

## **New Frontiers in European Studies**

**Guildford, 30 June - 1 July 2011**

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

**[www.uaces.org](http://www.uaces.org)**

Part of thesis conceptualization. First incomplete draft. Please do not quote.  
Comments are welcome!

## **The Europeanisation of Polish Migration Policy since 2004**

Michal Tudorowski, 1st year PhD student, University of Sheffield

Paper presented at the UACES Student Forum 12th Annual Conference at the University of Surrey, Guilford, 30 June–1 July 2011. Panel ‘Immigration, Minority Rights and Europeanisation’

### **Abstract**

To what extent has the Polish migration framework been europeanised since EU accession? In which way has Europeanisation affected Polish migration law and/or policy? What type of domestic change has it produced? While addressing those questions, the paper argues that unlike the pre-accession period that brought the transformation of Polish migration policy, developments following EU accession take place within existing institutional framework and lead to moderate domestic change. Drawing upon the concept of the ‘goodness of fit’, the paper examines the influence of three key EU Directives: 1) the Directive on the rights of long-term residents, 2) the Directive on the right to family reunification, 3) the Qualification Directive on the migration system. Although changes they trigger centre on legislation, the whole adjustment process involves broader institutional, political and social developments.

### **Introduction**

Previous research done proves that the EU constitutes one of the main factors driving migration dynamics in Poland since the early 1990s. This impact can be discerned particularly at the level of legal changes. Subsequent Acts on Foreigners of 1997, 2001 and 2003, constituting a response to migration trends of that time, were adopted according to the EU

logic (Weinar 2006a). However, a profound systemic transformation and a redefinition of an obsolete institutional migration system in the 1990s limited the EU's impact on the policy-making developments in Poland. At the same time, EU migration and asylum policy was going through profound changes, specifically following the ratification of the Amsterdam Treaty and the transfer of migration issues from the third to the first pillar (Levy 2002). The EU, under transformation of its own migration structures and policies, brought Poland into this process and left her no room for expressing reservations during the accession negotiations (Iglicka, Kaźmierkiewicz and Weinar 2005, Weinar 2005, Weinar 2006a). Pressured by the EU member states, Poland finally accepted the EU migration *acquis* in full in 2002 (Duszczyk 2002). Having joined the EU, Poland has changed its role from a passive into an active participant of EU migration and asylum policy. At present, the country on the one hand, influences decision-making processes occurring in Brussels, on the other, follows a gradual path of implementing EU standards, norms and concepts.

The question that arises against a background of those developments is to what extent has Polish migration policy been europeanised (since EU accession)? In what way has Europeanisation affected Polish migration law and/or policy? What type of domestic change has been produced by Europeanisation? What are the key dynamics of Europeanisation of migration framework? What determines the response and adaptability of domestic institutions to external EU-level processes? – The paper addresses those questions within a specific analytical (and methodological) framework and look at the EU's influence on Polish migration legislation adopted since 2004. In order to show the logic of domestic change triggered by the EU, the analysis centres on three directives transposed into Polish legal system: the Directive on the rights of long-term residents<sup>1</sup>, the Directive on the right to family reunification<sup>2</sup> and the Qualification Directive<sup>3</sup>.

### **Europeanisation and domestic change**

Examination of the EU's influence on the Polish migration system is driven by the question of the way in which Europeanisation leads to the domestic change. How does the change occur

---

<sup>1</sup> Council Directive 25 November 2003, 2003/109/EC.

<sup>2</sup> Council Directive 22 September 2003, 2003/86/EC.

<sup>3</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

at national level? How can the change be understood? – While approaching these problems, the aim is to find the most transparent and concise path against a background of which it would be possible to explain legal post-accession developments of the migration system.

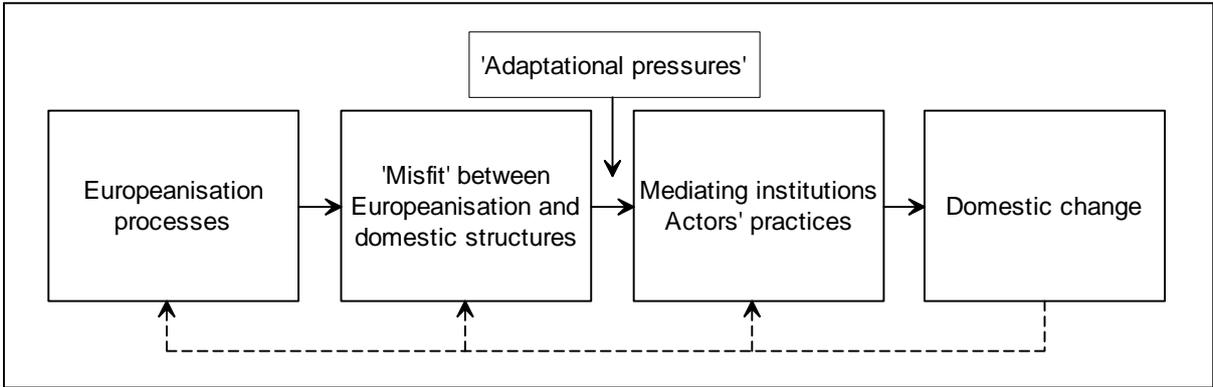
To apprehend the multidimensionality processes leading to domestic change as an outcome of EU pressures, the analysis is grounded on Radaelli's (2004: 4) definition of Europeanisation understood as 'processes of construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies'.

Bearing in mind the above definition, one can approach the study of Europeanisation by raising the question of this process' direction. Since the paper depicts the influence of EU migration norms adopted at the Community level, the analysis employs the top-down approach to Europeanisation (Rometsch and Wessels 1996), starting from European policies, directives and regulations, and tracking down their implementation at the domestic level. However, while it does mean plausible to identify Europeanisation as a source of domestic developments, there are other possible sources of change (Radaelli 2000, 2004). As Andrew Geddes (2005) points out while working out three types of borders (territorial, organisational and conceptual) that play a key intervening role in the relationship between EU migration policy and domestic policy contexts, there could be various international, domestic and subnational factors impinging on strategies of territorial management, on the borders of work, welfare and citizenship and on the boundaries of belonging, entitlement and identity.

