Comments on
„Report on the Free Movement of Workers in Poland in 2007”.

Chapter I

General Observations

On page 6, in the second paragraph it is stated: „With reference to third country nationals it should be stressed that there are also provisions regarding those aliens who need international protection. However, they do not refer to status of EU nationals in Poland”. Formally, EU nationals and members of their families are not excluded from the scope of application of the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland (Journal of Laws of 2006, No 234, item 1695, as amended).

A. ENTRY

Texts in force
The Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts” does not concern entry and stay of EU nationals nor free movement of persons.

“Commander of the Border Guard Unit” (page 8, second paragraph) should read, according to official translations, „Commander of the Border Guard Post” or „commanding officer of the Border Guard checkpoint”. “Commander of the Border Guard” should read “Commander-in-Chief of the Border Guard”.

According to the second and third paragraphs on page 8, the Act of 14 July 2006 does not indicate any reasons for refusal to enter the territory of Poland but it may be interpreted that they are identical with the reasons which justify an expulsion. The relevant decision can be based on reasons of public security and public policy. Actually, reasons for refusal to enter the territory of Poland referring to EU nationals and members of their families are defined in the Act of 14 July 2006 on the terms and conditions of the on the entry into, residence in and exit from in the territory of the Republic of Poland of the citizens of the EU Member States and the members of their families. Under Article 11, as in force in 2007, the relevant decision may be taken 1) when the personal data of the EU national or his/her family member has been entered on the list of persons undesirable in Poland (on the reason of the public security and public policy), or 2) when the EU national or his/her family member does not possess a travel document or any other document certifying the identity and citizenship of EU national (unless the EU national or his/her family member proves unquestionably that he/she is authorized to exercise the right to free movement).

The fifth paragraph on page 8 should read: "Since this date no systematic control at the Polish border with other Schengen countries is carried out".

B. RESIDENCE

Residence up to 3 months

The second sentence in the first paragraph should read: “For a family member who is a third country national a travel document and, if Regulation 539/2001 stipulates so, a visa are required (Article 9 of the abovementioned act)”.

Residence for over 3 months

On page 12, in the second paragraph, the third sentence is as follows: “Under current article 31 item 3 the decision on refusal to register may be taken only according to proportionality principle and has to be based exclusively on the personal conduct of an individual concerned when the conduct represents a genuine, present and sufficiently serious threat to the interests of the society”. Article 31 item 3 explicitly refers to „a threat for defence or State security or protection of public security or public order”.

In the last paragraph on page 12 „documents” should read „document”.

C. DEPARTURE

In the first paragraph „produces” should read "possesses" (according to the wording of English versions of Schengen Borders Code or Convention implementing the Schengen Agreement).

In the second paragraph, the first and third sentences refer to expulsion from Poland, like a few next paragraphs do, whereas the second sentence refers to a different question – when conditions for the right of residence or permanent residence are not met, which does not constitute a ground for expulsion.

D. REMEDIES

Complementary information: In the case of a decision on refusal of entry issued by the Commander of the Border Guard Post/Checkpoint, the person has the right to submit an appeal within 14 days to the Commander-in-Chief of the Border Guard.

MISCELLANEOUS

In the second paragraph „register the presence” should read „register the residence”, according to an official translation of the Act of 14 July 2006 on the terms and conditions of the on the entry into, residence in and exit from in the territory of the Republic of Poland of the citizens of the EU Member States and the members of their families, as well as in the application form for registering the residence..

The last sentence of this paragraph refers to procedures for issuing a ‘Union citizen family member residence card’ or ‘Union citizen family member permanent residence card’.

As far as applications for registering the residence and for residence cards are concerned (see the second paragraph on page 17), it is required to indicate the addresses of the place of stay

(which relates to territorial competence of an issuing body) and the registered address in Poland (as the case may be). The address for deliveries may also be indicated.

On page 17, in the third paragraph, the first sentence is as follows: "All relevant documents concerning fulfillment of the conditions of right of residence should be submitted as well (e.g. evidence of his/her health insurance or verification of the financial means sufficient to cover the costs of residence)". The given examples refer only to migrant EU nationals. Their family members are required to present different documents, according to Article 10 of the Directive 2004/38/WE.

In the above mentioned paragraph, the third sentence „It is allowed to produce another document which certifies an identity and nationality of a person concerned" refers only to EU nationals.

In the same paragraph, the fifth sentence should read: "The document certifying the right of permanent residence and card of permanent residence of an EU national's family member is issued by the Voivod".

Chapter II

3. RECOGNITION OF DIPLOMAS

Texts in force

On page 23 and 24 there are only a few acts listed concerning recognition of qualifications, whereas in 2007 a few dozen acts concerning this area were in force, including some Parliamentary acts.

Fundamental for the general system were:
- ustawa z dnia 26 kwietnia 2001 r. o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych – the Act of 26 April 2001 on the rules governing the recognition of the qualifications acquired in EU Member States for the pursuit of the regulated professions (Journal of Laws [Dziennik Ustaw]. 2001, no. 87, item 954, as amended);
- ustawa z dnia 10 maja 2002 r. o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalności.– the Act of 10 May 2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some of activities (Journal of Laws [Dziennik Ustaw]. 2002, no. 71, item 655, as amended).

Ministers responsible for government's sectors issued implementing acts.

Chapter III

4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ART. 39 EC AND REGULATION 1612/68

Referring to the third paragraph on page 35, it should be recalled that social assistance is not subject to coordination regulations and should not be analyzed in the light of the Regulation 1408/71.

