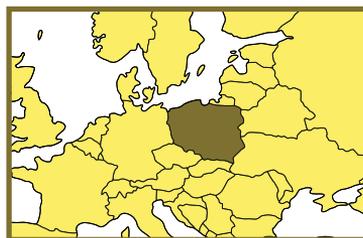


## 4. SIMPLIFICATION OF EMPLOYMENT OF FOREIGN WORKERS IN POLAND AND THE CASE OF WROCLAW

Mirosław Bieniecki and Mikołaj Pawlak<sup>16</sup>



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### 4.1. Description of the ‘Simplified System’

The so called ‘simplified system’ of employment of nationals of selected countries in Poland was not designed as a measure for immigrant integration. The introduction of the system in 2006 was a response to the employer demand in the sectors of agriculture and horticulture for the quick supply of the workers for seasonal employment. The integration aspect of the measure under consideration was intended, but is important as the ‘simplified system’ (1) supports integration into the regular labour market of migrants who are traditionally taking up the jobs in the irregular labour market; and (2) provides opportunity for the smooth transition to long-term employment under the general regulations on the employment of foreigners in Poland. The measure is also not designed exclusively for the less skilled migrants. However, due to the fact that it is targeted at workers taking up short-term jobs, it in reality predominantly concerning the low- or semi-skilled positions. Low- and semi-skilled work assignments do not necessarily correspond to the immigrants’ qualifications. Especially in the case of Ukrainian immigrants, overqualification is widespread (for example a nurse certified working as a domestic caregiver; or a teacher taking up seasonal work in agriculture).

In 2006, the Minister of Labour and Social Policy issued an *Ordinance on Taking Up Employment by Foreigners without the Need to Obtain a Work Permit* (Dz. U. Nr 156, poz. 1116). The Ordinance gave the opportunity to employ in the agricultural sector the nationals of Belarus, Russia and Ukraine for a maximum of three months in any consecutive six-month period without the need of going through the protracted and (at that time) relatively costly procedure of foreigner employment under the provision of the *Act of 20 April 2004 on Employment Promotion and Labour Market Institutions* (Dz. U. Nr 99, poz. 100). Under the provisions of the Ordinance whereby the employer

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is supposed to register a declaration in the district labour office. On the basis of the declaration, a future employee applies for the visa in the Polish consulate. Having this type of visa allows a foreigner to cross the border and to work for the employer who registered a declaration. Therefore, the measure implemented by the 2006 Ordinance had an integrative aspect by encouraging and enabling migrants to take up regular jobs.

The 'simplified system' established by the Ordinance was a response to the labour demand from the farmers who depend on the seasonal employment of irregular workers, mostly from the Ukraine (Bieniecki, and Pawlak, 2009). The changes of the regulations for admission to Poland of the citizens of Eastern neighbouring countries were introduced in 2003 in relation to Poland's EU accession. Before September 2003, citizens of Ukraine were not required to apply for visa to enter Poland, and hence the Polish employers had access to relatively cheap workers willing to accept irregular jobs. Ukrainians could apply for free tourist visas and then accept irregular jobs, but the Polish consulates started issuing visas for short periods only, and were rejecting them for many applicants. The lack of access to labour was the reason for representatives of the agricultural sector to lobby for implementing a measure allowing them relatively easy recruitment of workers from the Eastern neighbouring countries.

Since August 2006, the Ordinance was amended several times (see: EMN, 2011:20-21). The amendments gradually increased the period of work, opened new sectors of the economy for migrant employment and extended the list of countries, the citizens of which were eligible to work under the Ordinance.

The amendment in 2009 introduced the second aspect of the measure which is relevant for integration. According to this provision, a foreign employee who worked for at least three months on the basis of the employer declaration and a visa, is able to apply for the work permit, which is to be issued without a labour market test. Labour market test is the most significant barrier to receiving a work permit for less skilled migrants, so this measure is considered to facilitate integration by further encouraging regular employment.

The current legal status is defined by the Ordinance issued in July 2011 (Dz. U. Nr 155, poz. 919). The current version of the document stipulates that the employer declaration allows for employment of up to six months within any consecutive 12 months counting from the date of first entry to Poland. Every employer must declare the type of contract and expected remuneration. The measure applies to the nationals of Belarus, Georgia, Moldova, Russia and Ukraine; even though, in reality it was used predominantly by the Ukrainians (Table I).

**Table I: Employers' declarations on intention to employ a foreigner in 2007-2011**

	2007 (August-December)	2008	2009	2010	2011 (January-June)
Overall number of declarations	21,797	156,713	188,414	180,073	163,984
Declarations registered for Ukrainians	20,260	142,960	180,133	169,490	153,779

Source: Ministry of Labour and Social Policy.

