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## POLES ON THE GERMAN JOB MARKET

Due to still alive war memories on the one hand and because of completely different visions concerning the Polish western borderline on the other hand, decades had to pass before the diplomatic relations could be established between Poland and the Federal Republic of Germany. This took place as late as 1970 and after the post-war *status quo* was recognized by that country. Nevertheless, even in decades prior to that economic relations started to be established. In order to intensify these relations representative business agencies were established in both countries. Over the course of many years they were the only official state posts functioning on mutual terms in Poland and in the Federal Republic of Germany.

The situation was completely different in the case of the German Democratic Republic which already in 1950 recognized the border along the Oder and the Lusatian Neisse rivers. This was followed by establishing full diplomatic relations. Also, economic relations started to be developed. However, it has to be reminded that because of the fact that both countries belonged to the Council for Mutual Economic Assistance (COMECON) these relations were far from normal. The economy functioning in the east of Europe with its ordered and distributive character meant that also in the relations between the countries cost value did not play the most important part. The decisions to localize certain branches of industry were often made arbitrarily and they affected the directions and the volume of goods flow referring both to supply and to the ready-made products.

Taking into account the historical perspective of the years which have passed since the reunification of Germany the thesis that the process was perceived by Poland as carrying both opportunities and dangers from the economic point of view seems justified. For this reason the fact that the Treaty on Good Neighbourship and Friendly Cooperation signed between the Republic of Poland and the Federal Republic of Germany on 17 June 1991 included as many as 4 articles devoted to economic issues was received with huge satisfaction.

For instance, article 8 is devoted to the efforts towards European unity. The Federal Republic of Germany made a commitment in this article to support Polish efforts towards accession to the European Union. Article 10 in turn focuses on the financial aspects of the bilateral economic relations, and the following one discusses the issues pertaining to agricultural production and turnover of food products.

From the point of view of the present analysis article 9 deserves special attention. It, among others, states that,

“The parties to the Treaty will strive towards broadening and enriching mutual economic relations in all areas. They will create the most favourable premises, especially economic, legal and organizational for economic activity including industry and services offered by single and legal entities in the scope of their state legislation, as well as within their commitments stemming from international agreements, including the obligations of the Federal Republic of Germany due to its membership in the European Union. The parties to the agreement agree that the process of economic transformation which has been initiated in the Republic of Poland, should be supported by international cooperation. The Federal Republic of Germany is ready to operate on both the bilateral and multilateral platform to provide support for the economic development of Poland within the fully developed social market economy. By the same token adequate conditions should be created for a significant reduction of the existing developmental differences”<sup>1</sup>.

Considering the degree of the realization of this provision it needs to be remembered, especially taking into account the above mentioned experiences from the Polish-East German relations, that the role of the state is only to create frame conditions enabling the free operation of business entities irrespective of their origin.

In this context special attention should be paid to the fragment of article 9 in which both sides make an obligation to create the most favourable premises including especially legal ones for economic activity concerning industry and services provided by single and legal entities.

One of the fundamental premises enabling normal activity is the freedom of movement and lack of any restrictions either with reference to taking up paid employment or setting up one's own company in another country. An analysis of the migration streams between Poland and the enlarged Federal Republic of Germany allows to put forward a thesis that the realization of article 9 of the Treaty from June 1991 leaves much to be desired. The Federal Republic of Germany shows far-reaching caution in creating the same conditions for the Poles as those enjoyed on the German job market by German passport holders.

The situation did not change following Poland's accession to the European Union in May 2004. This must seem surprising at least because of the fact that as early as in 1952 in the treaty which established the European Coal and Steel Community the freedom of movement for the workers of the two branches of industry was introduced. Relying on these experiences also the Rome Treaty which established the European Economic Community in article 48 predicted the gradual lifting of the restrictions in this respect. The full freedom of movement of workers was supposed to be granted by the end of the transition period, that is by 1969. After that period all differences in the treatment of the workers were to be lifted irrespective of the country they come from. From that time onwards persons from the member states who were willing to take up employment in any other country belonging to the EEC

<sup>1</sup> Journal of Laws (Dziennik Ustaw-Dz. U.) 1992, No. 14, item 56.

were to be treated on equal terms with respect to employment, payment and work conditions. In practice it meant that a citizen of any member state could apply for a job if the requirements of qualifications were met.

