



**Conformity Study for Poland**  
**Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States**

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ENVIRONMENTAL LAW & POLICY



This National Conformity Study has been prepared by Milieu Ltd. in consortium with the Europa Institute, Edinburgh University under Contract No JLS/2007/C4/004-30-CE-0159638/00-31. The actual conformity checking was carried out in Poland by Magdalena Bar and was concluded on 1 August. The study does not take into account any subsequent changes in EU law and national legislation and/or administrative practice.

The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission. The national report reflects that legal situation as it stands on 1 August 2008. No subsequent changes have been taken into account.

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**ANALYSIS OF THE LEGISLATION TRANSPOSING  
DIRECTIVE 2004/38/EC ON FREE MOVEMENT OF UNION CITIZENS**

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## EXECUTIVE SUMMARY

### 1. Introduction

Poland is a unitary country so the transposition of EU Directives is provided by legal acts adopted at central level. According to Article 87 of the Constitution, the sources of Polish law are: the Constitution, statutes (acts adopted by the Parliament), ratified international agreements and executive regulations (issued under statutes by relevant ministers or by the Council of Ministers). As Poland is a unitary country, all these legal measures are legally binding in its entire territory. According to the Constitution, International, European or Community laws are superior to national law.

### 2. Introduction to the main particularities of the legal system of the Member State relating to the transposition of Directive 2004/38/EC

The majority of competences in the practical application of the provisions transposing Directive 2004/38 are the responsibility of voivodas - heads of governmental administration in regions - representatives of the central government in a given voivodship (region). The voivodas are responsible for issuing individual administrative decisions under EREA.

The direct supervisor (at the central level) of voivodas in the area covered by EREA is the Head of the Office for Foreigners. He is a second instance authority (appeal authority) regarding decisions issued by voivodas.

General supervision of the Head of the Office for Foreigners lies with the Minister of Internal Affairs and Administration. The Minister is also competent to issue majority of executive regulation under EREA.

The Border Guard is an authority with responsibilities regarding entry into the territory of Poland. The commander of a Border Guard post is competent for issuing an entry visa, as well as for refusing entry into the territory of the Republic of Poland. The decisions made by the commander of a Border Guard post may be appealed to the Chief Commander of Border Guard.

### 3. Conclusions of the legal analysis of the transposing measures for Directive 2004/38/EC

The Directive 2004/38 was transposed by legal Acts adopted by the Parliament and by relevant executive regulations adopted by Ministers. Circulars and guidance are not treated as sources of law in Poland and there is also no administrative practice to transpose EU Directives by them.

The main Polish legal act transposing Directive 2004/38 is 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 (EREA) and its executive regulations.

While carrying out this conformity study, several conformity problems were found. They could be classified as follows:

#### a) Incomplete transposition or non-transposition

Article 2(1) The definition of the Union citizen by EREA encompasses only foreign nationals, thus excluding Polish nationals. Please note that the scope of the transposing legislation (cf. Article 3(1) of the Directive) seems to be in line with the ECJ judgment given in the Surinder Singh case (C-370/90). The case clarifies that the rules of free movement shall apply also to citizens of the given Member State (here: Polish citizens) who return to Poland after having resided in another Member State and to their family members.

Even though the definition of the Union citizen by EREA encompasses only foreign nationals, the scope of the transposing legislation is explicitly extended to the “nationals of an EU MS, without the requirement to be a foreigner. Since the transposition is not explicit, it is not entirely clear what would happen in practice, and whether there is sufficient legal certainty that Polish citizens and their family members can invoke the provisions after having exercised their right to free movement. Therefore, the transposition is assessed as ambiguous.

Article 3(2)(a) - EREA does not apply to persons listed in Article 3(2)(a) of the Directive and does not contain any provision regarding their rights. Those persons may enjoy rights as provided for by FA and other Acts (FA is not applicable to persons covered by EREA but persons from Article 3(2)(a) **are not** covered by EREA). However, applying the general aliens regime to other family members seems to be insufficient for the purpose of correct transposition of the Directive, since the Directive specifically requires that they are given special treatment, better than other aliens.

Article 3(2)(b) - Neither registered partners nor other partners (with a durable relationship) are covered by EREA (see also remarks to Article 2.2(b)). EREA does not provide for any facilitation of entry or residence of partners either. Partners would not be able to enjoy rights as provided for by FA for other family members (see remarks to Article 3.2(a)), as they would not be covered by the concept of “family ties” under Polish law.

Article 5(2) second sentence - Article 10.3 of EREA declares granting rights facilitating the issue of a visa, but there are no specific provisions which provide for special procedures or which specify what the facilitating rights will look like. Therefore this is a blanket provision.

Article 7(4) – The Polish law has not transposed the obligation to facilitate the residence of the other family members not covered by the provisions (ascendants in direct line).

Article 8(4) - was not transposed

Article 8(3), 2<sup>nd</sup> intend - The conditions for sufficient resources have not entirely been transposed. The last sentence, which says that the declaration may not be required to refer to a specific amount has not been transposed.

Article 8(5)(e) and (f) - were not transposed

Article 10(2)(e) and (f) - were not transposed

Article 11(2) - was not transposed. Article 47 of EREA would conform to Article 11.2 of the Directive, but it is placed in the chapter of EREA concerning **permanent** residence and therefore does not apply to ‘non-permanent’ residence or the validity of the card.

Article 12(2) second sentence - was not transposed

Article 13(2) third subparagraph - was not transposed

Article 16(1) - the second sentence (This right shall not be subject to the conditions provided for in Chapter III.) was not transposed into Polish law

Article 24(1) - Transposition seems to be incomplete. There is no general provision on equal treatment. Some specific provisions partially implementing this rule are provided in columns 4 and 5. However, those provisions do not provide for guarantees for self-employed persons.

Article 25(1) - was not transposed

Article 27(2) second sentence - The sentence- ‘Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted’ was not transposed

Article 27(3) - The obligation of the Member State consulted to answer within two months was not transposed.

Article 27(4) - was not transposed

Article 29(3) - was not transposed. On one hand, there is no legal basis to perform the medical examination (which would be a more liberal measure). However, there is no guarantee that this kind of potential requirement will be justified by ‘serious indications that it is necessary’, and that ‘such medical examinations may not be required as a matter of routine’.

#### **b) Incorrect or imprecise/ambiguous transposition**

Article 4(1) - Article 30(1) and 54 of EREA seem to be not in line with Article 4.1 of the Directive. They require family members of Union citizens to present a valid passport (travel document) and a residence card (or permanent residence card) for crossing the border, while for Polish citizens and Union citizens the sole travel document (passport) is sufficient.

The wording ‘possession of the residence’ in the aforementioned Articles means that the family member has to have such a card, but that he is not obliged to carry the card with him (apart from the moment of crossing the border). Similarly, Polish citizens are obliged to possess IDs but not to carry them at all times. Therefore, the only transposition problem is the requirement concerning crossing the border.