Every year of implementation of the Ordinance, the Ukrainians constituted the vast majority (more than the 90%) of workers for whom the declarations were registered. It has to be emphasised that the statistics refer to the number of registered declarations, not to the actual number of migrants who came to Poland and took up jobs. The Ordinance did not prescribe any monitoring system and there is no available data on the actual number of foreigners working on the basis of these declarations. The interviews with the employers indicate that a rather large number of workers for whom they have registered their declarations do not appear at the declared destination (Bieniecki and Pawlak, 2009). There are no assessments indicating how many of the workers have actually obtained Polish visas on the basis of the declaration, how many entered Poland on the basis of such visas or the number of those who chose to work irregularly or on the basis of a declaration from a different employer.

## 4.2. Description of Wrocław's Labour Market

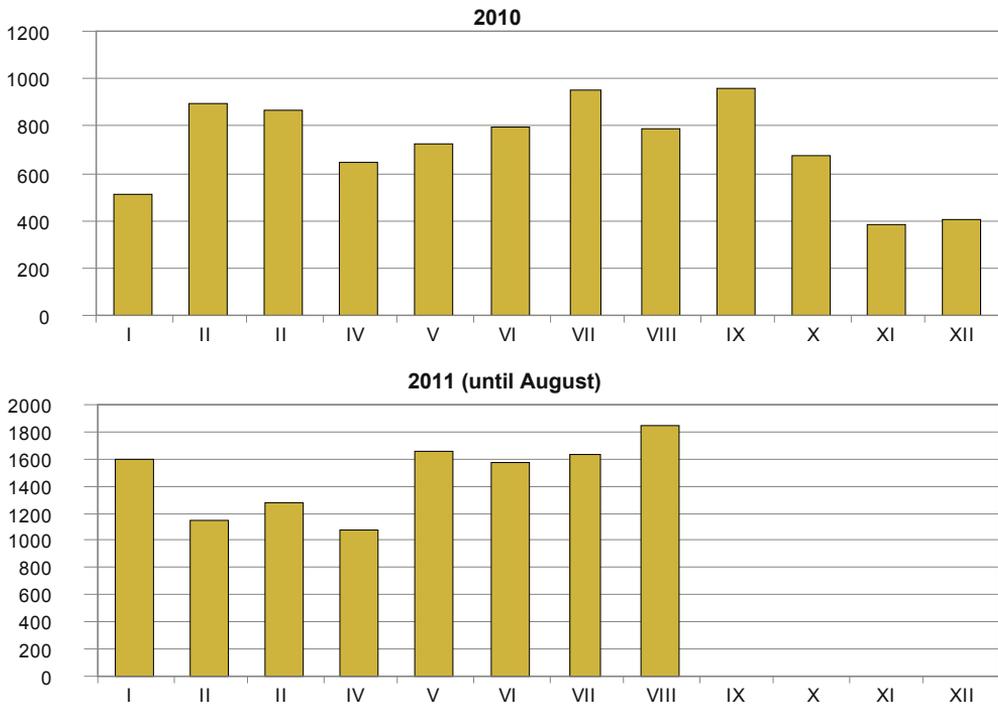
Wrocław has 632,146 inhabitants, which makes it the fourth biggest Polish city. It is the capital of the Lower Silesian Region (Województwo Dolnośląskie), an important administrative, cultural, and university centre attracting significant investments. The analysis also includes the District of Wrocław (Powiat Wrocławski) which contains nine communes surrounding the city and inhabited by 111,069 persons. The city and the districts have one common district labour office and according to the Polish institutional system constitute a basic unit of the single local labour market.

The situation on the Wrocław labour market compared to the average situation in Poland is considered to be very good. The Lower Silesian Regional Labour Office accounted at the end of the August 2011 in district labour offices 18,580 registered unemployed persons, which comprises an unemployment rate of 4.9 per cent, while the national average was 11.6 per cent (DWUP, 2011). Available data on the average salaries in 2009 shows that while the average salary in Poland was PLN 3,103, in the city of Wrocław it reached PLN 3,566, and in the Wrocław district outside the city amounted to PLN 3,004.49 (GUS, 2010; USwW, 2010).

Although the multicultural heritage of Wrocław is highlighted by the local authorities, the city is predominantly inhabited by ethnic Poles. As Patrycja Matusz stated in the Wrocław case study for CLIP network in 2010, “the current population of immigrants living in Wrocław is too small and too varied in terms of its interests to be recognised by the local authorities as a partner for creating policy or dialogue”. That was corroborated in the context of the labour market by the interviewed informants who were claiming that immigrant workers, although present, do play a marginal role on the local labour market.

In this context, several hundred foreign workers working at the time within the city district do not appear as a significant factor influencing the local economy nor the labour market. The number of declarations registered in 2010 and in 2011 (until August) are presented in Figure 1. Almost half of the declarations are registered for women migrants. The dominant age of the workers is between 24 and 40, and the declarations are mostly issued for construction work, agriculture and “other” employments, predominantly for three to six months.

