



**MAGDALENA ŚWITAJSKA**

*adwokat*, solicitor of England and Wales (not currently practising), partner, Employment & Global Mobility practice



**ALEKSANDRA WÓJCIK**

Employment & Global Mobility practice

# Foreign workers: Unexploited opportunities for the Polish labour market

For years, the figure of “five million” foreign workers who must be absorbed into the Polish labour market within the next decade or so if the Polish economy is to keep growing at its current pace has kept cropping up in the press and in public debate.

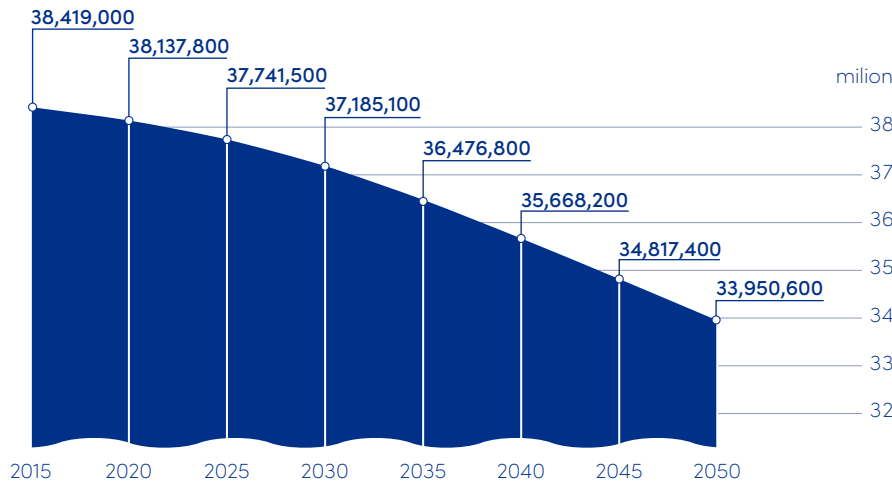
## Five million? Really?

This number doesn't seem to be exaggerated if we look at the demographic projections from Statistics Poland (GUS) for the country for 2014–2050. They anticipate a decline in the population to 33.1 million in 2050, 5.4 million fewer people than in 2016. On top of that, the rapid increase in the proportion of people in their “post-productive” years must also be factored in.

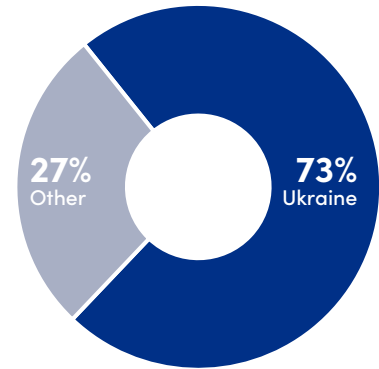
No one knows exactly how many foreigners are already working in Poland. According to the first, experimental report of this type by Statistics Poland, as of the end of 2019 there were over two million foreigners living in Poland. But this number includes all persons without Polish citizenship, regardless of when they settled in Poland or for what purpose. It thus seems more relevant to rely on the statistics maintained by the Social Insurance Institution (ZUS), according to which at the end of 2020 there were over 725,000 foreigners registered for social insurance and paying contributions. This was a record-high figure, up nearly 75,000 year-on-year. At the end of June 2021 this number had jumped to nearly 820,000 foreigners.

For years, Ukrainians have predominated among foreigners working in Poland, accounting for about 70% of foreigners registered with ZUS. Further down the list are citizens of Belarus and Georgia. Poland also draws workers from India, Vietnam, Russia, Moldova, China, and South Korea. There are also significant groups of German, Italian, and British citizens living in Poland.

## POPULATION OF POLAND



## FOREIGNERS REGISTERED WITH THE SOCIAL INSURANCE INSTITUTION (OCTOBER 2021)

**It's still not enough**

But all of this is still too little. The demand for foreign workers is steadily growing—and this is a trend not only in Poland but across Europe. And the influx of foreign workers is not keeping up with this demand. In June 2021 there were 142,800 jobs open in Poland (up 29.6% from March 2021), and 81% of businesses declared that they had difficulty filling vacancies. This situation is worsened by the noticeable and continuing outflow of economic emigrants from Poland to neighbouring countries due to competitive employment conditions and lower barriers to obtaining working papers there. For most Polish employers, using the work of foreigners has already become a common occurrence and a necessity. The rest will join this group within the next few years.