Having acknowledged that Europeanisation affects member states (see e.g. Green-Cowles *et al.* 2001, Héritier *et al.* 2001), the question whether it matters seems to be solved. However, there are still issues that require further exploration. Among the key ones, they are the degree, pace and the direction of change. The literature concentrates here on investigating mechanisms of change through which Europeanisation impacts member states (see e.g. Knill and Lehnkuhl 1999, Héritier *et al.* 2001, Börzel 2002). Since further analysis of the EU's impact on Polish institutional settings requires understanding of adaptational pressures exerted by EU legislation, domestic change is explained through the logic of 'goodness of fit'. Drawing upon Green-Cowles *et al.* (2001), the EU may 'fit' with domestic policy system or

there may be some ‘misfit’ that can lead to adaptational pressures. The ‘goodness of fit’ between European institutions on the one hand, and national institutions on the other, determines the degree of pressure for adaptation generated by Europeanisation on member states. The lower the compatibility (‘fit’) between European and domestic institutions, the higher the adaptational pressure and the likelihood that member states will absorb the effects of European integration (Figure 1.). It can be then said that the idea of ‘goodness of fit’ oscillates between two opposing situations. Adaptation becomes unnecessary when European norms, standards and/or values are compatible (or almost compatible) with national structures. The structures do not generate any obstacles that may impede implementation of external provisions, as the latter already exist in the system. Hence, there is no need for the reconstruction of internal institutional design and the distribution of resources between institutions remains unchanged (Börzel and Risse 2003: 61). Alternatively, in the situation of a fundamental ‘misfit’ between EU measures and domestic arrangements, broad and deep adjustments at a state level occur, what may lead to the transformation of domestic provisions and/or institutional structures. However, if a member state fails to comply or implement partially measures previously agreed, inertia, rather than change will take place (Börzel and Risse 2000). This is then the capacity and willingness of a member state to respond to EU pressure that will lead to absorption, accommodation, transformation or inertia as an outcome of the adaptational process (Börzel 1999, Börzel and Risse 2000, Green-Cowles *et al.* 2001).

**Figure 1. Europeanisation and domestic change**



Source: Green-Cowles *et al.* 2001

However, various dimensions of ‘goodness of fit’ have been criticised by some Europeanisation scholars. Firstly, it is not evident what happens when national institutions lack their capacities to adapt (Morlino 1999). This phenomenon could be seen for example in

Belgium that has been struggling with internal conflicts and the impossibility of establishing a firm federal government (since 2007). This political instability brings about certain fragility of domestic (administrative and political) structures, which are too weak to shape processes of Europeanisation. Just the opposite, as Radaelli (2003: 45) discerns, the relationship between EU (Europeanisation) and national institutions is dialectic, so as Europeanisation constitutes a vital component of domestic change, as it was shown by the impact of the European Monetary Union (EMU) on member states. Secondly, the 'goodness of fit' cannot explain causes of domestic change occurring without adaptational pressure. As the research of Héritier and Knill (2001) reveals, adaptational pressure is not an indispensable element for Europeanisation to trigger off domestic adjustments. They assert that actors carrying out domestic reforms are able to employ European policies even if national structures on the one hand and European standards on the other are compatible (...). Thirdly, as some authors assert, the concept of the 'goodness of fit' seems to disregard multidimensional effects of Europeanisation. It does not see political, economic and/or social ramifications of the EU's output requiring different level of compliance. What is more, depending on kinds of the output, the consequences (together or separately) may occur at different pace and at different phase of European integration. For instance, an EU regulation having a direct legal impact on a specific area causes different type of change than policy ideas transferred from Brussels to national policy-making processes.

But what are the factors that determine the above state response resulting in specific types of system changes? How do they facilitate the change? Having acknowledged that changes occur in the system (here under adaptational pressures) within certain institutional and political framework, what needs to be employed in the analysis, is behavior of actors defining the response. One of the approaches that help to understand the role of actors in the system is rationalist institutionalism (March and Olsen 1998). Here actors are seen as political institutions of certain coherence and autonomy. While treated as decision-makers (March and Olsen 1984), they take part in (or even create) strategic interactions using their preferences (interests) and resources (powers). In doing so, they behave rationally by weighting the cost and benefits of different strategies and predicting activities of other players on the chessboard. What is the role of Europeanisation in this context? It has been seen as a constant emerging political opportunity (Börzel and Risse 2003: 63) that strengthen selected actors taking part in the game in a way they can exert more influence while limiting impact of the others. This then leads to redistribution of resources among empowered domestic actors. However, the change among actors occurs only if there is sufficient 'misfit', which opens a space for adjustments

and if actors (of sufficient resources and capacities) themselves are able to employ them (Börzel and Risse 2003: 64). In cases of significant ‘misfit’ (leading to high adaptational pressures), the presence/absence of mediating factors determines the degree of expected change adapting to Europeanisation. There are three structural factors that influence the change: multiple veto points in national structure, mediating formal institutions, and political and organisational cultures (Risse *et al.* 2001: 9–10).

#### *Multiple veto points*

Multiply veto points existing in a given institutional framework constitute a key factor impacting the way of structural adaptation (Tsebelis 1995, Haverland 2000, Héritier 2001). According to Risse (2001), this is a number of actors among which the power is allocated (hence, also their place on the administrative ladder counts) that matters while responding to Europeanisation pressures. If their number is high and their (different?) interests dispersed throughout the system, the probability of hammering out a common strategy aiming at introducing domestic changes as a response to external influences becomes lower. On the contrary, as it can be seen on an example of the development of the Polish migration system, a narrow circle of governmental agencies involved in the policy-making process is able to prepare suitable ground for considerable legislative changes, i.e. for the transposition of EU directives into domestic law. Interestingly however, this case shows that also national actors (here, in the veto points’ context) can somewhat shape external pressures by participating in the consultations on European Commission’s (EC) legislative proposals.

