

Declaration system as a Polish “gate” to seasonal employment – more pros or cons?

Reflections on the planned amendments to the law
on access to short-term foreign work in Poland

Monika Szulecka

Researcher at the Department of Criminology, Institute of Law Studies,
Polish Academy of Sciences

Associate researcher at the Centre of Migration Research,
University of Warsaw

Main aim is to present:

- the role of the declaration system in stimulating inflow to Poland
- the observed positive and negative phenomena linked to the functioning of this system
- the expected changes linked to the new law to be introduced (reference to Directive on Seasonal Workers)

What is „declaration system“?

- Simplified procedure /system of employing foreigners from selected countries (covered by Eastern Partnership Programme – Ukraine, Belarus, Georgia, Moldova, Armenia – and the Russian Federation)
- An exemption from the obligation to possess a work permit
- Introduced in mid 2006 (only agriculture), widened in 2007 (all sectors)
- Employment without a work permit possible if a declaration of intention to hire a foreigner is registered (free of charge) at a relevant local labour office before work is commissioned to a foreigner
- Employment for at most 6 months within 12 consecutive months (till 2008 – 3 months within 6 months), even if work is performed for many employers, based on many declarations
- Possibility to obtain a work permit without a labour market test after 3 months of lawful employment based on the declaration for a particular employer

What is „declaration system”? (cont.)

- Declarations registered for concrete persons and jobs (incl. name, surname of a foreigner, data of birth, place of living, name of the employer, kind of job, sector of the economy, type of contract, periods of employment, offered remuneration)
- Foreigners with valid visas or residence permits (staying already in Poland) may be employed within simplified procedure; others may apply for visa presenting the declaration
- No consequences for not hiring the foreigner; no consequences for not taking up the job
- Possibility to register more declarations than vacancies or perspectives for creating workplaces
- Lack of central register of declarations (registered, being a basis of visa issuance, being a basis of work contract etc.) accessible for all institutions involved in registration or control activities

Who benefits? Number of declarations registered (2007-2016)

Citizenship	Did the foreigner possess a valid visa or a residence permit upon registering the declaration?	2007 (08–12)	2008	2009	2010	2011	2012	2013	2014	2015	2016 (01–06)
Belarus	No	1201	11 910	4584	3241	3820	6974	4513	3348	4362	6511
	Yes	146	696	276	382	550	662	681	669	1237	1428
Russia	No	160	1058	597	493	812	1378	1040	982	1514	1494
	Yes	30	89	77	102	151	246	220	245	425	331
Ukraine	No	19 150	134 939	167 271	152 635	210 943	194 178	184 536	294 640	549 302	441 419
	Yes	1110	8021	12 862	16 855	28 703	29 493	33 035	78 306	213 398	172 777
Moldova	No	:	:	2552	5564	12 457	8988	8827	5355	7922	7467
	Yes	:	:	195	348	567	433	421	976	1653	1548
Georgia	No	:	:	:	423	1666	1241	2196	1908	1210	575
	Yes	:	:	:	30	108	143	147	195	156	104
Armenia	No	:	:	:	:	:	:	:	603	825	516
	Yes	:	:	:	:	:	:	:	171	218	151
All countries	No	20 511	147 907	175 004	162 362	229 698	212 759	201 112	306 836	565 135	457 982
	Yes	1286	8806	13 410	17 711	30 079	30 977	34 504	80 562	217 087	176 339
TOTAL		21 797	156 713	188 414	180 073	259 777	243 736	235 616	387 398	782 222	634 321

Source: own elaboration based on the data from the Ministry of Family, Labour and Social Policy

Main facts and figures

- Visible and dynamic increase in the number of registered declarations since 2014 (preliminary data for full 2016 – 1.3 million declarations; also visible increases in other spheres – work permits, applications for residence permits, number of foreign students)
- Main beneficiaries of the declaration system – citizens of Ukraine (97% in 2016, similar share in previous years)
- Predominating form of admitting foreigners to the labour market – 1st half of 2016: 51.5 thous. work permits issued and 634 thous. declarations registered
- Decreasing share of agriculture: 27% of all registered declarations in 2016, whereas 61% in 2010, 36% in 2015
- Concentration of work performed within simplified procedure in *Mazowieckie* voivodship (decreasing share – from 52.5% in 2011 to 33.2% in 2016)

What went wrong?