However, the interpretation of this seemingly clear provision by the decision-makers in the countries of the old European Union was not uniform. Because of that, for the first time in the history of the community a decision was made to leave the decision about opening their job markets for the citizens of the new member states up to the individual member countries. From 1 May 2004 only the inhabitants of Cyprus and Malta were granted the same rights on the job markets of the European Union as the ones available to the citizens of the old member states. Notwithstanding, three old EU countries (Ireland, Sweden and Great Britain) complied with the earlier mentioned EEC regulations concerning the freedom of movement for the workforce. This meant that beginning from 1 May 2004 citizens of the new member states were able to take up employment in those countries without any restrictions. The remaining countries made use of the 2+3+2 formula provided for by the Accession Treaty. Consequently, the individual countries gradually worked towards opening their job markets for workers from the new EU member states. Austria and Germany were the last two countries to ensure from May 2011 equal legal treatment by the employers for Polish citizens who seek employment.

Such decisions and their argumentation have stimulated heated debates in Poland with major focus on the solutions accepted in this matter in the Federal Republic of Germany. This focus of interest is due to many reasons. For the Polish economy the relations with its western neighbour are not to be underestimated. The tradition of the labour-related migration to that country on the one hand and the resulting extensive ties with Poles living in Germany as well as with many German citizens on the other hand, have resulted in the fact that interest in taking up employment in Germany has always been and remains very high. The research done on a representative sample of students in vocational schools showed that as many as a half of the respondents expressed a lot of interest in working in the European Union, with 19% declaring that they will definitely seek such employment and 34% saw this option as highly probable. Those who were definite about working abroad showed the following preferences: Germany ( 37% ), Great Britain ( 31% ), Holland ( 14% ), Italy ( 14% ) and France ( 9%)<sup>2</sup>. The substantial interest in working for the western neighbour, apart from the above mentioned reasons, is caused by the geographical proximity of both countries, and contrary to the common although unjustified views, far-reaching similarities in the broadly understood cultural domain. The results also show close similarity with the opinion polls carried out at the beginning of the 1980s which demonstrated that over a half of Poles going abroad went to Germany ( 55% ), 12% to Great Britain and 8% to the USA.

<sup>2</sup> A. Rogala, *Młodzież na saksach* [The Youth working in Germany], "The European Union Monitor" 2005, No 1, p. 37.

It is possible to follow the course of various kinds of professional activity of Poles in Germany taking into account, on the one hand the regulations of the Treaty from June 1991 and on the other hand, the restrictions imposed by the German authorities on the freedom of movement of the workforce within the enlarged European Union.

The following types of labour-related migration need to be analyzed:

- Traveling to take up seasonal work
- Taking up work based on a work contract
- Work contracted by persons employed by Polish companies which provide services in Germany

Seasonal migration has for years been the type of labour-related migration which has occupied a significant position in the migration stream from Poland to Germany, and which has also in a significant way shaped the way Poles are perceived by their western neighbours. This kind of labour-related migration has been known in Europe for many decades and it is most frequently regulated by the international bilateral agreements. These agreements aim at channeling the influx of workers and preventing the influx of illegal foreign workers. The cooperation between the relevant units of state administration, including especially the job market sector allows as far as possible to match the demand for a workforce with the work supply from abroad. The term seasonal work includes paid work done on the basis of a special permit, often including the name of the worker, issued for the duration of time not longer than one year. To illustrate, until quite recently such a permit in Germany was issued for 3 months, in France for 6 months, and in Spain and Switzerland for 9 months. Such permits are very often issued when it is clear that the native workers or the unemployed are not ready to take up such types of work. Seasonal work is predominant in those branches of industry where the physical labour plays a significant role and is difficult to replace by mechanical devices. The branches which need to be enumerated include some part of the agriculture, forestry, wood processing industry, catering and hotel industry as well as construction services<sup>3</sup>.

The agreements which regulated seasonal work were known also in the times of the Polish People's Republic and they regulated the entirety of issues connected with legal work provided by Polish people in the former Czechoslovakia, East Germany and also in West Germany. This kind of agreement with West Germany was the only one Poland had at the time with a country from outside the COMECON. In the historic year of 1990 Poland signed several agreements with the unified Germany which regulated taking up employment by Polish persons in Germany. As M. Okólski rightly observed the agreement concerning seasonal workers "was the most important agreement concerning labour-related migration that Poland has ever

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<sup>3</sup> H. Werner, *Befristete Zuwanderung von ausländischen Arbeitnehmern. Dargestellt unter besonderer Berücksichtigung der Ost-West-Wanderungen*, „Mitteilungen aus der Arbeitsmarkt- und Berufsforschung“, 1996, No. 1, p.46., cf. also: K. Wach, *Europejski rynek pracy* [European job market], Kraków 2007, pp. 299 - 300.

signed<sup>4</sup>. It was reflected in a whole range of agreements which the Federal Republic of Germany signed with other post-communist countries in the early 1990s. In 1991 that is a year after signing the bilateral agreement Poles received 68,500 seasonal work permits<sup>5</sup>. The Polish contingent was decisively the largest and the fact that the number of seasonal workers from Poland exceeded the combined numbers of seasonal workers from other East and Central European countries does not come as a surprise (cf. table 1).