Article 5(2) first and second sentence - Re first sentence: Article 9.2 of EREA refers to a visa without specifying whether it shall be an entry or a residence visa. But Article 10 of EREA (see below) refers to some facilities re the issuing of a residence visa but not to an entry visa for family members. This may suggest that both Art. 9.2 and 9.3 also refer to a residence visa. The requirement of a residence visa would be contrary to the Directive. Re second sentence: Art. 10 of EREA refers to a residence and not an entry visa. Similarly, Article 47 of FA refers to a residence and not to an entry visa.

Article 5(4) - The period of 72 hours envisaged by Polish law to obtain the necessary documents may not always be reasonable, particularly since the transposing provision does not provide for any procedures to prolong this period in justified cases. Moreover, the expressions “every reasonable opportunity” and “proven by other means” are not included in the national disposition.

Article 5(5) - The deadline for reporting the presence is 4 days under Polish law.. According to ECJ ruling in case Watson (118/75), imposing such a short deadline is contrary to EU law. However, it must be stressed that Polish law does not provide for a sanction of expulsion in cases where the reporting obligation is not fulfilled. In addition, the sanctions in the transposing legislation include restricted freedom. This cannot be considered to be proportionate.

Article 7(1)(c) second dash – the wording of the transposing provisions suggests that the condition of sickness insurance is fulfilled only if the insurance is purchased in public institutions (even voluntary). Furthermore, it suggests that insurance by private firms is insufficient for the purpose of this requirement (although it is possible to purchase comprehensive sickness insurance in a private firm).

Article 7(3) - transposition of Article 7(3) is incorrect, as the transposing provisions do not say that the persons concerned retain the ‘status of worker’, but that they retain the rights of residence granted to workers.



Article 8(3) - transposing provisions require that a self-employed workers submit a certificate of registration in one of Polish commercial registers, while freedom of services allows for providing services on the basis of registration in another Member State.

Article 17(1)(a) second sentence - The word 'finished' (zakończenie) used by transposing provision means definite termination of activity and not stopping working, which is contrary to the Directive.

Article 18 - Article 43 of EREA transposing Article 18 of the Directive requires that third country family members must reside with an EU citizen in order for the right of permanent residence to be retained. This is an incorrect transposition of the Directive's provisions.

Article 30(3) - APC provides for a general rule guidance re-challenging a decision. The general rule is that expulsion is within 31 days. When national defence, national security or public security and order so require the expulsion may be executed immediately.

### **c) Minor instances of non-conformity**

Article 12(3) – the Polish transposing provision fails to mention that the custody is to be **actual** and seems to accept only the custody as it is stated by the court verdict.

## **Conclusions**

It seems that the main conformity problem is that Polish legislation fails to give any special rights to beneficiaries of the Directive as referred to Articles 3(2)(a) and (b).

Another serious problem is that Polish transposing provisions seem to require a residence visa and not only the entry visa.

Moreover, the Polish legislation is not in line with the ECJ judgment given in the Surinder Singh case (C-370/90), as the rules of free movement do not apply also to Polish citizens and their family members who return to Poland after having resided in another Member State.

## SUMMARY DATASHEET

### 1. Transposing legislation

The main Polish legal act transposing Directive 2004/38 is 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 (EREA, OJoL of 2006 No. 144 item 1043 amended by: OJoL of 2007 No. 120 item 818) and its executive regulations:

- Minister of Health Regulation of 18 January 2007 on the list of diseases justifying decision on expulsion of nationals of the European Union Member States and their family members from the territory of the Republic of Poland on grounds of public health (OJoL: of 2007 No. 18 item 112)
- Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of residence on the territory of the Republic of Poland of Nationals of the European Union Member States and their Family Members (OJoL of 2006 No. 154 item 1105, amended by: OJoL of 2007 No. 172 item 1214)
- Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of permanent residence on the territory of the Republic of Poland of Nationals of the European Union Member States and their Family Members (OJoL of 2006 No. 154 item 1106, amended by: OJoL of 2007 No. 172 item 1215)
- Minister of Internal Affairs and Administration Regulation of 31 August 2006 on charges for issuing or exchange of a registration certificate for Nationals of the European Union Member States and for issuing or exchange of a residence card for their Family Members
- Minister of Internal Affairs and Administration Regulation of 31 August 2006 on charges for issuing or exchange of a document certifying permanent residence or a permanent residence card for a Family Members of Nationals of the European Union Member States (OJoL of 2006 No. 160 item 1133)

Directive 2004/38 was transposed three months after the deadline.

The Foreigners Act of 13 June 2003 (cons. text: OJoL of 2006 No. 234 item 1694, amended by: OJoL of 2007 No. 120 item 818, OJoL of 2007 No. 165 item 1170) providing for general rules on aliens does not generally apply to EU citizens and their family members, excepting certain provisions directly indicated by EREA.

Moreover, as EREA fails to cover persons as referred to by Article 3(2)(a) and (b) of the Directive (other family members and partners), the only legal regime applied to those persons is the Foreigners Act (which causes non-conformity with the Directive).

Other subsidiary Legal Acts transposing certain provisions of the Directive are:

- Promotion of Employment and Work Market Institution Act of 20 April 2004 Act (OJoL of 2004 No. 99 item 1001; since then amended 20 times)
- Population Records and ID Cards Act of 10 April 1974 (cons. text: OJoL of 2006 No. 139 item 993, amended by: OJoL of 2006 No. 104 item 711, OJoL of 2006 No. 144 item 1043, OJoL of 2007 No. 21 item 125)

- Passport Documents Act of 13 July 2006 (OJoL of 2006 No. 143 item 1027)
- Stamp Duty Act of 16 November 2006 (OJoL of 2006 No. 225 item 1635; amended by: OJoL of 2007 No. 64 item 427 OJoL of 2007 No. 124 item 859 OJoL of 2007 No. 127 item 880 OJoL of 2007 No. 128 item 883)
- Administrative Courts Procedure Law Act of 30 August 2002 (cons. text OJoL of 2002 No. 153 item 1270 amended by: OJoL of 2004 No. 162 item 1692; OJoL of 2005 No. 94 item 788; OJoL of 2005 No. 169 item 1417; OJoL of 2005 No. 250 item 2118; OJoL of 2006 No. 38 item 268; OJoL of 2006 No. 208 item 1536; OJoL of 2006 No. 217 item 1590; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 121 item 831; OJoL of 2007 No. 221 item 1650)
- Medical Benefits Financed by Public Means Act of 27 August 2004 (OJoL of 2004 No. 210 item 2135, since then amended 22 times)
- Business Activity Freedom Act of 2 July 2004 (cons. text OJoL of 2007 No. 155 item 1095)
- Education System Act of 7 September 1991 (cons. text OJoL of 2004 No. 256 item 2572; since then amended 19 times)
- Higher Education Law Act of 27 July 2005 (OJoL of 2005 No. 164 item 1365, amended by: OJoL of 2006 No. 46 item 328; OJoL of 2006 No. 104 item 708; OJoL of 2006 No. 104 item 711; OJoL of 2006 No. 144 item 1043; OJoL of 2006 No. 227 item 1658; OJoL of 2007 No. 80 item 542; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 176 item 1238; OJoL of 2007 No. 176 item 1240)
- Social Assistance Act of 12 March 2004 (OJoL of 2004 No. 64 item 593; since then amended 21 times)
- Social Pension Act of 27 June 2003 (OJoL of 2003 No. 135 item 1268, amended by: OJoL of 2005 No. 94 item 788; OJoL of 2006 No. 144 item 1043; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 176 item 1241)
- Misdemeanour Code of 20 May 1971 (cons. text OJoL of 2007 No. 109 item 756, amended by: OJoL of 2007 No. 82 item 558)
- Administrative Procedure Code Act of 14 June 1960 (cons. text OJoL of 2000 No. 98 item 1071 amended by: OJoL of 2001 No. 49 item 509; OJoL of 2002 No. 113 item 984; OJoL of 2002 No. 153 item 1271; OJoL of 2002 No. 169 item 1387; OJoL of 2003 No. 130 item 1188; OJoL of 2003 No. 170 item 1660; OJoL of 2004 No. 162 item 1692; OJoL of 2005 No. 64 item 565; OJoL of 2005 No. 78 item 682; OJoL of 2005 No. 181 item 1524)