#### *Mediating formal institutions*

Adaptability processes occurred as a response to Europeanisation pressures, when impeded by multiply veto points, can be facilitated by formal institutions, which provide actors with material and ideational resources. One of the examples that may shed interesting light on Polish migration policy adjustments is the activity of the Office of the Committee for European Integration (OCEI) in Poland, responsible for the preparation of governmental institutions to EU accession. Between 1996 – 2008, the Office, as a separate governmental agency, provided domestic bodies with legal advice, conceptual support and assisted in implementing the EU *acquis*, e.g. by taking part in consultations on subsequent domestic legal acts. Its role in the negotiation process was undisputed (Harasimowicz 2005). However, in 2009, the OCEI was incorporated into the Ministry of Foreign Affairs. In consequence, its role has been significantly diminished, as most the ministries have set up their own units

responsible for European-related matters (XXX). This shift in competences has been generated not only because the EU's pressures on adjustments has (relatively) decreased since EU accession, but also due to the fact that the EU membership requires more detailed and complex responses to ongoing processes that can be best formulated as closest to the decision-making 'core' (see more on Europeanisation of national administrations Harmsen 1999). The rationale behind policy-makers, coping and dispersing the OCEI's functions to smaller entities, was to fasten and strengthen an institutional domestic adaptation.

### *Political and organisational cultures*

Are there any other factors shaping domestic actors' decisions? Following the sociological institutionalism's 'logic of appropriateness' (March and Olsen 1989), decision-making processes are defined within given political and organisational cultures containing actors' collective understandings of legitimate and socially accepted behavior (Risse *et al.* 2001). These structures in which actors are embedded naturally affect their goals and perceptions. Against the above background, also Europeanisation matters. Predominantly, as a construction of new regulations, norms, standards and values within meaning of which national actors operate, subsequently incorporating 'europeanness' into their own behavior (Börzel and Risse 2003: 65–68). If we quote the Polish example once again – an agreement among political (and also administrative) actors on to change and then reinforce the migration system on account of EU accession resulted in a moderately smooth transposition of EU norms into Polish framework. A main motivation that drove those institutions before 2004 was a common goal to join the Communities, whereas recently an incentive has been given by the need of system modernisation. Even when consensus-oriented and cooperative decision-making culture (see e.g. Katzenstein 1984) has not been formed yet, the governmental actors (the Ministry of Interior and Administration, the Ministry of Foreign Affairs, and the Ministry of Labour and Social Policy) finally succeeded in defining their separate areas of competence and achieved a consensus on how to develop the domestic migration policy.

Having analysed the way leading to domestic change, it is now possible to focus on outcomes of this process. As briefly mentioned above, four possible degrees of change can be discerned:

1. *Absorption* is the adaptation of EU requirements without substantially modifying existing structures and policies. A country expresses certain degree of its self-restraints and keeps

2. *Accommodation*, as compared to absorption, indicates a broader and deeper scale of adjustments as a response to Europeanisation pressures. Here, a member state adapts existing norms and policies without changing its parameters, previously agreed in Brussels. While discerning the importance of European regulations in improving domestic arrangements, the state acquires the EU logic in changing its institutions and/or policies (in accommodating to Europe). This type of change can be found, for instance, in certain areas of the Polish migration framework's developments following EU accession, when having received tools to participate in the EU migration policy-making, Polish authorities changed their approach and have focused on incremental adaptation and framework modernisation. Since 2004, the authorities has been 'patching up' (Héritier 2001) new policies and institutions into existing ones without modifying the latter.
3. *Transformation* occurs when the fundamental logic of policy-making changes. This is to say that existing norms, institutions or policies either change their key determinants or are replaced by new, different ones. As Ette and Faist (2007: 17) point out, although in the area of migration, substantially dominated by the cooperation based on 'inter-governmental thinking', where EU member states are unwilling to introduce deep structural adjustments, certain transformative developments can be seen. For example, the EU anti-discrimination directive adopted in 2009 fundamentally changed the logic of migration and integration policies in many EU member states (Geddes and Guiraudon 2004). States were induced to implement these provisions having seen a real danger of extreme right-wing politics growing in the early 2000s in Austria. Likewise, external forces, but in the form of Europeanisation, played a major role in reshaping Polish migration policy before EU accession. Fundamental changes of migration policy and politics took place at that time, predominantly because of the EU's pressure that extort concrete (and unconditional) adjustments from Poland (e.g. Weinar 2006a, 2006b, Kicingier *et al.* 2007). However, after Poland's joining the EU, intensity of adaptations has decreased and has taken the form of accommodation.

4. *Inertia* means a lack of change. It takes place when domestic actors see EU norms, regulations and/or policies as too unfitting to national patterns. In short term, one of the forms of inertia are delays in transposition of EU law, support for limiting the scope of directives discussed in Brussels to the lowest denominator possible or the resistance to EU-induced changes (Ette and Faist 2007: 16). This can be easily seen in the UK's immigration system, absorbing as minimal EU norms as possible and making frequent reservations to subsequent EU legal acts in the field (Ette and Gerdes 2007). In the long term, however, inertia produces crisis and disrupts the logic of change.

The role of Europeanisation as an incentive and a facilitator of change provides national structures with new opportunities (and constraints) leading to redistribution of resources that enable domestic actors to introduce policy change. As rational intuitionists point out, the stronger incentive Europeanisation gives, the more profound the changes are. In consequence, transformation took place. Following this logic, lower (medium) adaptational pressure causes transformation as well but only under the condition of the existence of facilitating institutions. If however there are more veto points and they cannot be overcome, most likely accommodation or absorption occurs (Börzel and Risse 2003: 70). However, domestic institutions may prevent any change if Europeanisation pressure is relatively low and facilitating institutions not interested/unable to support it. Then inertia occurs.