Table 1  
*Seasonal workers in Germany between 1993-1995*

Country of origin	Years		
	1993	1994	1995
Poland	143,861	136,659	170,576
Croatia	6,948	5,753	5,574
Slovakia	7,781	3,939	5,442
Romania	3,853	2,272	3,879
Czech Republic	12,027	3,465	3,722
Hungary	5,346	2,458	2,841
Slovenia	1,114	601	600
Bulgaria	71	70	131

Source: H. Werner, *op.cit.*, p.46.

A decisive majority of the seasonal workers went to Germany on the basis of a personal demand from the employer. In the initial period the trade or territorial restrictions were not observed. However, from April 1993 the employment offices were obliged to observe the four-week withdrawal period. If during that time there is no interest to take up the job from a German passport holder, the job can be taken by a foreigner. Also starting with September of the same year the upper time limit for seasonal work was introduced at three months with a clear specification of those branches of industry in which such work is allowed. These included: agriculture, forestry, agricultural produce processing industry, the hotel and catering industry, exhibition industry and work in timber mills. In the following years the number of Poles working legally in Germany for a period of several months has remained high (cf. table 2).

<sup>4</sup> M. Okólski, *Przepływ siły roboczej w świetle niemiecko-polskiej umowy dwustronnej o pracownikach sezonowych* [The flow of workforce in the light of the German-Polish bilateral agreement concerning seasonal workers], in: *Polscy pracownicy na rynku Unii Europejskiej* ed. by: P. Kaczmarczyk and W. Łukowski, Warszawa 2004, p. 27.

<sup>5</sup> *Ibidem*, p. 25.

Table 2  
*Polish seasonal workers in Germany in the years 2003-2009*

Years	Number of permits for		
	Seasonal workers	Students wanting to work during their holiday	Highly qualified professionals in a deficit professions in Germany
2003	265,414	5,799	690
2004	324,340	5,017	671
2005	272,757	5,858	606
2006	230,353	5,869	389
2007	228,807	5,406	316
2008	190,582	3,971	154
2009	183,553	(.)	108

Source: Information concerning the employment of Polish citizens in the European Economic Area (EEA) and Switzerland and the inhabitants of the EEA in Poland, Ministry of Labour and Social Policy, October 2004, p.5, October 2005 p. 6, April 2007, p. 10, April 2008, p. 14, May 2009, p. 41, May 2010, p. 24

In the first half of 2010 on average 5,884 workers delegated from Poland worked in Germany on construction sites which constituted a slight rise (8%) in comparison with the previous year<sup>6</sup>. It is worth noting here that Poland for years has not used the contingent of permits for seasonal work. To illustrate, in 2006 the contingent assigned by the German side for seasonal work per person per month was used in 74%, in 2009 the percentage dropped to 42%<sup>7</sup>.

This shows that the Federal Republic of Germany is becoming relatively a less attractive place for taking up paid work. The existing situation was without doubt significantly affected by the opening of borders of other EU countries with Great Britain and Ireland at the forefront, as well as by an improved situation on the Polish job market in those years. A rise in the value of the Polish currency especially in confrontation with the pay offered by German employers was also not without significance. Still, Polish citizens are a decisive majority in the group of seasonal workers working in Germany. However, this domination of Poland is steadily dropping. In the period from June 2009 to the same month of the following year the percentage of Poles among foreign seasonal workers dropped from 70% to 61%. Romanian citizens constitute 34% of the workers and now take second place<sup>8</sup>. This number is

<sup>6</sup> Information concerning the employment of Polish citizens in the European Economic Area (EEA) and Switzerland and the inhabitants of the EEA in Poland, Ministry of Labour and Social Policy, April 2007, p. 10.

<sup>7</sup> Information concerning the employment of Polish citizens in the European Economic Area (EEA) and Switzerland and the inhabitants of the EEA in Poland, Ministry of Labour and Social Policy, October 2004, p. 5, October 2005 p. 6, April 2007, p. 10 and November 2010, p. 23.