## 2. Assessment of the transposition

### a) Incomplete transposition or non-transposition

Art. 3(2)(a)	EREA does not apply to persons listed in Art. 3.2(a) of the Directive and does not contain any provision regarding their rights. They are only covered by FA but applying the general aliens regime to other family members seems to be insufficient for the purpose of correct transposition of the Directive, since the Directive specifically requires that they are given special treatment, better than other aliens.
Art. 3(2)(b)	Neither registered partners nor other partners (with durable relationship) are covered by EREA. They are only covered by FA but applying the general aliens regime to other family members seems to be insufficient for the purpose of correct transposition of the Directive, since the Directive specifically requires that they are given special treatment, better than other aliens.
Art. 5(2) second sentence	Art. 10(3) of EREA declares granting rights facilitating the issue of a visa, but there are no specific provisions which provide for special procedures or

	which specify what the facilitating rights will look like.. Therefore this is a blanket provision.
Art. 7(4)	Polish law has not transposed the obligation to facilitate the residence of the other family members not covered by the provisions (ascendants in direct line).
Article 8(3), 2 <sup>nd</sup> intend	Also, the conditions for sufficient resources have not been entirely transposed. The last sentence, which says that the declaration may not be required to refer to a specific amount has not been transposed.
Art. 8(4)	Not transposed
Art. 8(5)(e) and (f)	Not transposed
Art. 10(2)(e) and (f)	Not transposed
Art. 11(2)	Not transposed. Art. 47 of EREA would comply with Art. 11.2 of the Directive, but it is placed in the chapter of EREA concerning <b>permanent</b> residence and therefore does not apply to 'non-permanent' residence or the validity of the card.
Art. 12(2) second sentence	Not transposed
Art. 13(2) third subparagraph	Not transposed
Art. 16(1) - the second sentence	The sentence "This right shall not be subject to the conditions provided for in Chapter III", was not transposed into Polish law.
Art. 24(1)	There is no general provision on equal treatment. Some specific provisions partially implementing this rule are provided in columns 4 and 5. However, those provisions do not provide for guarantees for self-employed persons.
Art. 25(1)	Not transposed
Art. 27(2) second sentence	The sentence "Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted" - was not transposed.
Art. 27(3)	The obligation of the Member State consulted to answer within two months was not transposed.
Art. 27(4)	Not transposed
Art. 29(3)	Not transposed. On one hand there is no legal basis to require the medical examination (which would more liberal measure), on the other hand however there is no guarantee that such potential requirement may be justified only by 'serious indications that it is necessary', and that 'such medical examinations may not be required as a matter of routine'.

#### **b) Incorrect or imprecise/ambiguous transposition**

Art. 2(1)	<p>According to ECJ judgment given in the Surinder Singh case (C-370/90) the rules of free movement shall apply also to citizens of the given Member State (here: Polish citizens) who return to Poland after having resided in another Member State and to their family members.</p> <p>Definition of the Union citizen by EREA encompasses only foreign nationals, but the scope of the transposing legislation is explicitly extended to the "nationals of an EU MS, without the requirement to be a foreigner.</p> <p>Since the transposition is not explicit, it is not entirely</p>
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	clear what would happen in practice, and whether there is sufficient legal certainty that Polish citizens and their family members can invoke the provisions after having exercised their right to free movement. Therefore, the transposition is assessed as ambiguous.
Art. 4(1)	Requirements towards family members as provided for by Articles 30 (1) and 54 of EREA are not in line with Article 4.1 of the Directive as they require family members of Union citizens to present valid passport (travel document) PLUS residence card (or permanent residence card accordingly) while for Polish citizens and Union citizens the sole travel document (passport) is sufficient (e.g. Polish citizens are not obliged to present their IDs apart from passports).
Art. 5(2) first and second sentence	Art. 9.2 of EREA refers to a visa without specifying whether it shall be an entry or a residence visa, but Art. 10 of EREA (see below) refers to some facilities re issuing of a residence visa and not to an entry visa for family members. This may suggest that Art. 9.2 and 9.3 is about a residence visa as well. The requirement of a residence visa would be contrary to the Directive. Art. 10 of EREA refers to a residence and not an entry visa. Similarly, Art. 47 of FA refers to a residence and not to an entry visa.
Art. 5(4)	Ambiguous - The period of 72 hours envisaged by Polish law to obtain the necessary documents may not always be reasonable, given that the transposing provision does not provide for any procedures to prolong this period in justified cases. Moreover, the expressions “every reasonable opportunity” and “proven by other means” are not included in the national disposition.
Art. 5(5)	The deadline for reporting the presence is only 4 days in Polish Law. According to ECJ ruling in case Watson (118/75) imposing such a short deadline is contrary to EU law, although it must be stressed that Polish law does not provide for a sanction of expulsion in cases when the reporting obligation is not fulfilled. In addition, the sanctions in the transposing legislation include restricted freedom. This cannot be considered to be proportionate.
Art. 7(1)(c) second dash	The wording of the transposing provisions suggests that the condition of sickness insurance is fulfilled only if the insurance is purchased in public institutions (even voluntary) and that insurance by private firms is insufficient for the purpose of this requirement. Yet it is also possible to purchase comprehensive sickness insurance in a private firm.
Art. 7(3)	The transposing provisions do not say that the persons concerned retain the ‘status of worker’.
Art. 8(3)	The transposing provisions require that a self-employed person submits a certificate of registration in one of Polish commercial registers, while freedom of services allows for providing services on the basis of registration in another Member State.
Art. 17(1)(a) second sentence	The word ‘finished’ (zakończenie) used by the transposing provision means definite termination of the activity and not stopping working, which is contrary to the Directive.

Art. 18	Article 43 of EREA transposing Art. 18 of the Directive requires that third country family members must reside with an EU citizen in order for the right of permanent residence to be retained. This is an incorrect transposition of the Directive's provisions.
Art. 30(3)	As a general rule, APC provides guidance re challenging a decision. The general rule is that expulsion is within 31 days. When national defence, national security or public security and order so require the expulsion may be executed immediately.