**Figure I: Employers' declarations on intention to employ a foreigner in 2010-(August) 2011, Wrocław and Wrocław district**



Source: Lower Silesian Regional Labour Office.

The observed growth of registered declarations in 2011 in comparison to 2010 in Wrocław and Wrocław district is due both to the economic growth in recent three years and to common registration of foreigners by more than one employer. In recent years no increase of unemployment was observed. Number of registered declarations differ depending on the seasonal demand for many jobs.

### 4.3. Potential Problems

The discussed measure is generally very well perceived, although, as usually in the case of regulations expanding access of immigrants to the national labour market, it has raised some questions concerning its potential negative impact on the employment of nationals and expected decrease of wages in some sectors. Those concerns were expressed by some representatives of trade unions in the period of implementing the Ordinance and expanding its application (Szczepański, 2009; Janowski, 2007). The empirical evidence suggests has proven the concerns to be overstated. Workers who have taken up jobs through the 'simplified system' do not seem to compete with Polish workers. In the suburbs of larger cities, migrants are employed mainly as construction workers, household help and babysitters. Moreover, it seems that since mid 1990s Ukrainians offering household services created the market for themselves in the sector where Poles had no employment interest (Bieniecki, 2007). Outside of the cities, most

migrants are employed in agriculture. According to the data of the Ministry of Labour and Social Policy in 2010, 60.9 per cent of the declarations were registered in this sector with a large demand for seasonal workers for short periods of time. Such work is most often unattractive for Poles who prefer to choose much better paid seasonal jobs in agriculture in other EU Member States. Here, too, in some areas as a result of the availability of the migrant labour there seems to have been an increase in the acreage of strawberries and raspberries, making the harvest of these berries and the sectoral development fully dependent on the availability of migrant labour (Bieniecki, and Pawlak, 2009).

Another concern related to the Ordinance has been connected to the institutions of informal employment mediation which have developed around the 'simplified system', and the phenomenon of 'trading declarations'. In most such cases, Polish employers are matched with Ukrainian workers with the help of mediators. These mediators are usually not registered, and their services are not licensed or controlled neither by Poland nor by the Ukraine. Middlemen offer a 'package service' for finding the job, help with documents and the application for visa and transportation. They charge migrant workers for their services, and in some cases also charge the employers. Many migrants prefer to use their services to direct contacts with employers, because the mediators secure access to the migratory network, and organize the change of jobs (which often happens in case of seasonal workers). The institution of informal employment mediation has both disadvantages and benefits. It replaces the formal employment mediation in sectors of the economy which, being close to the informal zone, are not penetrated by the formal institutions. The mediators also to some extent secure the position of migrant workers (for detailed discussion of institution of informal employment mediation see: Bieniecki, and Pawlak, 2009).

Somehow connected and often confused with the institutions of informal employment mediation is the phenomenon of 'trading declarations'. In Poland, there has developed an informal business of companies or individuals registering declarations without the real intention to employ a foreigner, only to sell them to foreigners willing to have a legal basis to enter Poland; to travel further abroad to another EU country (Polish Eastern border is the border of Schengen zone), or to simply accept a job with another employer in Poland. The latter situation is often encountered by the inspectors of the National Labour Inspectorate (PIP, 2011). These activities are the subject of investigation by the Border Police, which has already succeeded in arresting several organized groups trading declarations. Although this phenomenon is a negative and an unintended consequence of the 'simplified system', it should not be considered a reason for abolishing the mechanism. Rather, the relevant institutions should improve control of employment in the framework of the current legal system. One of the tools for counteracting such practices is the recently implemented amendment (July 2011), which provides to the declaration an additional information free information leaflet (in all languages of countries covered by the system).

## 4.4. Practical observations on the ‘Simplified System’ for the case of Wrocław

Due to a small number of work permits and a relatively small number of valid declarations compared to the active workforce in Poland, the influence of foreign workers on the Polish labour market is considered generally insignificant. In Wrocław, according to data of the Lower Silesian Regional Labour Office, foreigners constitute less than 1 per cent of the 250 thousand workforce. They can, of course, play an important role in some niche areas of the labour market, but such situations are rare and localized (such as strawberry farms in Płońsk district, household keepers in Warsaw or construction workers in Sub-Warsawian Lesznowola).

It is important to notice that quite a few workers whose declarations were registered in Wrocław are registered by employment agencies that provide workers for other Polish regions. The activities of the employment agencies contribute also to a growing number of issued declarations, since foreigners that come to Poland on the basis of their declarations are registered again once they start working for the target business.