<sup>8</sup> Information concerning the employment of Polish citizens in the European Economic Area (EEA) and Switzerland and the inhabitants of the EEA in Poland, Ministry of Labour and Social Policy, November 2010, p. 22.

not surprising due to the fact that Romania in terms of population takes second place after Poland in the group of the new member countries in the European Union as far as the number of people is concerned. The fact that seasonal work is so popular among Romanians despite the relatively long distance from Germany shows that the level of economic development and in consequence the differences in pay between Germany and Romania are of major importance. The problems emerging more and more frequently on the German job market led in 2008 to a decision to extend the allowed period of employment for seasonal workers from 4 to 6 months from 1 January of the following year.

Students constitute a specific group of temporary employees. In their case the condition for taking up work is not obtaining a work permit but making them exempt from obtaining such kind of concession. The number of employees from this group is remaining quite stable, however in 2008 there was a clear drop. Students generally find employment in the same branches of industry where most Poles work in seasonal jobs. They are especially frequently employed to work in German vineyards where the bulk of the work accumulates by the end of the summer, that is when students are on holiday.

Apart from the seasonal work there are also very limited possibilities of employing Poles on the basis of a work contract. Exacerbating problems with finding highly qualified workers which became visible in the second half of the 1990s forced the authorities to take some steps to selectively liberalize access to the German job market. More and more often permits were issued to employ foreign workers, the higher their qualifications were the more willingly the permits were given. Simultaneously, a kind of headhunting campaign was initiated aimed at recruiting representatives of these professions, which were in a significant deficit, in Germany. For example, in 2000 an attempt was made to recruit a large number of computer experts. The offer was taken first of all by Asians (Hindu) and to a lesser degree by Bulgarians and Romanians. However, contrary to German expectations and Polish fears the offer of receiving the so called 'green card' to a very limited degree aroused interest among specialists in Poland.

Shortages of qualified workers forced the German authorities to intensify activities aimed at attracting highly qualified specialists to take up work in Germany. The recruitment area included primarily European countries. In October 2007 the procedures for taking up employment were substantially facilitated for graduates of the German universities of foreign origin. An identical liberalization of formalities became available to engineers of certain specializations, namely, electronics engineers and specialists in mechanical and motor engineering.

Also starting with January 2009 a significant barrier was lifted for graduates of higher education institutions from the new EU member states which frequently made it impossible for them to take up employment in Germany. Namely, they no longer have to undergo the so called market test that is the checking procedure whether there is no native candidate who could take the job offer.

At the same time the minimum level of annual salary which justifies taking up employment by a citizen of the new EU member states was lowered to € 66,500 from the so far then € 85,000. This means that in applying for work permits priority is given to persons who are highly qualified. However, practice has shown that the efficiency of this job market instrument is very limited. The number of people who receive a work permit on the basis of a predicted high level of pay does not exceed 1,000 per year<sup>9</sup>.

The process of the aging of German society which is gaining speed on the one hand, and on the other hand the society's relative affluence supported by the well developed system of social insurance have resulted in a serious problem of the need to provide care for the elderly and the disabled. In view of the fact that the supply of the native workforce trained for this kind of services turned out to be insufficient a broad recruitment campaign was launched abroad. Traditionally, Poles have shown a lot of interest in this kind of work. The increasing demand for providing such services resulted in 2010 in the liberalization of requirements for care providers. The requirement of certified qualifications similar to the ones expected of a qualified German nurse was dropped. Besides, as the practice shows the German controlling bodies display far-reaching tolerance towards the growing practice of illegal employment of foreigners as care providers for the disabled and elderly.

When analyzing the selective opening of the German job market for the representatives of some deficit professions it needs to be remembered that these decisions originate in the desire to improve the situation in some selected segments of the job market. These offers are addressed most frequently to the citizens of the new EU member states including Poland. However, these gestures towards Polish citizens do not stem from the willingness to comply with the articles of the Treaty and they are rather included in a broader strategy of the German authorities aiming to improve the situation on their job market.

Another group which requires a closer examination with respect to the realization of the articles of the Treaty relevant for this analysis is constituted by persons employed by Polish companies which provide services on German territory. The situation of these companies is not easy.

The barriers imposed by Germany in employing workers from Poland are not only discordant with the articles of the Treaty but they are also far from being in line with the spirit of European integration and the letter of the relevant legal acts which were the cornerstone of the European Economic Community. To illustrate, article 49 of the EEC founding Treaty states that a company can temporarily provide services also on the territory of another member state. The condition is that the company has to be a registered business in its own country. This should mean that a Polish company can provide services in Germany, France, or any other EU country, and the employees of that company should not be obliged to apply for an additional work permit.

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<sup>9</sup> H. Brücker, *Brain Gain oder Brain Drain, Deutschland und Europa fallen im Wettbewerb um die besten Köpfe zurück*. "IAB-Forum" No. 2/2010, p. 6, cf. also: K. Wach, op.cit., pp.294-295.