**c) Minor instances of non-conformity**

Art. 7(1)(c) second dash	The wording of the transposing provisions suggests that the condition of sickness insurance is fulfilled only if the insurance is purchased in public institutions (even voluntary) and that insurance by private firms is insufficient for the purpose of this requirement. However, it is also possible to purchase comprehensive sickness insurance in a private firm.
Art. 12(3)	The Polish transposing provision fails to mention that the custody is to be actual and seems to accept only the custody as it is stated by the court verdict.



## **ABBREVIATIONS USED**

Art	Article
APC	Administrative Procedure Code Act of 14 June 1960
CA	Competent Authority
DRR	Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of residence on the territory of the Republic of Poland of nationals of the European Union Member States and their family members
DPRR	Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of permanent residence on the territory of the Republic of Poland of nationals of the European Union Member States and their family members
ECJ	European Court of Justice
EREA	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
FA	Foreigners Act of 13 June 2003
ID	Identity (card)





# 1 INTRODUCTION

This conformity study analyses in detail the provisions of Directive 2004/38/EC on the free movement of EU citizens in its consolidated version, and compares it with the legislation in place in Poland.

Directive 2004/38/EC repealed the earlier directives on free movement of persons (Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) as from 30 April 2006.

EU citizenship gives every Union citizen the right to move and to reside freely within the territory of the Member States. The facilitation and promotion of this right, which is at the same time one of the fundamental freedoms of the internal market, is the objective of Directive 2004/38/EC. A second objective of Directive 2004/38/EC was to codify and review the various pieces of legislation and case-law dealing with this issue.

## **Free movement as a fundamental freedom of the internal market**

Free movement is one of the fundamental freedoms of the internal market and can therefore only be restricted in a limited number of pre-determined circumstances. Thus, national legislation cannot adopt more restrictive legislation than provided for in the Directive.

Directive 2004/38/EC introduces, on the one hand, a uniform approach regarding the formalities that Member States can impose upon EU citizens residing in their territory. These formalities are expressly established in the Directive and restricted in function of the duration of the stay in the Member States.

- For a stay of less than three months, the only formality a Member State can impose is the presentation of a valid passport or national identity card.
- For residence of more than three months, a Member State can only require the EU citizen to register in the population register of the place of residence. This registration needs to be validated immediately if a certain number of conditions are complied with. The Member State can only require the EU citizen to present proof that he/she is a worker, self-employed person, student or has sufficient resources not to become a burden upon the social security system of the Member State. Member States cannot lay down a fixed amount of what they consider to be “sufficient resources”, but must always take into account the personal situation of the person concerned. Family members of the EU citizen will have to present an identity document and proof of the family link to an EU citizen.
- After five years of continuous residence in a Member State, an EU citizen obtains a right to permanent residence. The host Member State shall issue a document certifying permanent residence. A permanent resident has the right to be treated equally to a national of the Member State.

On the other hand, the Directive also determines and clarifies the only acceptable reasons for restriction of the free movement of citizens by Member State authorities, namely for reasons of public order, public security and public health. (For the interpretation and conditions of such exceptions, it is important to rely upon the case-law of the Court of Justice.)

These measures guarantee strong protection against expulsion for EU citizens who have been long-term residents in another Member State. Such measures need to be proportionate and shall always examine the personal conduct of the individual concerned, which must represent a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”. In addition, the Directive establishes some procedural safeguards in case an expulsion decision is considered.

## **1.1 OVERVIEW OF THE LEGAL FRAMEWORK IN POLAND**

The Polish legal system is based upon the continental system.

According to Article 3 of the Polish Constitution, Poland is a unitary country, so the transposition of EU Directives is provided by legal acts adopted on central level.

According to Article 87 of the Constitution, the sources of Polish law are: the Constitution, statutes (acts adopted by the Parliament), ratified international agreements and executive regulations (issued under statutes by relevant ministers or by the Council of Ministers). As Poland is a unitary country, all of these legal measures are legally binding on its entire territory.

Under Article 91.1 and 91.2 of the Constitution, ratified international agreements, after their promulgation in the Official Journal of Laws, constitute part of the domestic legal order and shall be applied directly. If an international agreement was ratified upon prior consent granted by statute, it has precedence over Polish statutes if such an agreement cannot be reconciled with the provisions of such statutes.

The Constitution provides for the supremacy of the Community law over domestic legislation: according to Article 91.3 of the Constitution, if an agreement, ratified by the Republic of Poland, establishing an international organization (such as European Union) so provides, the laws established by that international organization shall be applied directly and have precedence over Polish statutes in case of a conflict of laws.

Court judgements are not recognized as formal sources of law and are used only for interpretation purposes.

## **1.2 FRAMEWORK FOR TRANSPOSITION & IMPLEMENTATION OF DIRECTIVE 2004/38/EC IN POLAND**

### **1.2.1 Distribution of competences according to the national Constitution**

Although Poland is a unitary country, it is quite decentralized and has a four-tier system of public administration:

- central (governmental)
- voivodship (regional)
- powiat (district)
- gmina (local community).

This structure is not hierarchical but it rather consists of independent governmental and self-governmental authorities.

At the central level the Minister of Internal Affairs and Administration is the member of the Government with responsibility for issues covered by Directive 2004/38. He is competent to issue the majority of executive regulations under EREA - the main Act transposing the Directive.

However, the main executive authority dealing with issue of immigration at the central level is the Head of the Office for Foreigners (see below).

At the regional level there are 16 voivodships. Public administration at this level consists of two separate sets of institutions: self-governmental (marshall of the voivodeship) and governmental.

The voivoda is the representative of the central government in a given voivodship. Voivodas are entrusted main competences in the field of immigration at regional level.

Marshall of the voivodship has no competences connected with the implementation of the Directive 2004/38. (Generally, marshal's competences are connected with the development of the region).

Given the unitary character of Poland and the approach taken in the regulations, there is very little potential for conflict of responsibilities in the implementation of the Directive.

### **1.2.2 General description of organisation of national authorities implementing Directive 2004/38/EC Poland**

The majority of competences in practical application of the provisions transposing Directive 2004/38 are the responsibility of voivodas - heads of governmental administration in regions - representatives of the central government in a given voivodship (region). The voivodas are responsible for issuing individual administrative decisions under EREA. Theoretically, all voivodas represent the central government's policy. However, as there are no guidelines or circulars on the application of the provisions transposing Directive 2004/38/EC, different voivodas may reach different decisions in analogical cases. Such inconsistency may be challenged on the basis of general principles of administrative procedure: there is a judgment of the High Court saying that the lawfulness principle as provided for by Art. 6 of the Administrative Procedure Code means i.a. that the citizens may expect similar decisions in analogous situations. (For example, when an authority issues a decisions which the person concerned does not accept, and the person is aware of another - advantageous - decision issued by another authority in similar situation, the person may try to challenge the decision in question on that basis).