One of the problems accompanying the present situation is that in spite of the possibility of legal employment provided by the Ordinance to foreigners, many still do not regularize their employment. Moreover, according to the collected data, the majority of Ukrainians working in Poland do not seem to be interested in the possibility of regular work, even if they had the chance. This observation is supported by the report of the National Labour Inspectorate concluding that the reason of the many irregularities is the common intention of both employers and employees to reduce the costs of work as much as possible. Hence, foreigners employed on the basis of a declaration aim to work very long hours and avoid paying taxes and social insurance (PIP, 2011). This is due to many factors, such as the particularities of the short-term work in agriculture, construction or domestic services.

Working in the informal economy, the foreigners are very flexible and competitive and they can easily change employers or work for several at the same time, as in the case of domestic help and caregivers. This is possible also because the informal economy in Poland is estimated to amount to a quarter of the Polish GDP, and it is especially widespread in the sectors of migrant concentration (GUS, 2011). At the same time, observations of the sectors where foreigners work indicate that their living and working conditions in the informal economy are generally similar or identical to those of Polish workers. Consulted Wrocław construction companies declare even that due to problems with the Polish employees, they often pay more to the Ukrainians than to domestic workers.

Summing up, the reason behind informal employment is twofold. First, legal employment in general is the subject of too many regulations that make legal short-term employment quite complicated (obligatory medical examination, safety training and several forms to fill and send to various institutions). Second, irregular work is not effectively persecuted. Of course, there are some forms of simplified employment (i.e. employment on a freelance basis), though these forms are often subject to disputes with the tax authorities (for example, whether or not workers picking strawberries can be employed as a freelancers).

In addition, employers prefer freelance employment of foreigners since work contracts demand spending money on workers' retirement fund and social insurance, and these costs are considered as "a waste" from the foreigners' viewpoint. Such situation shows a need to facilitate reforms towards the increasing flexibility of the national labour market. A special instrument allowing easy seasonal/short-term employment (beyond admission, but in terms of labour market legal requirements) would help avoiding unnecessary irregularity.

The second integration-related aspect of the measure – facilitation of the long-term employment – supports transition from the short-term employment to more stable employment forms that require work permits. According to the Lower Silesian Regional Office the significant majority of work permits for nationals of the five eligible countries are currently issued on the basis of previous employment within the 'simplified system'. Unfortunately there is no official data available, and this observation cannot be supported by figures.

The possibility of smooth transition from short-term employment within the 'simplified system' to long-term employment on the basis of the regular system of employment of foreigners in Poland is praised by all stakeholders. Employers find it very beneficial, since it allows finding workers quickly and treating the six months period of short-term employment as a trial period – an option not available in the regular migrant admission system.

Migrant employees also are satisfied with this option of faster and more flexible initial employment without being tied to the employer. In the regular system, a work permit is issued for the employer and it is the only ground for legal residence of a migrant in Poland. The regular regime places a migrant worker in the asymmetrical situation of dependency. In addition, foreigners from Belarus, Georgia, Moldova, Russia and Ukraine employed on the basis of the 'simplified system' work permit have the possibility to take an additional job on the ground of the declaration of another employer. It gives them better position on the labour market and minimizes their dependency on one employer. Nevertheless, it is a common practice that temporarily employed foreigners who were found to be good workers prolong their contracts over the initial six months and take up a work permit. According to Wrocław employers, it is very often difficult since most of their foreign workers are in fact not interested in long-term or permanent work in Poland, but rather prefer go return to their countries of origin.

## Conclusions and Recommendations

The *2006 Ordinance on Taking Up Employment by Foreigners without the Need to Obtain a Work Permit* responded to the labour market's need for quick and flexible seasonal employment of workers from neighbouring countries. However, the need remains for better inclusion of migrants employed on the basis of 'simplified system' in the regular labour market. This could be pursued on several levels and by adopting a range of measures:

- setting the less-restrictive general national conditions for short-term employment;

- providing information on the legal requirements of employment to migrants in as many situations it is possible (at the consulates when issuing visa, at the border checkpoints and so on);
- providing better information to the employers – a good example is the common action of National Labour Inspectorate and the Border Police in Lublin Region where 2,010 meetings with the potential employers were organized to explain requirements and conditions;
- strengthening inspections by the National Labour Inspectorate of the companies and individuals employing foreigners on the basis of the ‘simplified system’ – this is already being done and there are indications of the positive effects.

Further recommendations consider the need to extend the ‘simplified system’ to more Eastern Partnership countries – Armenia and Azerbaijan – to strengthen the foreign policy role of the measure among other goals.

As the growing number of workers employed on the basis of the ‘simplified system’ are hired by the temporary employment agencies, there is a need for better regulations and monitoring of the operations of these agencies.

Finally, better data, including figures on the number of work permits issued to foreigners who previously were employed on the basis of the ‘simplified system’ would give the possibility to assess the real impact of the measure on labour market inclusion.

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