This, however is not the case. In Germany (similar to Austria) some important restrictions are imposed on Polish companies in this respect. As long as until 1 May 2011, that is until the expiry date of the maximum seven-year transition period applied by Germany, Polish companies were not allowed to provide some services. The restrictions involved construction services (and similar activities), cleaning buildings and interior design<sup>10</sup>.

The difficulties encountered by Polish companies which intend to provide services on the territory of the EU member countries stem to a large extent from the lack of unequivocal interpretation of the EU regulations in this respect. To illustrate, directive No. 96/71/WE of the European Parliament and the EU Council from 16 December 1996 about delegating workers of service providers did not include any restrictions on employing workers for the purpose of contracting them to provide services for individual persons or companies outside the country where the company is based. The approaching enlargement of the European Union to include the post-communist countries caused a heated debate around this issue. In effect a straightforward statutory interpretation in this matter was adopted which is known as Bolkestein's directive, after the name of its author, the then liberal Dutch commissioner of the EU. The regulation was adopted in January 2004 and already in March the following year the EU Council of Ministers made a decision about the need to revise the directive. This happened as a result of protests articulated mostly in France and Germany, that is in the countries where there is an especially strong fear of competition from cheaper service providers. However, it should be noted that this phenomenon did not have a mass character. From May 2004 until February 2005 the number of people delegated from Poland to provide services in the EU countries (including Norway and Switzerland) altogether reached 89,000<sup>11</sup>.

The Bolkestein's directive recommended a departure from any forms of discrimination of companies because of their origin. This would mean that a Polish enterprise could provide services on the territory of the whole European Union. The op-

<sup>10</sup> In this context it should be underlined that we deal with a similar discrimination of Polish companies providing services also in other EU member states. It is also present in those countries which before May 2004 declared to open their borders and job markets for the newcomers from the East, and shortly before that date they tightened their procedures without introducing legal restrictions as it was the case with Austria and Germany. Such a situation is present, for example in Holland. To safeguard the interests of the native companies the Dutch authorities discriminate against those companies providing services from the new member states (these restrictions do not refer to companies from Cyprus and Malta). If, for example a Polish building company enters into a contract in Holland then the condition that it can be realized is obtaining a work permit for its workers. This procedure is difficult to describe otherwise than a discrimination practice and a divergence from the letter and the spirit of the Accession Treaty. It is not surprising then that the European Commission appealed to the Hague authorities to change their attitude in this matter. It should be also noted at this point that a similar treatment of Polish companies started to be practiced also in Italy. After the intervention of the Polish government these procedures were dropped. Also Denmark considered the possibility of introducing work permits for the workers of Polish construction companies (A Słojewska, *Dyskryminacja polskich firm* [Discrimination of Polish companies], "Rzeczpospolita" 28 July 2005, p. B.2.

<sup>11</sup> *Labour-related migration to and from Poland*, "The European Union Monitor" 2005, No. 5, p. 22.

ponents of this resolution fearing the danger of the so called social dumping, which in their opinion was an inherent consequence of adopting the directive, created an international initiative under the name *Stop Bolkestein*. In their initiative they drew attention allegedly to the dangers of the introduction of the full freedom of providing services for the job market of the old EU member states. This broad campaign was conducted under the slogan: *No to a Europe of social cuts (Nein zu einem Europa des Sozialabbaus)*. The initiators of the campaign in their information spread via the internet made references to persons and institutions which supported their initiative. A closer examination of the list allows to notice that it includes almost exclusively left-wing trade unions and parties with communist orientation that is these organizations which advocate a close and broad-ranged intervention of the state in the economic processes which, among others, is demonstrated by well developed social benefits, which in turn are determined by a far-reaching fiscal policy. The support for the campaign from such organizations does not alter the fact that the majority of the member states seemed to be in favour of implementing the recommendations formulated by the then Dutch commissioner of the EU, the fact which was sadly underscored by the initiators of the campaign. The opponents of the introduction of the freedom to provide services reached for arguments of both, a legal and economic nature. For example, there were accusations that the directive does not at all introduce the category of public utility services which in their opinion should be exempt from free competition. The opponents also did not like the lack of attention to special requirements with reference to providing services which, in their opinion, should be accounted for as far as health and safety are concerned. According to the opponents it cannot be allowed that services in the area of health, culture and education on the one hand are treated in an identical way with services like repairing a car or hairdressing on the other hand. They criticized the solution suggested by the directive according to which a company providing services would be subject to legal rigor binding only in the country in which the company is registered. It is difficult to resist an impression that accepting such a line of reasoning assumes a priori a superiority of legal provisions in the old EU countries over those in the new ones. The same assumption was present in the reservation of the opponents concerning the lack of possibilities to control the working conditions.