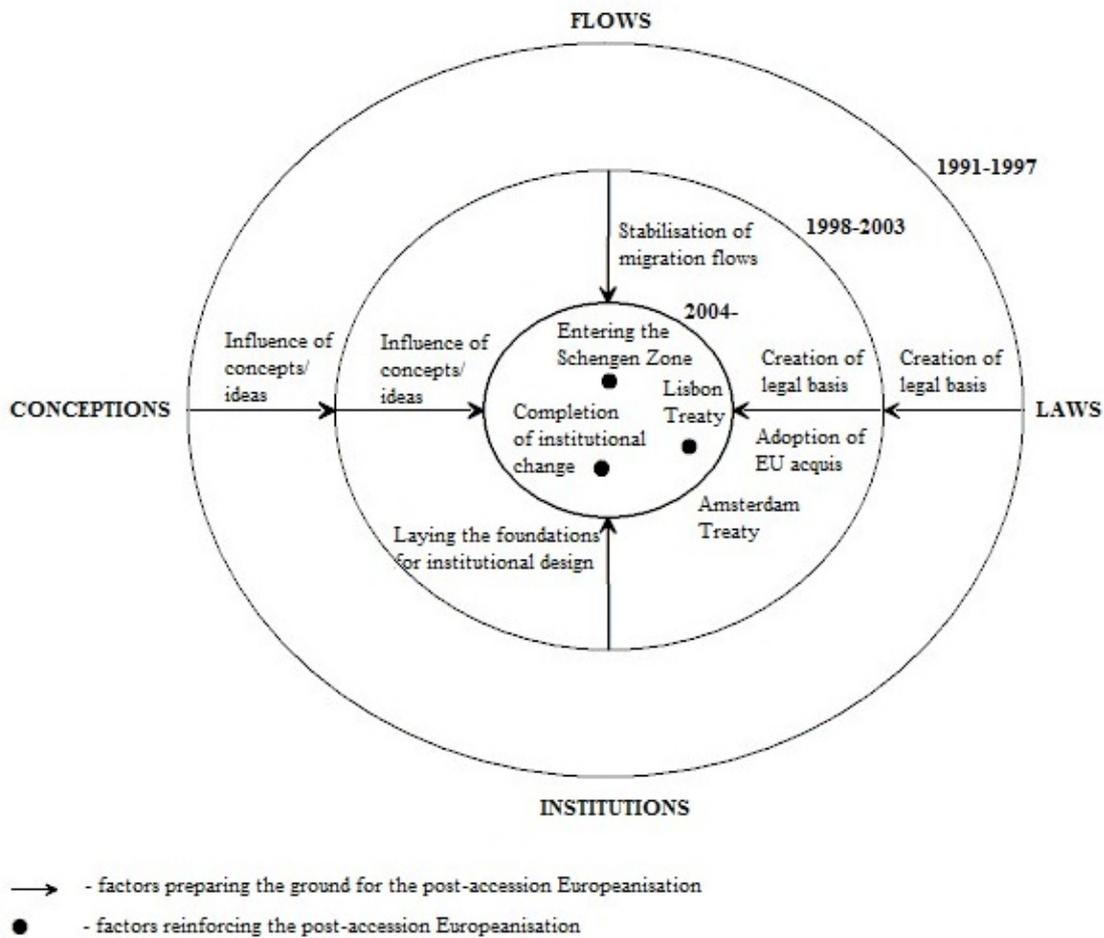
The outcomes of the process of domestic change prove that Europeanisation should be seen as a dynamic force leading to concrete policy adjustments at the national level and requiring constant (top-down?) cooperation. However, what is interesting, when one looks at actors involved in the policy change, it turns out that it is the state that plays the main role in determining the extent of developments and coordinating dynamics of change. It scrutinises structures responsible for EU adjustments, mobilises or discourages given actors, and formulates national interests. Hence, not only Europeanisation but also the state matters.

### **Polish migration policy europeanised?**

While looking at legal developments within the migration system made since 2004, the paper draws upon the methodological framework aiming to prove that Europeanisation of the Polish migration policy can be best discerned in the post-accession period. Upon which arguments is the framework been constructed?

Firstly, the research on pre-accession modifications of Polish migration structures reveals that they were driven by increasing and diverse migration flows, emerging legal framework, transforming institutions and EU norms. Since all of these processes occurred simultaneously, narrowing the measurement to effects of Europeanisation would lead to certain pitfalls. However, the nature of the above multilayered developments turns out to be useful in the examination of post-accession European integration. They provide a sound institutional, legal and conceptual basis for gradual and more ‘participatory’ Poland’s adaptations to EU structures (Figure 1.). This basis constitutes a point of departure for (and at the same time contributes to) the post-accession EU adjustments. For instance, the period 1998 – 2003 brought an institutional set-up resulting in empowering governmental bodies (e.g. the Ministry of Interior and Administration) and enabling them to take active part in the EU decision-making processes. Additionally, through the reconstruction and modernization of the Border Guard, the Eastern border management has been reinforced. Also, the influx foreigners stabilised at that time – the number of applications for fixed-period residence reached the level of around 30,000 applications per year and fluctuates around this number since 2004. On the other hand, the number of applications for permanent stay oscillates between 3000 – 4000 applications every year. As a consequence, more predictable and comprehensive policy towards immigrants could be created.

Figure 2. Factors shaping Polish migration policy since 1991<sup>4</sup>



Secondly, the EU's influence on the post-accession Polish migration framework has been reinforced, among others by the full implementation of the Amsterdam Treaty. It was only five years after the entry into force of the Treaty, when the Commission acquired an exclusive right to provide the Council with legislative proposals within the area of Justice and Home Affairs. This immensely strengthened the Commission's role in the policy-making structure and allowed her to impact developments of EU migration and asylum policy according to her own logic.

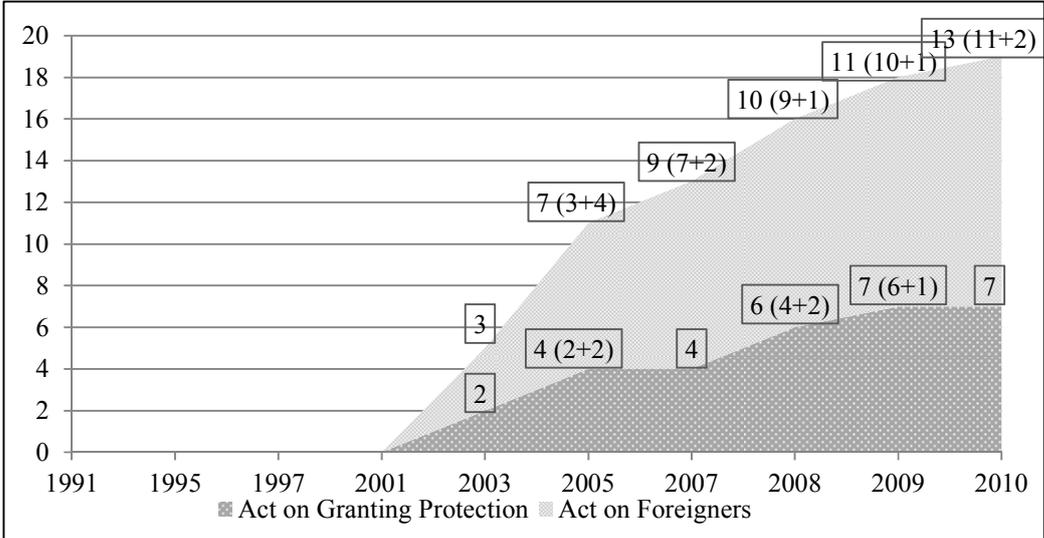
Thirdly, what is connected with the second factor, it is a growing number of the Commission's legislative proposals that (conceptually) reinforces the discussed framework.