- Very limited possibilities of verification of the authenticity of declarations and the will to employ a foreigner
- Development of informal market of declarations (e.g. companies established just to register declarations, declarations sold to foreigners willing to apply for visas)
- If any sanctions used, almost only in the case of foreigners, who may be at the same time victims of bogus employers or informal intermediaries
- Obtaining visas fraudulently, with fraud declarations (practical challenges for law enforcement)

What went wrong? (cont.)

- (Sometimes) vulnerable position of foreigners in case the declarations registered for them come from bogus employers or unfair intermediaries
- Instrumental approach to the simplified procedure observed among part of the employers and foreign employees (declaration treated as meaningless invitation to work which helps in getting documents to enter Poland and the Schengen zone) → disadvantageous for all those who could benefit from the system – seasonal workers and employers demanding labour-force on flexible and short term basis
- No legal basis to prevent the abuses effectively (only guidelines for local labour offices where declarations are registered and where verification could/should take place)

How does simplified system work in agriculture?

- Huge role of informal intermediaries (not always trustful) in recruitment and arranging declarations
- Informal practices aimed at maximising profits: „borrowing” or „stealing” employees
- Problems with visa issuance causing problems with arrivals of employees in due time
- Task specified contracts predominating → lack of health contributions
- Lack of proper contracts due to lack of awareness or will to maximise the profits
- Declarations treated as a valid work contract
- Long hours, no breaks, poor conditions of living – acceptable cost of the expected gains or lack of choice?
- Lack of incentives for lawful employment

Changes in law (as planned in the proposal of 21 October 2016)

- Necessity of implementation of the Directive on Seasonal Workers as a main inspiration to fill in the gaps and eliminate sources of abuses?
- Planned termination of the declaration system and replacing it with the system of short-term work permits
- Introduction of a new form of a work permit (seasonal work permit) for foreigners staying abroad upon application for such a permit
- Permits issued upon arrival at workplace, visa and border procedures based on application for a permit submitted
- Possibility to refuse issuing of a permit in case the potential employer is not able to employ anyone or does not plan to employ anyone (applies for a permit / registers declaration only to enable the foreigner getting a visa, entering Poland / the Schengen zone or staying in Poland / the Schengen zone)
- Harmonisation of the conditions of issuing and refusals of issuing different kinds of work permits for foreigners

Developed system of work permits according to proposal for amendments of October 2016 – to be introduced (?) in April 2017 (seasonal work permits) and January 2018 (short-term work permits)

	Work permit	Short-term work permit	Seasonal work permit
For how long?	Specified period, up to 3 years, possibility to prolong	6 months within 12 months	Up to 8 months within 12 months
Limited scope of sectors	No	Yes (all apart from those covered by seasonal work permit)	Yes (sectors specified in the ordinance by the minister of labour, based on the directive: agriculture, horticulture, fisheries)
Limited scope of addressees?	No	Yes	No, but preferences for selected countries (e.g. without a labour market test, entrance into the register for 3 years)
Cost of application	50 PLN / 100 PLN / 200 PLN	30 PLN	30 PLN
Responsible institution	Voivod (regional governor)	Starosta (local governor)	Starosta (local governor)

Changes in law postponed

- The time of introducing changes postponed (no common consent on replacing the simplified procedure with short-term work permits)
- Concern that seasonal work permits (new kind of permits to be introduced) will not be used
- Necessity of introduction of a central register available for various institutional actors involved in registering applications, issuing work permits, verification of applications within visa and border procedures requires time
- Introduction of limits discussed
- Institutional changes discussed

Thank you for your attention!

Contact: monika.szulecka@gmail.com