożej K., The Defence of Poland and its risks as the foundation of national defence (*System Obronny Rzeczypospolitej Polskiej i jego zagrożenia jako fundament obronności państwa*), Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach, available at : http://www.tstefaniuk.uph.edu.pl/zeszyty/archiwalne/104-2015_6.pdf
- Cizek M., The theoretical basis of national security (*Teoretyczne podstawy bezpieczeństwa państwa*), available at : https://repozytorium.uph.edu.pl/bitstream/handle/11331/104/Doc_9.Cizek.Teoretyczne_podstawy_bezpieczenstwa_panstwa.pdf?sequence=1
- Nowosielska K., Persons living in a civil partnership cannot benefit from the health care insurance of their partner (*Osoby żyjące w związkach partnerskich nie skorzystają z ubezpieczenia zdrowotnego swojego partnera*), Rzeczpospolita, 2013, available at: <http://www.rp.pl/artukul/1071947-Osoby-zyjace-w-zwiazkach-partnerskich-nie-skorzystaja-z-ubezpieczenia-zdrowotnego-swojego-partnera.html>
- I. Szelaǳ, Protection of public order and security as a task of local government (*ochrona porządku i bezpieczeństwa publicznego jako zadanie własne samorządu lokalnego*), The Central European Journal of Social Sciences and Humanities
- Union of Polish Roma, The Report on the situation of Roma Community in Poland, available at: http://www.romowie.com/the_report.pdf
- Ministry of Interior and Administration, *Report of 2015 on the situation of minorities in Poland*, available at: <http://mniejszosci.narodowe.mac.gov.pl/mne/prawo/ustawa-o-mniejszosciac/raporty-ustawowe/9711,V--dotyczacy-sytuacji-mniejszosci-narodowych-i-etnicznych-oraz-jezyka-regi.html>
- Statement of the Polish Ministry of the Interior and Administration, available at: <https://www.rpo.gov.pl/sites/default/files/Odpowiedz%20MSW%20z%205.03.2015.pdf>

Websites

- Website of the Voivodeship Office in Warsaw, available at: <http://bip.mazowieckie.pl/cases/content/405>
- Website of the Voivodeship Office in Łódź, available at: <http://www.paszporty.lodzkie.eu/page/2529>
- Website of the Administrative Supreme Court in Poland: <http://orzeczenia.nsa.gov.pl/doc/297E6A767B>

- Website of the Polish Supreme Court:
http://www.sn.pl/sprawy/SiteAssets/Lists/Zagadnienia_prawne/EditForm/I-KZP-0020_15.pdf
- <http://polska.newsweek.pl/dziecko-lesbijek-nie-moze-otrzymac-w-polsce-aktu-urodzenia,artykuly,365352,1.html>

List of stakeholders consulted

- ILGA Europe, May 2016
- KPH, May 2016
- Wielkopolski Voivodeship Office, April 2016
- Office for Foreigners, March 2016
- Silesian Voivodeship Office, March 2016
- Kujawsko-Pomorski Voivodeship Office, March 2016
- Mazovian Voivodeship Office, March 2016
- Warmińsko-Mazurski Voivodeship Office, March 2016
- Bieszczadzki Unit of the Border Guard, March 2016
- Śląsko-Małopolski Unit of the Border Guard, March 2016
- Nadwislanski Unit of the Border Guard, March 2016

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

Documents

Visit the European Parliament website:
<http://www.europarl.europa.eu/supporting-analyses>

PHOTO CREDIT: iStock International Inc.



ISBN 978-92-823-9369-7 (paper)
ISBN 978-92-823-9368-0 (pdf)

doi: 10.2861/911370 (paper)
doi: 10.2861/061318 (pdf)