<sup>4</sup> The figure consists of three circles of Poland's integration with the EU: 1991 – 1997 (from the conclusion of the Association Agreement with the EU until the adoption of the first new Act on Foreigners), 1998 – 2003 (from the commencement of accession negotiations until the adoption of subsequent Act on Foreigners and the Act on Granting Protection), 2004 until now (from the EU accession onwards).

Between 2005 – 2010 four directives and two regulations were adopted according to the Hague Council (2004) decisions. The proposal for a Directive on Single Permit (CEC 2007) has been still discussing in the European Parliament. On the other hand, subsequent Stockholm Programme (Council of the European Union 2009) (to be completed in 2014) has resulted so far in the preparation of two directives: on intra-corporate transfer (CEC 2010a) and seasonal migration (CEC 2010b). What has come out of the intensification of the Commission’s works is increasing adaptational pressure going on member states.

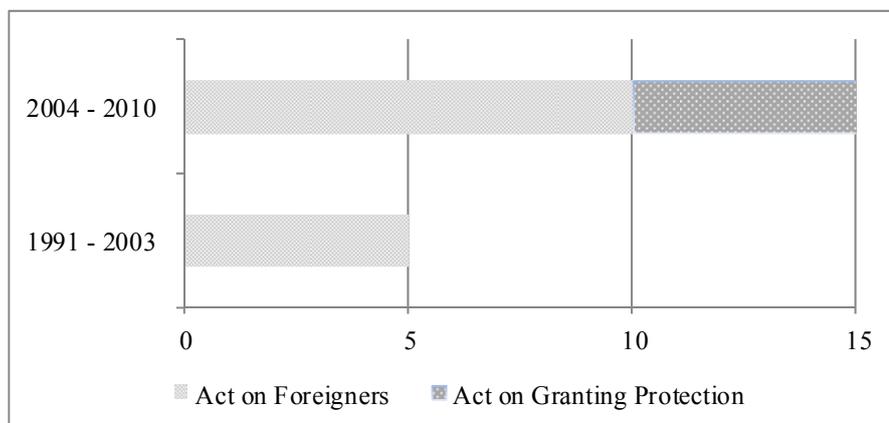
Finally, this upward tendency of the number of EC’s proposals has been ideally reflected in Polish legislation on migration. Each year brings new transpositions of EU regulations into Polish domestic system since EU accession (Graph 1.). Additionally, if one looks at the number of European legal acts adopted before and after 2004, the difference in favour of the post-accession period is striking (Figure 3.). Especially if each EU regulation brings to the national system new political and/or legal dynamics.

**Graph 1. Number of key EU directives and regulations transposed into Polish law between 1991 – 2010<sup>5</sup>**



<sup>5</sup> On the basis of subsequent amendments to the Act on Foreigners (and since 2003 to the Act on Granting Protection), the graph shows the transposition of main EU directives and regulations. Although the latter are directly binding upon member states, they are included in following amendments, since they become specifically apparent in the process of adjusting domestic provisions. The graph has been created according to the ‘logic of law accumulation’. Hence, the detailed figures mean the sum of a number of previous EU acts transposed into Polish law and a number of directives and/or regulations adopted through a given amendment.

**Figure 3. Number of key EU directives and regulations transposed into Polish law between 1991 – 2003 and 2004 – 2010**



The above methodological framework allows then to advance the analysis and make an attempt to capture the impact of Europeanisation on legal developments of Polish migration framework following EU accession. The analysis centres on the transposition of selected EU directives into domestic system (for the list of key EU acts implemented into Polish migration law since 2003 see Box 1.). The question that arises here is of the extent of changes made under the EU’s influence. How has the system been changed? Have (and how) the changes follow the pattern of ‘goodness of fit’? How has the state responded to those developments?

**Box 1. Key amendments to the Act on Foreigners and the Act on Granting Protection transposing EU law into the Polish domestic system**

**The Act on Foreigners:**

**2003**

- Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas.
- Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

**2005**

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

**2007**

- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.
- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

**2008**

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

**2009**

- Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States.
- 2010**
- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visa (Visa Code).
  - Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa
- The Act on Granting Protection:**
- 2003**
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.
  - Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
- 2005**
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
  - Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
- 2008**
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
  - Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.
- 2009**
- Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States.

### *The 2003 Directive on the rights of long-term residents*

One of the most fundamental changes in Polish migration law since EU accession have been made by the transposition of the 2003 Directive on the rights of long-term residents. The 2005 amendment<sup>6</sup> to the Act on Foreigners<sup>7</sup> introduced a new category of foreigners. According to Article 65(1) of the Foreigner's Act, a long-term resident is a foreigner residing legally and continuously in Poland for a period of at least five years who possess stable and regular resources which are sufficient to maintain himself or herself and the members of his or her family, and health insurance. The main rationale behind the process of introducing this category of third-country nationals into Polish law was on the one hand, to enable foreigners to obtain a residence permit for more than two years (this limitation exists in the case of fixed-time residence), and on the other, to provide them (and their families) with the right to reside on the territory of other member states for a period exceeding three months<sup>8</sup>. Since those provisions had not existed in the Polish migration system before, a high 'misfit' occurred that generated strong adaptational pressures speeding up the implementation process. Polish

<sup>6</sup> Act of 22 April 2005 on the change of the Act on Foreigners, Act on granting protection to foreigners within the territory of the Republic of Poland and of other selected acts (Journal of Laws 2005, No 94, item 788).

<sup>7</sup> Act of 13 June 2003 on Foreigners (Journal of Laws 2006, No 234, item 1694, with further amendments (currently into force)).