Nevertheless, it seems that the above accusations were only more or less of a formal nature. Undoubtedly, the reservations of an economic character were the most important. The signatories of the *Stop Bolkestein* campaign stressed that the realization of the recommendations would mean liquidation, or far-reaching difficulties in the use of such important instruments as the minimum wage or tariff agreements<sup>12</sup>. The German government picked up the idea of the opponents and it gradually extended the list of industries in which the minimum wage would be binding (also for foreign companies). Earlier on such minimum limits were binding only in the construction industry (€ 12.47 per hour in the west and € 10.01 in the east).

<sup>12</sup> [www.stopbolkenstein.org](http://www.stopbolkenstein.org), pp. 1-4.

It is not unreasonable at this moment to mention here that there is a general consensus among the analysts of the complex problems of the job market as far as the major reasons for high unemployment in most EU countries are concerned, namely the over-regulation of the market. Practice shows that the level of unemployment is relatively low where the state intervenes in the relations between the employer and the employee only to a very slight degree. Because of this, it is not surprising that in western Europe there was no shortage of voices articulating the need to implement Bolkestein's directive. According to many economists it would allow to make efforts to rationalize employment. In consequence, there might be some rise in unemployment over a short period of time but also its significant reduction in the long-run. Such a conclusion was reached, among others by the authors of a report concerning this issue prepared by the Copenhagen Economics Institute. The report shows that after the restrictions on providing services on the territory of the whole European Union are lifted, the value of consumption in Germany and France will increase by 0.8%. Countries like Belgium, Great Britain, Finland and Italy would benefit even more from the liberalization of the service market. The value of consumption in those countries would rise by 1.2%. When summing up the report the Danish analysts concluded decisively that Germany and France by opposing the directive were acting against their own interests<sup>13</sup>. Many specialists in Germany itself voiced similar views. The opinion of C. Hefeker from the Hamburg HWWA seems sufficient to quote. In a straightforward way he states that by opposing the implementation of Bolkestein's directive France and Germany from being once the motor of integration are now contributing to its slow down. By acting as they do they will lead to a definite collapse of the Lisbon strategy which after all was supposed to be anchored on the improvement of Europe's competitiveness towards the United States. Hefeker, similar to the analysts from the Copenhagen Institute underlines that the liberalization of services in the European Union will in the mid and long-term bring positive results. The appearance of cheaper service providers from the new countries would contribute to a rise of demand also for services provided by the native companies. Apart from that, reducing the role of illegal work would undoubtedly be a positive outcome<sup>14</sup>.

Yet, the above arguments did not convince the decision-makers in the "old" member states. In April 2006 the European Commission presented a new draft of a directive concerning providing services. It diverts from the principle of the country of origin introducing at the same time a kind of protection in the third sector. The new directive for service providers was adopted by the European Parliament in November of the same year. According to the new regulations companies operating on the territory of a given country will have to pay their employees wages not lower

<sup>13</sup> J. Bielecki, *Francja strzela sobie gola* [France scores own goal], „Rzeczpospolita“ 17 October 2005, p. B 1.

<sup>14</sup> C. Hefeker, *Dienstleistungsfreiheit und Europäische Wettbewerbsfähigkeit*, „Wirtschaftsdienst“ 2005, No. 3, p. 136.

than the minimum wage valid for that country. On the other hand, the authors of the directive distanced themselves from the demands issued by the workers unions in the "old" countries including the requirement to verify the professional qualifications of the workers recruited from Eastern Europe. In this respect the qualifications acquired in the country of origin were regarded as sufficient. A similar tendency to limit the access of Polish workers to the German job market was characteristic of the efforts made by the German administration.

Indeed, it is difficult to resist an impression that the German decision-makers do not read specialist economic journals or, what cannot be overruled, that they consider arguments raised by authors who publish there as not convincing enough. This assumption is justified by the steps taken by the Berlin administration which aimed at limiting the influx of service providing companies from Poland to a maximum level.

The increasing limitations of access to the German job market for the Polish companies providing services, on the one hand by reducing the number of branches accessible to foreign companies and on the other hand, by limiting the number of Poles employed in Germany makes Poles seek ways of making use of the still attractive differences which exist in the level of pay between the two countries. They do it by setting up their own sole proprietorship which most frequently offer construction services and related services. The example from Berlin reached anecdotal dimensions where it was estimated that under one and the same address of a flat owned by a Polish citizen over 100 one-person companies providing services were registered. This is an exemplification of Polish entrepreneurship well known and variously appreciated in Europe. This kind of phenomenon is reflected in the results of comparative studies. It turns out that in 2004 the entrepreneurship index understood as the percentage of persons aged 18 to 64 engaged in a new business activity was the highest in Poland and reached the level of 8.8%. In Ireland which was ranked second in this category it was lower by 1.1 of a percentage point, in Great Britain it reached 6.3% and in France 6.0%<sup>15</sup>.