Direct supervisor (at the central level) of voivodas in the area covered by EREA is the Head of the Office for Foreigners. He is a second instance authority (appeal authority) regarding decisions issued by voivodas.

General supervision of the Head of the Office for Foreigners lies with the Minister of Internal Affairs and Administration. The Minister is also competent to issue most of the executive regulation under EREA.

The Border Guard is an authority with responsibilities regarding entry into the territory of Poland. The commander of a Border Guard post is competent for issuing an entry visa, as well as for refusing entry into the territory of the Republic of Poland. The decisions of the commander of a Border Guard post may be appealed to the Chief Commander of Border Guard.

## **2 LEGAL ANALYSIS OF THE TRANSPOSING MEASURES FOR DIRECTIVE 2004/38/EC**

Directive 2004/38 was transposed mainly by 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 (EREA). It was adopted by the Parliament and by executive regulations adopted by relevant ministers, mainly by the level Minister of Internal Affairs and Administration.

EREA replaced the former analogous Act of 27 July 2002 which was meant to transpose directives replaced by Directive 2004/38 and was insufficient to transpose Directive 2004/38.

Certain provisions of the Foreigners Act of 13 June 2003 (FA) are also relevant for EU nationals and their family members covered by EREA, namely certain provisions regarding visas (for family

members), certain provisions on practical arrangements in case of expulsion, such as an obligation to take fingerprints and photos of the person concerned (for both EU nationals and their family members). Moreover, FA provides for provisions establishing the Office for Foreigners and regulating its activity, as well as for provisions on registers of expelled persons run by voivodas.

In addition, FA is the only Act applicable for “other family members” and “partners” as referred to in Art. 3.2 (a) and (b) of the Directive, as EREA does not cover them.

The practice of applying provisions transposing the Directive 2004/38 is not too developed. In particular, it seems that there are very few cases of appeal to the Office for Foreigners against the decisions of voivodas<sup>1</sup>. Consequently, no national case law is available, neither based on EREA, nor on the previous Act of 2002.

## 2.1 Definitions, family members and beneficiaries

### *Definitions: the concept of family members (Article 2)*

In general, definitions have been correctly transposed. However certain conformity issues appear concerning the definitions.

#### Article 2(1): “Union citizen”

According to the Directive, a Union citizen means any person having the nationality of a Member State. In its verdict in *Surinder Singh* (C-370/90), ECJ said that the rules of free movement shall apply also to citizens of the given Member State (here: Polish citizens) who return to Poland after having resided in another Member State and to their family members.

The definition of a Union citizen in the Polish law explicitly excludes Polish citizens (« *Union citizen shall mean a foreign national...* »). However, the body of transposing legislation often uses the term “national of a Union Member State”, which is a part of the definition of Union citizens to which the requirement to be a foreign national does not apply. The explicit use of the term “national of a Union Member State” instead of the defined term “Union citizen” indicates that it was the purpose of the legislator not to use the term “Union citizen” which excludes Polish nationals, but rather the larger definition of “nationals of a Union Member States”. As such, it is not explicitly provided for, but certainly not excluded, that the Polish legislation would apply to Polish nationals who have exercised their right to free movement. In any case, Polish citizens in some cases (e.g. right of exit) enjoy rights granted by other laws, e.g. PA; and their family members - rights granted by FA, which however are less beneficial than those provided for by EREA.

#### Article 2(2)(a): “Family member”

Transposition of this provision is effective. However, it must be remembered that under Polish law the term “marriage” means a relationship of male and female (Art. 18 of the Constitution and Art. 1 of the Family Code). This means that in case of homosexual marriages made in Member States allowing for this (e.g. Spain) the homosexual spouses will not be covered by EREA. However, as the scope of the term “spouse” depends on national law (as does the acknowledging or not of registered partnership) and recognition of marriages in other MS is a competence of the MS under their rules of private international law (except for the issues harmonised at EU level), this does not cause non-compliance with the Directive.

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<sup>1</sup> See statistics available at the Office for Foreigners’ website: [www.udsc.gov.pl](http://www.udsc.gov.pl)

### Article 2(2)(b): “Partner”

Art. 2.2 (b) was not transposed into Polish law, as Polish law does not treat registered partnership as equivalent to marriage (which does not cause non-conformity with the Directive). Consequently, “the partner” is not mentioned in the provisions transposing Arts. 2.2 (c) and (d) of the Directive.

### Article 2(3): Host Member State

The definition of Host Member State is not transposed, but it is not needed in transposing legislation. Article 1 of EREA specifies that it applies to entry, residence and exit of the territory of the Republic of Poland which means that according to this Act the Republic of Poland is the “Host Member State”.

However, as mentioned above (see comments to Art. 2.1), EREA does not apply to Polish citizens who exercised their right of free movement in the EU and have returned to Poland.

EREA does not make the rights granted by it conditional on lawful residence in another Member State (Poland applies MRAX and Jia and not Akrich).

The Polish transposing legislation also applies to a third country national residing in Poland who becomes family member afterwards (because he/she meets a Union citizen and they marry).

### ***Beneficiaries and facilitation of the right of entry and residence (Article 3)***

- Transposition in relation to other family members

EREA does not apply to persons listed in Article 3.2(a) of the Directive and does not contain any provision regarding their rights. Those persons may enjoy rights as provided for by FA and other Acts (FA is not applicable to persons covered by EREA but persons from Article 3.2(a) **are not** covered by EREA). However, applying the general aliens regime to other family members seems to be insufficient for the purpose of correct transposition of the Directive, since the Directive specifically requires that they are given them special treatment, better than other aliens.

On the other hand, certain provisions of FA refer to persons who are “other family members” in the sense of Article 3(2) Those provisions are:

- Article 26.4(p) of FA according to which a residence visa may be issued for a person who wants to join the Union citizen - without setting any conditions for that person, i.e. without requiring justification for joining the Union citizen. However, it is unclear whether this Article provides for an autonomous legal basis to issue a visa, or whether it applies only providing that other conditions (such as family ties with the EU citizen) are met.
- Article 47.2 of FA provides that a visa as referred to in Article 26.4 (p) may be issued by the Commander of a Border Guard Unit if the person concerned proves ‘family ties’ with the Union citizen.
- Article 53a(2) of FA: a residence permit may be granted to a foreign who wants to join an EU citizen because of family ties with him. Such a permit may be issued for a maximum of 2 years.

However, the above provisions seem to be insufficient for the purpose of the Directive - therefore the transposition of Art. 3.2(a) is incomplete.

- Partner with whom the Union citizen has a durable relationship

Article 3.2(b) of the Directive was not transposed into Polish law. Neither registered partners nor other partners (with a durable relationship) are covered by EREA (see also remarks to Article 2.2(b)). EREA does not provide for any facilitation of entry and residence of partners either. The partners will not be

able to enjoy right as provided for by FA for other family members (see remarks to Art. 3.2(a)), as they would not be covered by the concept of “family ties” under Polish law.

As the transposition of Article 3.2(a) and (b) is incomplete, so is the last paragraph of Article 3.2 (obligation to undertake an extensive examination of personal circumstances of persons as referred to in Art. 3.2).