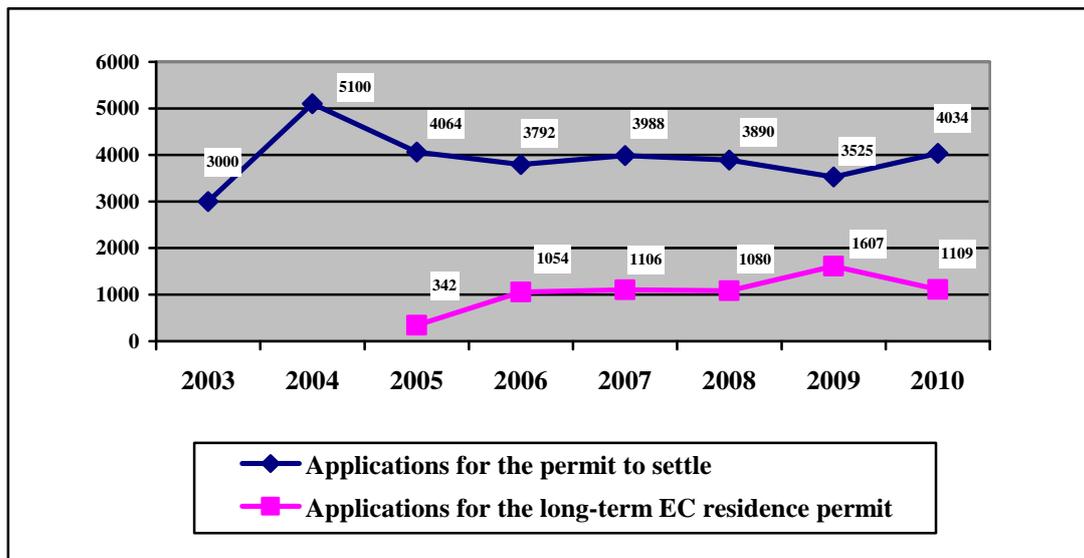
<sup>8</sup> Art. 14(1) of the Directive on the rights of long-term residents.

authorities were aware that along with EU accession, special provisions for this category of foreigners were necessary, hence the transposition did not encounter any difficulties at the political level. An agreement between the government (the Ministry of Interior and Administration) and the parliamentarians responsible for passing the amendment was achieved on the basis of the assumption that those regulations were necessary. Poland had to contribute to the increase of third-country nationals' movement across the EU. The logic of domestic change came thus from Brussels (XXX).

Against a background of this political consensus, interesting multilevel influence of Europeanisation appeared. The establishment of the new legal category of foreigners under EU guidelines has impacted not only migration framework but also other fields of public policy. It has influenced the educational system, as long-term residents have acquired the right to education; the social security in the case of long-term residents' unemployment; and the labour market, as they have had the right to legal work. Simultaneously, EU provisions have affected the Polish economy, since the admission process of those foreigners has constituted an additional financial burden for the Budget (Reasons for the Act 2005). On the other hand however, granting more residence permits has enabled third-country nationals and members of their families to contribute to the labour market, culture and tradition of Poland (XXX). However, these effects of foreigners' presence are difficult to assess without conducting an in-depth research on social interactions.

Has the Directive's implementation impacted migration trends to Poland? Diagram 1. provides that the introduction of the long-term EC residence permit has not brought any changes of the number of applications lodged for an analogous permit to settle. Since the enactment of the 2003 Foreigners' Act, the number of foreign persons applying for the permit to settle has remained uninterrupted and oscillates around 3000 applications lodged per year. It appears that the aforementioned types of residence are directed towards two differently-motivated groups of immigrants. While the EC residence permit enables foreigners to be more mobile and settle in other member states, the permit to settle gives more rights for those willing to live permanently in Poland.

*Diagram 1. Applications for the permit to settle and for the long-term EC residence permit lodged in Poland between 2003 – 2010*



Source: Office for Foreigners (2011)

However, just after the introduction of new provisions in 2005, provincial governors (voivods) responsible for examining applications for the EC residence permit, experienced various organisation problems, such as insufficient human resources (XXX). The difficulties were brought about by the establishment of a new detailed and time-consuming procedure involving cooperation with other institutions. For instance, each application needs to be consulted with agencies responsible for ensuring security (the Border Guards, the Police and the Internal Security Agency)<sup>9</sup> in case of possible threat an alien can pose. Hence, unlike governmental institutions, responsible predominantly for shaping institutional and legal migratory framework, the 2005 Foreigners' Act amendment has affected chiefly local authorities laying upon them additional administrative burdens. This shows that the EU influences national institutions at different levels depending on the content and the scope of policies and/or regulations transmitted.

How can the domestic change produced by EU regulations be assessed? The transposition of the Directive on the rights of long-term residents has led to developments at legal and institutional level. On the one hand, by introducing a new form of permit (and a new logic behind it), the transposition restructured the institution of permanent residence. On the other hand, new provisions triggered moderate institutional changes. The most important one

<sup>9</sup> Article 71b(2) of the Act on Foreigners.

concerned the reinforcement of provincial governors' capacities for handling new long-term residence permit applications. It can be then seen that Europeanisation had an accommodative effect on the national system.

### *The 2003 Directive on the right to family reunification*

Second important change in Polish migration law has been brought by the implementation of the 2003 Directive on the right to family reunification. The Directive was transposed into the Polish system by the 2005 amendment to the Foreigners' Act. The Directive's provisions were implemented according to the EU logic, though the regulations as such were influenced by the demands of 'old' member states, which have been experiencing a constant inflow of migrants under family reunification since the 1970s (Geddes and Boswell 2011: 32). Discussions on how to manage more effectively this type of inflows led to a number of domestic changes and exerted pressure on the European Commission to regulate the problem at the EU level.