Foreign workers find jobs in Poland primarily in industrial processing, construction, transport, and warehousing, which struggle with the highest shortages. Foreigners still perform mostly less-skilled labour in Poland, as operators and installers of devices, and as industrial workers and craftsmen. But many

professions from the IT sector (e.g. app programmers) and healthcare have appeared for years on the lists of professions suffering labour shortages.

**State uninterested, law unencouraging**

Although the problem of the shortage of workers on the labour market is nothing new, for many years the government has not taken steps to make it easier or more attractive to hire foreign workers in Poland.

Not much was changed by the publication in July 2021 and distribution for inter-ministerial comment of a resolution of the Council of Ministers on adoption of a document entitled “Poland’s migration policy: Directions for actions in 2021–2022.” This much-awaited policy is another attempt to coordinate the state’s actions with respect to migration processes. Earlier, in 2012, the Council of Ministers adopted a document entitled “Poland’s migration policy: Current state and calls for action,” which was subsequently repealed in 2016. In 2018 the

Council of Ministers adopted “Socio-economic priorities of migration policy,” but that document never led to any specifics.

It is hard not to notice that the policy currently being drafted covers a very brief period, a big chunk of which had already elapsed before the draft even appeared. Moreover, the document does not provide many solutions to the multiplicity of issues raised by employers. This manifests the lack of a clear, long-term vision for Poland’s migration policy, and even suggests that the government’s interest in this area is illusory. Instead, realistic legal solutions streamlining processes for hiring foreigners should be adopted as soon as possible if Poland wishes to avoid squandering the potential of foreign workers.

**No rush**

For years, the biggest problem for foreigners and employers has been the significant delays in handling of matters by the administrative authorities, and more specifically the province governors (*województwo*). >>

This applies in particular to temporary residence and work permits (documents allowing foreigners to legally work as well as reside in Poland, without the additional need to obtain a visa). As of 25 June 2020, the average time it took to resolve a case of this type in Poland was 238 days. This is several times longer than the periods provided for in the law. One reason is the growth year after year in the number of permit applications (in 2018, 165,000 applications were filed for temporary residence and work permits, and in 2021, nearly 327,000), and another reason is the shortage of officials and the lack of procedures (including internal procedures) for efficient handling of these applications.

It generally takes much less time, although still too long (from several weeks to several months), to obtain a work permit, which only authorises the holder to work and generally requires the foreigner to obtain a visa abroad. It should be mentioned, by the way, that despite obtaining a work permit, there is no guarantee that the consulate will issue a visa to the foreigner allowing them to exercise the permit and actually begin working in Poland. In practice, there are many instances where consulates have failed to issue visas to foreigners holding a work permit, due to the large number of applications received, or did not manage to schedule meetings with applicants.

In the case of a work permit, as well as a permit for temporary residence and work, in a situation where it is new work for the foreigner, the long waiting time means that the foreigner cannot begin work until obtaining a permit. In the case of a permit for temporary residence and work, this also means that as a rule (certain modifications were introduced for the duration of the pandemic), if the foreigner leaves Poland before issuance of the permit, it is not permissible to re-enter Poland without a visa (or without the right to visa-free travel). In many instances, these inconveniences

are great enough to discourage employers from seeking foreign workers, or to encourage foreign workers to seek work in other neighbouring countries instead. Certain possibilities do exist for expediting consideration of these cases, but they require experience and an intimate knowledge of the procedures.

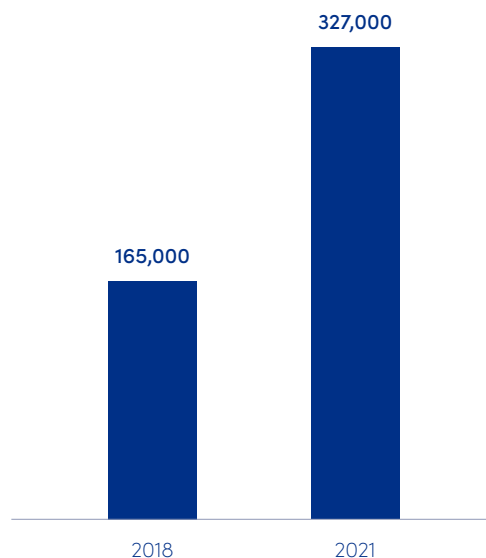
### Only in Polish

It is not just the waiting times that discourage foreigners and employers. Communication barriers between the foreigner and the office pose a major problem, particularly in proceedings involving legalisation of the foreigner's stay (where the employee himself is the party, not the employer as in the case of legalisation of work).