According to the fourth paragraph, „The Act on social assistance provides benefits for persons who are in need (e.g. because of poverty, homelessness, long-term unemployment) (…)". It should be noted that the Act may be applied also to short-tem unemployed – specifically Article 7 of the Act refers to unemployment (not limited to long-term unemployment).

In this paragraph there is a sentence: „There is a wide range of benefits financed by the state budget (…)". Actually, social assistance benefits are financed by state and, in majority, by local authorities' budgets.

According to the sixth paragraph, second tiret, aliens (third country nationals) who have residence permit are eligible for social assistance benefits. Actually, under Article 5, item 2, of the Act on social assistance, as in force in 2007, social assistance benefits might be granted to foreigners having place of residence and staying in the territory of the Republic of Poland on the ground of the permit to settle, or the long-term resident's EC resident permit, or the residence permit for a fixed period granted in relation to the circumstance defined in Article 53, paragraph 1, item 13, of the Act on Aliens of 13 June 2003, or the permit for tolerated stay, or in relation with the status of refugee in the Republic of Poland. Article 2 item 2 of the Act on social pension defines the same categories of foreigners eligible for social pension.

Chapter IV

1.3. Recruitment procedure

Basic recruitment rules referring to vacancies in civil service has been regulated in the Act of 24 August 2006 on Civil Service. According to Article 3 of the act, the Civil Service Corps consists of civil service employees (employed under employment contracts) and civil servants (employed on the basis of appointment). An individual who fulfils conditions listed in Article 19 of the Act on Civil Service (i.a. is a Civil Service employee) may apply for the appointment. As a rule, the appointment takes place upon qualifying procedure within the Civil Service. The regulation of Prime Minister of 24 January 2007 has established the rules concerning the qualifying procedure.

Chapter V

Residence rights

In the first paragraph the third sentence should read: „ It also does not apply to family member who is not an EU national and has a document issued by another Member State which is an equivalent to residence card of an EU national's family member or card of permanent residence of an EU national's family member or who has a residence card issued under the Act of 13 June 2003 on Aliens".

Referring to the third paragraph it should be explained that data regarding the Union citizen or a family member who is not a Union citizen, who left the territory of the Republic of Poland as a result of execution of the decision to expel issued due to the threat to country's defences or safety, or protection of public safety and order, are stored in the the index of aliens whose residence on the territory of the Republic of Poland is undesirable, for the period of 5 years (Article 77, paragraph 1, of the Act of 14 July 2006 on the terms and conditions of the on the entry into, residence in and exit from in the territory of the Republic of Poland of the citizens of the EU Member States and the members of their families).

Information contained in the second and third paragraphs on page 49 does not refer to persons who accompany or join an EU national as their family member. The provisions of the Act of 13 June 2003 on Aliens, that concern granting permits to stay, do not apply to such persons. It is the Act of 14 July 2006 on the terms and conditions of the on the entry into, residence in and exit from in the territory of the Republic of Poland of the citizens of the EU Member States and the members of their families that applies to such persons. It regulates i.a. issuing residence and permanent residence cards of an EU national's family member.

It should be stressed that, under the Act of 14 July 2006 on the terms and conditions of the on the entry into, residence in and exit from in the territory of the Republic of Poland of the citizens of the EU Member States and the members of their families, illegal stay of an EU national's family member in the territory of Poland does not constitute a ground for refusal to issue a residence or permanent residence card of an EU national's family member.

On page 49 in the fifth paragraph, the first sentence is as follows: "Right to residence for a period exceeding 3 months for family members who are third country nationals is subject to the conditions imposed also on EU nationals (see chapter I)". Actually, under Article 18 of the Act of 14 July 2006 on the terms and conditions of the on the entry into, residence in and exit from in the territory of the Republic of Poland of the citizens of the EU Member States and the members of their families, the EU national's right to residence for a period exceeding 3 months extends to accompanying or joining members of their families. Family members are not required to meet the criteria for stay that are required from the very EU nationals (e.g.. sufficient resources, health insurance).

In the sixth paragraph "Union citizen's card" should read: „residence card of an EU national's family member".

Right to permanent residence

The first paragraph informs: "An EU national shall obtain right of permanent residence after five years of continuous residence in Poland (Article 42). The same applies to a family

member who is a third country national (Article 43-44). (…) Thus, for both EU nationals and their family members the residence lasting 5 years is the only prerequisite to obtain the right to permanent residence". It should be noted, however, that under Article 43, the prerequisite, for a family member who is a third country national, to obtain the right to permanent residence is five years of continuous residence in Poland together with the EU national residing in Poland.

Chapter VI

4. The ruling C-291/05 Eind

In the second paragraph there is an opinion that, in the situation referred to in the ruling C-291/05 *Eind*, the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members would be applicable by analogy. It is questionable, however, in the light of the Article 2, item 3, of the Act of 14 July 2006. It defines an EU-citizen as a foreigner. Amendments to national regulations are planned, in order to take into account the ruling of the European Court of Justice in the *Eind* case.

7. The ruling C-97/05 Gattoussi

Information complementing the sentence: "Under article 53, point 1), item 6, the residence permit for defined time should be granted to a spouse of Polish citizen". Under Polish law work permit is issued for the period not exceeding legal stay of a given foreigner in the territory of Poland (Article 88, paragraph. 8 of the Act of 20 April 2004 on promotion of employment and labour market institutions (Journal of Laws of 2008, No. 69, item 415).