Poland, by accepting the EU *acquis* during the accession negotiations, committed itself to adapt the 2003 Directive after joining the Union. Since low-level binding character of the Directive left member states much discretion, Polish authorities (specifically the Ministry of Interior and Administration) decided to limit the scope of modification of then regulations to the temporary residence permit institution. The scope of fixed-time residence permit has been broadened by new provisions on the assumption that a third-country national residing lawfully in Poland<sup>10</sup> can be reunited with his or her family member who is already established in the country, i.e. resides there on a basis of the permit to settle or the long-term EC residence permit; is granted subsidiary protection or refugee status; or possesses the fix-time residence permit (at least for two years)<sup>11</sup>. Also, the amendment provides for European norms concerning obligatory resources a foreigner is required to possess while settling in the EU. Hence, according to Article 53b(1) of the Foreigner's Act, a spouse or an adult child applying for the fixed-time residence permit on the grounds of the right to family reunification has to prove stable and regular source of income enough to cover the cost of his or her maintenance

---

<sup>10</sup> According to Article 53(2) of the Foreigner's Act, a member of a foreigner's family shall be regarded: 1) a person married to a foreigner, such marriage being recognised under Polish law in force; 2) a minor child of a foreigner and person married to foreigner, such marriage being recognised under Polish law in force, including an adopted child; 3) a minor child of a foreigner, including his or her adopted child, if the foreigner exercises actual parental control over the child; 4) a minor child of a person referred to in point 1, including his or her adopted child, if he or she supports and exercises actual parental control over the child.

<sup>11</sup> Article 54 of the Act on Foreigners.

and of members of his or her family; and health insurance. The residence permit granted to the member of a foreigner's family, applying for family reunification, ensures him or her access to education and employment in Poland. He or she can enjoy educational and labour rights to the same extent as his or her family member already established in Poland. EU provisions, as in the case of the long-term EC residence permit, exert then adaptational pressures not only on the foreigners' admission system, but also on other areas of social activity, what makes changes broader and multidimensional.

However, even if the EU's pressure has been put in this case on various public policy sectors, its intensity could be assessed as low, what allowed the Ministry of Interior and Administration, transposing the Directive provisions into migration law, to use a relatively broad 'margin of flexibility' they provided. Accordingly, it led to the transposition of selected regulations in line with domestic arrangements (affected by political, financial and organisational factors). Let me then look at forms which this implementation leeway took.

First, at the conceptual level, Poland decided not to include an 'unmarried partner' and his or her children in the category of family members who can apply for reunification on the grounds of Article 53(2) of the Act on Foreigners. Here, Article 4(3) of the Directive gives a member state room for political decision whether to recognise (unmarried) partner relationships and provide them comparable legal status to persons in a civil marriage. So far, Poland has not regulated the above problem in domestic legislation and has constantly evaded applying EU provisions in question. Although this approach leads to serious consequences at EU level (e.g. Poland has been recently brought by the European Commission to the European Court of Justice for not applying the definition of a registered partner, stipulated Article 2(2) of the 2004 Directive on the right of EU citizens and their family members to move and reside in member states<sup>12</sup>, to same-sex relationships at the time of application for the EU residence permit), there is still no consensus among Polish political parties on how to define an unmarried relationship and which groups of persons include in it (XXX).

---

<sup>12</sup> Directive 29 April 2004, 2004/38/EC. The Directive was transposed into Polish law through the enactment of the Act of 14 July 2006 on the terms and conditions of the entry into and the stay in the territory of the Republic of Poland of the citizens of the EU and the members of their families (Journal of Laws 2006, No 144, item 1043, with further amendments (currently in force)).

Second, at the institutional level, the procedure of an application for entry and residence on the grounds of the right to family reunification<sup>13</sup> has been fitted into existing national regulations. The fixed-time residence institution has been enriched with a new category of third-country foreigners who have to follow the same procedure as other groups of foreigners mentioned in Article 53 and 53a of the Foreigners' Act. Unlike most member states, Poland deals with family reunification within general immigration rules (CEC 2008: 9), mainly because of the current residence system's simplicity (and effectiveness). Also, the Ministry of Interior and Administration while transposing the Directive aimed at that time to limit possible costs of the introduction of new provisions so not to struggle with the opposition in the Parliament.

The above implementation leeway confirms that the influence of the 2003 Directive on Polish migration law has been limited. The low-level binding Directive's provisions have curbed (from the top) adaptational pressures and financial constraints that occurred in Poland. Even at the absence of veto points in the system, moderate domestic change has been finally made.

Having analysed the way in which Europeanisation impacts Polish migration law on the example of two above Directives, what one can see is on the one hand domestic change as an outcome of this process, on the other, facilitation of third-country nationals' movement inside the EU. The provisions hence not only modify the logic of national system but also aim to create a common European migration space through harmonisation of member states' domestic regulations.

It is tempting to see whether the impact of EU regulations trigger the same changes as far as third-country nationals granted international protection are concerned. What is the scope of change? Do the change follow the domestic or EU logic? To what extent/How Europeanisation matters? Those questions drive the examination of the Qualification Directive provisions transposed into Polish asylum law by the 2008 Amendment<sup>14</sup> to the Act on Granting Protection<sup>15</sup>.

---

<sup>13</sup> Article 5(1) of the Directive.

<sup>14</sup> Act of 18 March 2008 on the change of the Act on granting protection to foreigners within the territory of the Republic of Poland and of other selected acts (Journal of Laws 2008, No 70, item 416).

<sup>15</sup> Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2009 No 189, item 1472 (currently into force)).

### *The 2004 Qualification Directive*

Unlike regulations concerning the long-term EC residence permit and family reunification, the 2004 Directive does not contribute to increase foreigners' mobility within the EU, just the opposite, it restricts movements of asylum applicants from one member state to another (Reasons for the Act 2008). The Directive by providing for the approximation of the rules on recognition and the content of refugee and subsidiary protection status aims to establish the same level of protection in each member state so as to eliminate the situation where asylum-seekers apply for asylum in more than one member state or choose one member state in preference to others on the basis of a perceived higher standard of reception conditions or social security assistance.

At the time of the Directive's implementation, both the rules of refugee recognition and of tolerated stay (an alternative domestic form of protection) already existed in Polish law. However, in order to establish common provisions in all member states, the Directive requires more precise definitions and the same level of protection granted. The domestic change produced by the Directive's implementation took place at two levels. First, new interpretational rules of the Geneva Convention refugee definition have been introduced, specifically as far as acts<sup>16</sup> and reasons of persecution<sup>17</sup> are concerned. Second, a new category of international protection – subsidiary protection has been established. On the Polish ground, where the system allowed to make changes within existing structures of the Act on Granting Protection, 'misfit' between Europeanisation and domestic regulation that arose was moderate. As a result, adaptational pressures generating legal change were of medium intensity.