- Transposition of the Surinder Singh principle

However, as mentioned above (see comments to Article 2.1), the Surinder Singh principle was not explicitly transposed into Polish law, but certainly not excluded in view of the precise wording chosen by the Polish legislation. Consequently EREA could apply to Polish citizens who exercised their right of free movement in the EU and have returned to Poland, and to their family members.

## **2.2 Rights of exit and entry (Article 4-5)**

### ***Right of exit (Article 4)***

Article 4 provides a general right for Union citizens and family members, provided they have the required identity card or passport. Member States are also required to issue to their own nationals, and renew, an identity card or passport.

Article 4(1) is partially incorrectly transposed into Polish law, as requirements towards family members as provided for by Articles 30 (1) and 54 of EREA are not in line with the Directive. They require family members of Union citizens to present a valid passport (travel document) PLUS residence card (or permanent residence card accordingly) while for Polish citizens and Union citizens the sole travel document (passport) is sufficient (e.g. Polish citizens are not obliged to present their IDs apart from passports).

Apart from that conformity problem, Article 4 has been correctly transposed into Polish law. Under Polish law there are no provisions requiring exit visa or equivalent formality from Union citizens or their non-EU family members. This means that the requirement of Art. 4.2 of the Directive is met.

Under Polish law Polish citizens are required to have an ID that is valid to enter any MS and they can have a passport confirming identity and citizenship. The ID is issued for 10 years and must be renovated by its holder after expiry. Those provisions of Polish law ensure correct transposition of Article 4.3 of the Directive.

### ***Right of entry (Article 5)***

Article 5 provides a general right of entry for Union citizens and family members.

- **Entry of Union citizens and their non-EU family members**

According to Article 5(1) Union citizens shall be allowed to enter the territory of a Member State with a valid identity card or passport and their non-EU family members - with a valid passport.

This provision has been correctly transposed by Article 9.1 and 9.2 and 11.2.2 of EREA.

- **Visa requirements**

According to Article 5(1) last sub-paragraph: no entry visa or equivalent formality may be imposed on Union citizens.

EEA transposes this requirement correctly by Article 9(1) in saying that “Union citizen may enter the territory of the Republic of Poland on the grounds of a valid travel document or other valid documents confirming their identity and citizenship”. This means - a *contrario* - that no visa is required for Union citizens.

Article 5(2) of the Directive provides i.e. that non-EU family members shall only be required to have an **entry** visa in accordance with Regulation 539/2001. This provision has been incorrectly transposed. Article 9(2) of EEA refers to a visa without specifying whether it shall be an entry or a residence visa, but Article 10 of EEA (see below) refers to some facilities regarding the issuing of a **residence** visa and not of an entry visa for family members. This suggests that Articles 9(2) and 9(3) are about a residence visa as well. The requirement of a residence visa is contrary to the Directive. Similarly, FA covering “other family members” as referred to in Article 3(2)(a) of the Directive (as mentioned above, EEA does not cover them) mentions a residence and an entry visa.

Transposition of Article 5(2) second sub-paragraph requiring a Member State to grant non-EU family member every facility to obtain the necessary visas was incomplete. Article 10(3) of EEA declares granting rights facilitating the issue of a visa, but there are no specific provisions providing for special procedures or which specify what the facilitating rights will look like. Therefore this is a blanket provision. Moreover, Article 10 of EEA refers to a residence and not an entry visa (see remarks above).

Similarly, Article 47 of FA refers to a residence and not to an entry visa. No fees are charged to issue the visa which is in line with the Directive.

- **Entry or exit stamps**

Although Article 5(3) forbidding placing an entry or exit stamp in the passport of non-EU family members was not transposed into Polish law, Article 10(2) of the Regulation 562/2006 (Schengen borders code) which has direct effect in Poland, states that there is no need for stamps in passports of family members if they show a residence card (a *contrario*). Therefore implementation of this provision should be considered correct.

- **Obtaining the necessary documents by EU citizens and their family members**

Transposition of Article 5(4) requiring giving to persons concerned every reasonable opportunity to obtain the necessary documents before turning them back, is ambiguous, as Article 12 of EEA provides that the documents shall be submitted within 72 hours. It is debatable whether such a period is always reasonable, particularly since the transposing provision does not provide for any procedures to prolong this period in justified cases.

Moreover, the expressions “every reasonable opportunity” and “proven by other means” are not included in the national disposition.

- **Requirement to report presence in the Host Member State**

Article 5(5) allowing Member States to require the person concerned to report his presence within its territory within a reasonable and non-discriminatory period of time was incorrectly transposed into Polish law.

There are two conformity problems concerning this Article:

- The deadline for reporting the presence is only four days under Polish law. According to ECJ ruling in case Watson (118/75) imposing such a short deadline is contrary to EU law, although it must be stressed that Polish law does not provide for a sanction of expulsion in case when the reporting obligation is not fulfilled (which was the case in the Watson verdict).



- In addition, the sanctions foreseen in the transposing legislation for non-compliance with the reporting requirement include restricted freedom. This cannot be considered to be proportionate.

## 2.3 Right of residence

### 2.3.1 Right of residence for up to three months (Article 6)

Article 6 grants an initial right of residence for up to three months without any conditions except holding a valid identity card or passport.

Article 6 is correctly transposed into Polish law. Article 15 of EREA is more liberal than the Directive, as it allows the Union citizen to use not only travel documents but other documentation confirming his/her identity and citizenship. However, job seekers are not covered by provisions transposing Article 6, which means that the general regime applies to them (more details see Article 8).

The transposing provisions follow wording of the Directive. However, it must be stressed that the general regime concerning right of residence for up to three months applies to job seekers as well, while the ECJ jurisprudence indicates that job-seekers should be able to reside for a period of at least six months without any conditions or formalities (there are no special provisions concerning job seekers).

### 2.3.2 Right of residence for more than three months (Article 7-13)

#### a) *General conditions under Article 7*

Article 7 providing a right of residence for more than three months is mainly correctly transposed by Articles 16-18 of EREA.

The Minister of Internal Affairs and Administration Regulation on application and documents related to the right of residence in Poland (DRR) provides for a list of documents/proofs to be presented by persons as referred to in Article 7.1. For example persons referred to in Article 7.1(b) can prove possession of sufficient resources by presenting, in particular, a credit card or a bank certificate (DRR uses the wording “in particular” which means that a credit card or a bank certificate are only examples of documents which may prove possession of sufficient resources). According to the questionnaire filled in by CA, the number of family members dependent on the person concerned is taken into account.

The conformity issue is the fact that wording of the *Medical benefits financed by public means Act* indicates that the condition of sickness insurance is fulfilled only if the insurance is purchased in public institutions (even voluntary) and that insurance by private firms is insufficient for the purpose of this requirement (although it is also possible to purchase comprehensive sickness insurance in a private firm).

Article 7(4) of the Directive providing i.e. that Member State has to facilitate the residence of EU citizens dependent direct relatives in the ascending lines has been incompletely transposed. The Polish law has not transposed the obligation to facilitate the residence of those persons.