It needs to be underlined at this point that in recent years, namely almost all the time since 1 May 2004, we are dealing with a relatively continuous growth of interest of Polish people in taking up professional activity abroad by going self-employed. This conclusion can be drawn from the analysis of the statistics from the Polish Social Insurance Institution (ZUS). The institution in compliance with the EU regulations issues an adequate form (E 1010) to persons employed (and conducting their individual business activity in Poland) who apply for jobs in other EU countries. Unfortunately, the analysis of the number of collected forms does not allow for drawing unambiguous conclusions as to the size of the phenomenon because the form confirming that a person is eligible for social insurance in Poland can be

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<sup>15</sup> P. Blajer, *Bardziej konieczność niż pomysł na życie* [Necessity rather than a life plan] „Rzeczpospolita” 26 October 2005, p. B 2.

issued even several times in the same year. Bearing in mind this limitation an investigation of tendencies which occur in this respect seems nevertheless justified. To illustrate, in the first full calendar year since Poland's accession to the European Union the form was collected by 3,300 persons intending to take up business activity abroad, but in 2007 the number of forms issued was nearly quadrupled (13,400). In 2009 as many as 15,800 Poles took steps allowing to conduct their own business activity abroad<sup>16</sup>.

It is worth undelining that a decisive majority of Poles who intend to run their own businesses abroad want to do it in Germany. In 2009 as many as 52.1% of the above mentioned forms were collected by persons intending to go to that country. The following countries were also chosen as destinations: Belgium (10.8%), Norway (7.7%), France (6.7%), Holland (6.4%) and Sweden (4.7%)<sup>17</sup>. This is confirmed by German statistics. According to the data from the Berlin Craft Workers Union there were 26,500 registered companies run by Polish citizens which constituted as much as 86% of companies owned by citizens from the new member states of the European Union. Although Poland is definitely the largest country from the new ones which joined the EU in 2004 this relative dominance is not as big as the statistics show. Undoubtedly, the factor which contributes to the overrepresentation of Poles is the geographical proximity. However, it is not difficult to observe that in this respect our country is not more "privileged" than the Czech Republic whose inhabitants show nevertheless a much smaller initiative in setting up business activity abroad.

As it was already mentioned, in line with the EU regulations the E 1010 form is issued for persons who run their own businesses as well as for those who are delegated by Polish companies within the trans-border service providing. After some increase of interest in this kind of work the number of applications shows a dropping tendency. To illustrate, in 2005 the number reached 81,000 and went up to 112,000 two years later. In the following years it reached the number of 105,000 and 99,000<sup>18</sup>.

The statistics presented above demonstrate that Polish workers continue to show considerable interest in taking up work in Germany which still remains the most popular country in this respect in the whole European Union. It needs to be pointed out that from the first decade of the new century we dealt with a gradual drop of interest in labour-related migration to the United States. The dissatisfaction from maintaining the quite troublesome visa procedures, which are perceived by many Polish people as humiliating, on the one hand and on the other hand, the de-

<sup>16</sup> Information concerning the employment of Polish citizens in the European Economic Area (EEA) and Switzerland and the inhabitants of the EEA in Poland, Ministry of Labour and Social Policy, May 2009, p. 22. Appendix 2 and Information ... from May 2010, p. 42.

<sup>17</sup> Information concerning..., May 2010, p. 42.

<sup>18</sup> Information concerning, May 2009, p. 22. Appendix 2 and Information ... from May 2010, p. 42.

crease of the relative value of the dollar mean that a substantial number of potential migrants would change their destination for the anyway closer Federal Republic of Germany. In this context the rigorous regulations which are maintained by Germany and which impede access to their job market is perceived by a vast majority of the Polish public as unfair treatment directed against the eastern neighbour. It should be noted that the critics of the restrictive policy adopted by the authorities in Berlin emphasize the EU context of the problem. They remember that Germany (apart from Austria) used the maximum seven-year transition period during which the citizens of the new UE states were unable to take up jobs without the relevant permission from an adequate employment office.

The average Pole is not aware of the fact that these regulations are at least in contradiction with the spirit of the Polish-German Treaty from June 1991. Indeed, the Treaty says about creating the most favourable premises, especially economic, legal and organizational for business activity including industry and services provided by single and legal entities.