How has the EU affected the migration framework in this case? One of the primary changes is the establishment of subsidiary protection, the institution that in its main scope bases on the same grounds as tolerated stay that constitutes a domestic form of protection<sup>18</sup> resulted from pre-accession legislative developments. Both of the above forms of protection express the principle of *non refoulement*<sup>19</sup> that prohibits expulsion of a foreigner to a country where he or she could be exposed for persecution. Hence, if a foreigner cannot be granted refugee status, he or she is allowed to stay in Poland and benefit from certain (limited) rights. But how is

---

<sup>16</sup> Article 9 of the Qualification Directive.

<sup>17</sup> Article 10 of the Qualification Directive.

<sup>18</sup> Articles 97, 98, 99, 100, 101, 102, 103, 104 and 105 of the 2003 Act of Granting Protection.

<sup>19</sup> Article 33(1) of the United Nations Convention relating to the Status of Refugees, *done* July 28, 1951.

subsidiary protection different? First, the authorities examining an asylum application, when refugee status cannot be granted, have to take into account a broader scope of factors such as reasons and actors of persecution that have been specified in the 2004 Directive. Also, Article 16(1) of the Act on Granting Protection widens the list of actors of persecution by adding non-state actors controlling at least a substantial part of a given country, where actors of protection are either unable or unwilling to provide protection.

Second, EU regulations concerning subsidiary protection<sup>20</sup> have affected the logic and the institutional basis of proceedings for granting supplementary forms of protection. In contrast with norms on granting tolerated stay, which authorise the Provincial Governor (the Voivod)<sup>21</sup>, the President of the Office for Foreigners<sup>22</sup> or the Refugee Board<sup>23</sup> to grant protection on the grounds of final decision on refusal of granting the refugee status, an application for subsidiary protection is considered at the same time as an application for refugee status<sup>24</sup>. If the status cannot be granted, and all the requirements<sup>25</sup> are met, a foreigner is given subsidiary protection. In this case, an application for granting refugee status is submitted to the President of the Office for Foreigners, through the commanding officer of the Border Guard division or commanding officer of Border Guard checkpoint<sup>26</sup>. The Office examines the cases<sup>27</sup> and renders first instance decision<sup>28</sup>.

Along with the aforementioned legal and institutional developments, public assistance adjustments have come about as an effect of Europeanisation processes. Regulations on subsidiary protection require provision of integration programmes for the protection beneficiaries<sup>29</sup>. The EU's pressure has gone thus beyond the framework of the Act on Granting Protection and impacted Polish social welfare system. However, since the changes have been fitted into existing aid framework for refugees, they have not led to significant changes as in the case of reception system developments. The most important ones concern

---

<sup>20</sup> Articles 4, 5, 6, 7, 8, 15, 16, 17, 18 and 19 of the 2004 Qualification Directive.

<sup>21</sup> Article 104(1)1 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2009 No 189, item 1472 (currently into force)).

<sup>22</sup> Article 104(1)2.

<sup>23</sup> Article 104(1)3.

<sup>24</sup> Article 23(2).

<sup>25</sup> Articles 15, 16, 17, 18.

<sup>26</sup> Article 28(1).

<sup>27</sup> Articles 29, 31.

<sup>28</sup> Article 35.

<sup>29</sup> Article 89e.

the provision of funds for maintenance, Polish language lessons<sup>30</sup>, health insurance<sup>31</sup>, and accommodation<sup>32</sup>. The programme lasts twelve months and aims to involve beneficiaries of international protection in Polish society.

How can be thus the domestic change triggered by the EU assessed? There is no doubt that the Qualification Directive has influenced the Polish asylum framework at legislative, institutional and social levels. However, unlike the establishment of a category of long-term EC residents, introduction of subsidiary protection took place within existing refugee regulations what limited the change to absorption of EU norms.

## **Conclusions**

Europeanisation in the post-accession period has been one of the driving forces of developments within the Polish migration framework. While applying the pattern of ‘goodness of fit’, the paper aimed to show how the transposition of selected EU directives triggers domestic change and at which levels it occurs.

Approaching the problem of change from a theoretical angle, what dominates as an outcome of EU law implementation is absorption. This type of change confirms a general tendency taking place in member states to transpose EU provisions on migration without modifying existing legal and institutional ‘core’. While looking at the causes of this situation in Poland, one can discern relatively low ‘misfit’ between Europeanisation and national standards (predominantly because of recently implemented EU *acquis*) that generates only moderate adaptational pressures on state arrangements. However, a general political agreement on constant modifications of migration framework in the face of new migration challenges has limited the number of veto points in the system and allowed to consolidate the decision-making process within one governmental body – the Ministry of Interior and Administration. Hence, the nature of political and organisational culture, even if consents only for absorption of EU norms, creates general acceptance for developments generated in Brussels.

---

<sup>30</sup> Article 92(1)1 of the Act of 12 March 2004 on Social Assistance (Journal of Laws 2004 No 64, item 593, with further amendments (currently in force)).

<sup>31</sup> Article 92(1)2.

<sup>32</sup> Article 94(1).

If one then asks about the extent to which Polish migration policy has been europeanised (since 2004), the above analysis enables to discern multidimensional and multilayered domestic change made as a result of the transposition of EU provisions. Developments prompted by Europeanisation, although have their origins in legal adjustments, such as successive amendments to the Foreigners' Act, they simultaneously influence other sectors of aliens' activity. This can be easily seen in the case of beneficiaries of subsidiary protection who, along with the Qualification Directive's implementation, have been provided social assistance, health insurance and even accommodation for an initial period of their residence in Poland.

Europeanisation in the context of Polish migration policy has also a broader inter-state dimension. On the hand, through the transposition of the Directives' provisions, such as those concerning long-term EU residents, Europeanisation facilitates the movement of persons inside the Community. On the other hand, harmonisation of regulations on minimum reception standards in refugee law leads to restricting secondary flows between EU member states. Migration system in Poland is thus shaped by the EU at different levels and as such, while europeanised, it affects migration trends outside the country. It proves that Europeanisation has also its 'external face', what constitutes a point of departure for separate research.

**References** (to be added)