- **The concept of sufficient resources**

The concept of sufficient resources is not defined in the Polish law. There are also no guidelines or circulars to help interpret this notion. The questionnaire filled in by CA provides for no hints on how to interpret this term (it repeats only the transposing provisions of EREA in saying that sufficient resources are required as well as provisions of DRR, indicating that sufficient resources may be certified e.g. by credit card or bank certificate).

As there is not too much experience of applying EREA, it must be concluded that there are no hints on how the concept of sufficient resources could be interpreted by the Polish authorities.

It is also worth stressing that transposition of Article 8(4) is incomplete. The Polish provisions do not provide for any fixed amount (which is correct), but also do not provide for any guarantee that such an amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State. Neither do they guarantee a case-by-case approach based on the personal circumstances.

- **Retention of the status of worker**

Article 7(3) of the Directive requires that a Union citizen who is no longer a worker or self-employed person shall - under certain circumstances - retain the status of worker or self-employed person.

Article 7(3) - Transposition of Article 7(3) is correct, as the transposing provisions do not say that the persons concerned retain the 'status of worker', but that they retain the rights of residence granted to workers.

Article 17.1.3 of EREA transposing Article 7.3(d) of the Directive is more favourable than the Directive, as it does not require vocational training to be related to the previous employment (the Directive mentions such a relationship).

- b) Administrative formalities for Union citizens (Article 8)*

Poland used the option given by Article 8(1) and introduced a requirement of registration by EU citizens residing longer than three months. Article 8(1) is transposed by Article 20 of EREA which is in line with the Directive.

According to Article 8(2), the deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration.

Moreover, Polish law requires that the registration shall be made in person, but this requirement seems not to exceed the scope of formalities allowed by the Directive. Article 22 of EREA says that the registration (or refusal of registration) shall be carried out immediately.

According to Article 28 of EREA the registration certificate shall state the name and address of the person registering, as well as date of issue of the certificate (which is equal to the date of registration).

According to the second sentence of Article 8(2), failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.

Article 81 of EREA provides for sanctions for not fulfilling the obligation to register - which seem to be proportional (a fine which may be between EUR 5,7 and 1428) and non discriminatory (equal as for Polish citizens in similar cases).

Article 8(2) requires the registration certificate to be issued immediately. According to the questionnaire, this takes up to seven days in practice.

Article 8(3) lists the conditions which may be required in order to issue a registration certificate. One of the conditions (Article 8(3) first dash) is the presentation of a proof that the person concerned is self-employed. This condition was incorrectly transposed into Polish law. Para 3.1.1.b) of DRR requires that a self-employed person submits a certificate of registration in one of Polish commercial registers, while freedom of services allows for providing services on the basis of registration in

another Member State. Also, the conditions for sufficient resources have not entirely been transposed. The last sentence, which says that the declaration may not be required to refer to a specific amount has not been transposed.

The Polish legislation requires the companies to be included in the National Court Register and self-employed natural persons to be included into the economic activity register.

The application form as provided by Annex 1 to DRR also does not specify additional requirements/restrictions regarding documents.

The working permit mentioned by § 3.5 of DRR is required only for Union citizens (and their family members) from MS against which Poland applies the limitations in the access to labour market (currently no such limitations are applied by Poland, even for Romania and Bulgaria).

Article 8.5 provides for a list of documents to be presented by family members of Union citizens, who are themselves Union citizens for the registration certificate to be issued.

Transposition of Article 8.5 (a)-(d) is correct, but Article 8.5 (e) and (f) was not transposed. There are no requirements for persons listed in Article 3.2.(a) and (b) because EREA does not apply to those persons. Consequently they can not receive a registration certificate.

*c) Family members who are not nationals of a Member State (Articles 9-11)*

- **Administrative formalities (Article 9)**

Article 9 provides for the issuing of residence cards to the family members of EU citizens. Article 9 is correctly transposed into Polish law.

The deadline for submitting the residence card application of not less than three months from the date of arrival, provided by Article 9(2) is respected by the period of three months in which requirements must be substantiated.

The sanctions applied according to Article 9(3) seem to be proportionate and non-discriminatory (a fine, which according to MS is between EUR 5,7 and 1428). Those sanctions are equal to (or more lenient than) sanctions applicable to Polish citizens who fail to fulfil the obligation to obtain the ID or fail to return the ID. According to Article 55 of IDA, the sanctions for Polish citizens are either a fine on the same level as for EU citizens' family members, or limitation of freedom up to 1 month (the latter sanction is not foreseen by EREA for family members).

- **Issue of residence cards (Article 10)**

Article 10 regulates the issuing of residence cards for family members of a Union citizen who are not nationals of a Member State and provides for conditions for such a card to be issued.

Articles 10(1) and 10(2)(a)-(d) have been correctly transposed into Polish law. The documents required by Polish legislation when applying for a residence card are those proving the existence of family link, age and dependency.

The form as provided by Annex 3 to DRR also does not specify additional requirements/restrictions regarding documents

Article 10.2 (e) and (f) was not transposed - there are no requirements for persons listed in Art. 3.2.(a) and (b) because EREA does not apply to those persons. Consequently they can not receive a residence card.

- **Validity of residence cards (Article 11)**

Article 11(1) of the Directive is correctly transposed into Polish law.

Article 11.2 of the Directive concerning the right of residence (and not the right of **permanent** residence) was however not transposed into Polish law. Article 47 of EREA would conform to Article 11.2 of the Directive, but it is placed in the chapter of EREA concerning **permanent** residence and therefore does not apply to 'non-permanent' residence or the validity of the card.

*d) Retention of the right of residence by family members in the event of death, departure, divorces, annulment or termination of partnership*

- **Retention of the right of residence in the event of death or departure of the Union citizen (Article 12)**

Article 12 provides that family member retain the right to reside where the Union citizen dies or leaves the Member State.

Article 19.1 and Article 44.1 of EREA transposing Article 12(1) of the Directive provide for more favourable measures than those required by the Directive. EREA does not provide for any conditions for persons concerned, i.e. does not say that those persons must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1) of the Directive before acquiring the right of permanent residence. The same situation concerns transposition of Article 12(2) second sentence of the Directive - Article 44.2 of EREA does not require any conditions to be fulfilled by the persons concerned before acquiring the right of permanent residence.

One may ponder whether it was a deliberate decision of the legislator or rather an omission. Regardless, the conditions for persons concerned are not laid down.

Article 12(2) first sentence (providing that the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death) is correctly transposed into Polish law by Article 19(2)(1) of EREA which provide for analogues provisions.

Article 12(2) third sentence requiring considering retention of rights on a personal basis was however, not directly transposed into Polish law, although it seems to be logical that a personal basis should apply. The obligation of considering personal circumstances might be interpreted from the general rules of Polish administrative procedure as regulated by the Administrative Procedure Code. The Code obliges CAs to examine and consider the complete data concerning the case. However, such a legal basis seems too weak to ensure correct transposition of the Directive.