At this point it needs to be emphasized that it is difficult to see the spirit of the Treaty in the analyses published by German job market experts. In a way it is hard to lay claims against the German economists for whom after all the most important objective is the good condition of their native economy. However, the German economy, as they themselves point out in numerous publications may in the near future come up against a serious growth barrier in the form of a workforce shortage. This deficit will first of all concern highly qualified employees. German experts emphasize that in this context the Federal Republic of Germany missed a great chance which became available together with the enlargement of the European Union to include new countries. It is not difficult any more to come cross a statement that closing the borders of Germany for citizens of the new member states from eastern Europe was a mistake<sup>19</sup>. The majority of labour migrants from these countries (including first of all Poles) went to Ireland and Great Britain and contributed to the growing prosperity in these countries<sup>20</sup>. Yet, also in this context no reference is made to the articles of the Polish-German Treaty from June 1991.

Instead, the German analysts draw attention to the fact that contrary to some OECD countries Germany does not conduct any well-considered migration policy which would allow for determining its shape. First of all, the lack of decisive steps to recruit foreigners with high professional qualifications is emphasized. The results

<sup>19</sup> J. Möller, *Standpunkt. Mindestlohn muss die Dienstleistungsfreiheit in der EU absichern*, „IAB-Forum“ 2/2010, p. 25, cf. also: H. Bonin, *Der Finanzierungsbeitrag der Ausländer zu den deutschen Staatsfinanzen: Eine Bilanz für 2004*, „IZA Discussion Papers Series“, November 2006 and H. Brücker, E.J. Jahn, *Arbeitswirkungen der Migration. Einheimische Arbeitskräfte gewinnen durch Zuwanderung*, „IAB-Kurzbericht“ No. 26/2010, pp. 1-7.

<sup>20</sup> H. Hinte, K.F. Zimmermann, *Agenda Zuwanderung. Ein Zehn-Punkte-Aktionsplan für gesteuerte Arbeitsmigration und bessere Integration*, „Wochenbericht des DIW“ Berlin No. 46/2010, p. 19.

of the last census in the OECD countries carried out in 2000/2001 show huge disproportions in the direction of this kind of migration. It turns out that as many as 73% of emigrants with a higher education degree chose four countries as their destination: Australia, Canada, New Zealand and the USA while 22% chose the European Union countries (out of this only 5% chose Germany). However, it needs to be noted that only 60% of the migrants are recruited from the OECD countries and about 40% are citizens of countries from outside of this organization<sup>21</sup>.

The opinions suggesting that Germany should take steps to recruit highly qualified foreign professionals are not rarely accompanied by opinions suggesting that some measures should be also taken to limit the influx of people with poor or no professional qualifications. According to the views of a significant number of German experts the best instrument to achieve this aim is the minimum wage. Introducing it would prevent redundancies in the companies which employ a significant proportion of workers of this kind<sup>22</sup>.

Summing up, it needs to be stated that contrary to the provisions in article 9 of the Treaty on Good Neighbourship and Friendly Cooperation between Poland and the Federal Republic of Germany from 17 June 1991 the most favourable premises provided by the article have not been created, especially the economic, legal and organizational ones for economic activity including industry and services provided by single and legal entities. Poles could not count on any privileges on the German job market. Special difficulties were experienced by companies providing services on the territory of Germany. The far-reaching protectionism of the German job market resulted in some negative consequences in the mutual perception of Polish and German citizens. This became especially visible after Poland's accession to the European Union. Despite the fact that a decisive majority of Poles intending to work abroad were going to go to Germany, the political decisions meant that Great Britain and Ireland were the countries where the migrants found employment. This enforced change of direction for the labour-related migration did not have a significant impact on the development of the economic situation in Poland. It seems, however that it is right to agree with the opinion of German experts who in the majority were critical towards the decisions of the Berlin administration, both in the middle of the first decade of the new century and today. As they demonstrate because of these decisions the German economy suffered considerable losses. It is difficult to predict that the opening of the border in May 2011 will result in a mass influx of Poles. However, it can be expected that a vast majority of the labour-related migrants will consist of poorly qualified persons and these are not really anxiously awaited by German employers.

<sup>21</sup> H. Brücker, op.cit., p. 4, cf. also: Ch. Anger, A. Plünnecke, *Signalisiert die Akademikerlücke eine Lücke bei den Hochqualifizierten? – Deutschland und die USA im Vergleich*, „IW – Trends” No. 3/2009, pp. 19-30.

<sup>22</sup> J. Möller, op. cit., p. 27.