Phone lines of province offices handling applications are often busy, and some of them are permanently suspended. Email correspondence often goes unanswered, and when a response is sent, it is usually just standard information, not addressing the specific circumstances of the case, telling applicants what they already know. Submissions of letters and documents by post often require the sender to wait weeks for a response.

Another problem is the language barrier. Even if the foreigner manages to get through to an official, that person usually cannot use the foreigner's native language, and English can be an inadequate substitute when fluency is lacking on both sides. The same applies to the sometimes extensive summonses from offices to fix formal deficiencies in applications already filed, which are sent to foreign applicants in Polish. Summonses often employ standard content, not advertizing to documents already filed and not explaining why the existing documents are insufficient or stating exactly what the foreigner needs to submit. Sometimes summonses are sent

NUMBER OF APPLICATIONS FILED FOR TEMPORARY RESIDENCE AND WORK PERMITS



out needlessly because the officials have overlooked materials already provided. Over recent years, deciphering such requests has become a skill requiring special experience.

It seems that misunderstanding on the part of foreigners of correspondence sent to them, or in communications in other forms, may be the main reason for issuance by offices of the relatively high number of denials of applications (according to government migration statistics).

### Is there any hope?

A new prospect has recently appeared, as the parliament has adopted a long-awaited amendment to the Foreigners Act and other acts.

It makes a number of changes in the existing procedures for legalisation of work and stay of foreigners in Poland, including with respect to the requirements imposed on foreigners and the deadlines for deciding their cases.



## The maximum permissible period of work on the basis of a declaration has been extended to 24 months.

It also introduces a 60-day period for deciding cases by the administrative body of first instance, generally starting to run from the time when any formal deficiencies in the application for issuance or amendment of a temporary residence permit have been fixed, and the foreigner has fulfilled his obligation to appear in person at the administrative office. If the authorities actually meet these deadlines, the change will be revolutionary.

A significant change, long called for, is also introduced with respect to declarations registered with the labour office on entrusting work to a foreigner. These declarations can cut red tape and allow for quick legalisation of work by citizens of countries including Ukraine, Belarus and Russia (the declarations should be registered within 7–14 days). Under the prior rules, the period of performance of work on the basis of such a declaration could not exceed 6 months within a period of 12 successive months, regardless of the number of entities entrusting work to the given foreigner. Under the new regulations, the maximum permissible period of work on the basis of such a declaration has been extended to 24 months, which should greatly increase the usefulness of this solution and

unburden other proceedings, at least for some time.

The amendment also gives priority in considering applications for work permits to businesses conducting activity of strategic importance for the national economy. A list of such businesses is to be drawn up by the minister for economy through an executive regulation.

The amendment also allows authorities to exchange information via electronic channels on whether a foreigner's entry or stay in Poland could pose a threat to state defence or security or public order and safety. At least in theory, this should greatly expedite this stage in the procedure for issuance of residence permits, sparing the various state offices the trouble of exchanging the physical case files.

A major practical problem which employers hiring foreigners struggle with on a daily basis is that permits for residence and work are tied to a specific employer, without the possibility for another employer to rely on the permit, as well as the limitation on the possibility of changing certain working conditions. The amendment provides for the possibility (not existing before) to amend a

permit for residence and work in the case of a change in employers. In such cases it is no longer necessary to apply for a new temporary residence permit. Additionally, the catalogue of circumstances not requiring amendment of a temporary residence and work permit, or amendment of a work permit, has been expanded to include:

- Change in the name of the position at which the foreigner works, where the scope of duties remains unchanged
- Increasing the working time while increasing the foreigner's remuneration proportionally.

### Polish opportunities

It is hard to predict how the practice of applying the new regulations will shape up, but the aim of the changes should be assessed positively and regarded as a turning point in the government's approach to the employment of foreigners in Poland. Any instruments that can expedite the consideration of immigration cases and increase their predictability, as well as the efficiency of the system, will contribute to improvement of the situation of foreigners and their employers (current and potential), and consequently enable the growing gaps in the labour market to be filled. But much will depend, as usual, on the correct application of the new regulations (or not) by the authorities, and this in turn will largely depend on the state's policy towards employees from abroad. It is ultimately that policy that will determine whether Poland takes advantage of the opportunities and undoubted advantages offered by hiring foreigners. ●