There is also one conformity issue regarding Article 12(3) concerning the retention of the residence of the EU citizen's children who are studying in the Member State and of the parent who has actual custody of the children, until the completion of their studies. Article 19.3 of EREA transposing this provision fails to mention that the custody as referred to by the Directive is to be **actual** and only the custody stated by the court verdict.

Regarding Article 12(3), it is worth mentioning that EREA grants retention of right to parents of children until completion of their studies or learning at school, which is interpreted by the CA as the right of residence. This period lasts until completion of the entire education by a child and not only the current school (see questionnaire filled in by the CA).

- **Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership (Article 13)**

Article 13 is mainly correctly transposed. Provisions transposing Article 13(1) are even more favourable than those required by the Directive. According to the second sentence of Article 13(1), before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1). Polish law does not provide for any conditions for persons concerned, i.e. does not say that those persons must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1) of the Directive before acquiring the right of permanent residence.

A similar situation concerns transposition of Article 13.2 second subparagraph of the Directive. One may discuss whether it was a deliberate decision of the legislator or an omission. Either way, the conditions for persons concerned are not laid down (see also comments to Article 12 of the Directive).

Article 13.2 third subparagraph requiring considering retention of rights on a personal basis was, however, not directly transposed into Polish law, although it seems logical that a personal basis should apply. The obligation of considering the personal circumstances might be interpreted from the general rules of Polish administrative procedure as regulated by the Administrative Procedure Code. The Code obliges CAs to examine and consider the complete data concerning the case. However, such a legal basis seems too weak to ensure correct transposition of the Directive.

### **2.3.3 Retention of the right of residence (Article 14) and Article 15(2)**

Article 14 provides for the circumstances in which the person may lose the right of residence granted by Articles 6, 7, 12 and 13 of the Directive.

#### **(a) General aspects**

Polish provisions transposing Article 14 of the Directive are more favourable than those required by the Directive (such assessment comes also from the questionnaire filled in by CA).

Article 14(1) concerns the retention of the right of residence by Union citizens and their family members as long as they do not become an unreasonable burden on the social assistance system of the host Member State. The Polish transposing provision (Article 15.1 of EREA) is even more favourable than the Directive since it does not contain the condition that the persons concerned must not become an unreasonable burden on the social assistance system.

Moreover, according to the provisions transposing Article 27 of the Directive only public policy, public security and public health reasons (and not economic grounds) can restrict the entry and less than 3 months residence.

According to Article 14(2) Union citizens and their family members shall have the right of residence as long as they meet the conditions set out therein.

The Polish transposing provisions are even more favourable than the Directive Article 16 of EREA. Transposing this Article provides indeed for conditions for Union citizens to have a right of residence, which would suggest that the right expires once the conditions are no longer met. But on the other hand, ceasing meeting the conditions does not create grounds for cancellation of registration (Article 35 of EREA provides for a closed list of grounds for such cancellation). There is also no legal basis for expulsion of the Union citizen in such cases.

As opposed to registration, a residence card is to be cancelled in cases where its holder ceases meeting the conditions (Article 36 of EREA). However, there is no explicit legal basis for expulsion of a family member in such cases. Moreover, only public policy, public security and public health reasons (and not economic grounds) can restrict the right of residence.

The problem is that the legislation does not provide for any legal basis for any measures to be taken by the authorities (this is probably a loophole in the legislation).

The conditions for cancellation of registration are those of Article 35 (abuse of rights and fraud) and Article 27.

Article 14(2) second sentence (a right of a Member State to verify if relevant conditions are fulfilled) was not transposed into Polish law, which means that Polish measures are more liberal (Polish authorities have no legal ground to verify whether the conditions are fulfilled).

Article 14(3) and 14(4) explain further. The provisions were not transposed into Polish law.

As indicated above, ceasing meeting conditions does not constitute a ground for expulsion; therefore transposition of this provision of the Directive is not needed. Moreover, only public policy, public security and public health reasons, as well as grounds mentioned in Article 35 of the Directive (and not economic grounds) can restrict the right of residence.

### ***(b) Article 15(2)-(3) Expiry of document not a ground for expulsion***

Transposition of Article 15(1) concerning procedural safeguards is correct. Polish provisions transposing Article 15(1) apply to both cases regulated by Chapter VI of the Directive (public policy, public health, public security) and to refusals of registration, deny of entry etc. when they are not justified on the grounds of public policy etc.

Article 15(2) of the Directive provides that the expiry of the ID or passport on the basis of which the person concerned entered the host MS and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the host MS. Article 15(2) was not transposed into Polish law however, as legal grounds for expulsion are limited to those mentioned in Chapter 5 of EREA (public policy, public security and public health), so transposition of this provision seems to be unnecessary. A contrario, therefore: expiry of ID or passport is not a ground for expulsion.

There has been no transposition on Article 15(3) which forbids the imposition of a ban on entry in the context of an expulsion decision taken on the grounds of not meeting the requirements of Article 6, 7, 12 and 13. However, as legal grounds for expulsion are limited to those mentioned in chapter 5 of EREA (public policy, public security and public health), transposition of this provision seems not to be needed. Expulsion for other reasons, e.g., not meeting the requirements, cannot take place and therefore the only entry bans are linked to decisions on expulsion based on grounds of public policy, public security and public health.

## **2.4 Right of permanent residence**

### **2.4.1 General rule for Union citizens and their family members (Article 16: eligibility)**

Article 16(1) and (2) of the Directive grant the right of permanent residence after legal residence for five years. The second sentence of Article 16(1) (“*This right shall not be subject to the conditions provided for in Chapter III*”) was not transposed into Polish law. Apart from this gap, Article 16(1) was correctly transposed into Polish law.

Polish provision transposing Article 16(2) of the Directive (Article 43 of EREA) is more favourable than the Directive requirements. Article 43 does not provide for the condition that the family member has to “legally reside with the Union citizen”. The mere residence is sufficient for obtaining the right of permanent residence.

Article 16(3) providing that the continuity of residence shall not be affected by temporary absences described in this Article was correctly transposed into Polish law by Article 47 of EREA.

According to Article 16(4) of the Directive, the right of permanent residence once acquired, shall be lost only through absence from the host Member State for a period exceeding two consecutive years.

Polish provision transposing this Article (Article 60.3 of EREA) is more favourable than the Directive requirements. Article 60.3 does not provide for the possibility to cancel right of permanent residence of the Union citizen, so in this regard Polish provisions are more liberal than those of the Directive.

#### **2.4.2 Acquisition of the right of permanent residence for workers/self-employed persons and their family members (Article 17)**

Article 17 allows for workers/self-employed person and their family members to acquire the right of permanent residence before completion of the five-year period of residence.

The first sentence of Article 17(1)(a) was incorrectly transposed into Polish law as the word “finished” (zakończenie) used by transposing provision means definite termination of activity and not stopping working, which - according to the Commission - is contrary to the Directive (see Q.50 of “Big refont” document).

The second sentence of Article 17(1)(a) was not transposed into Polish law at all.

Transposition of Article 17(1)(c), 17(1) second and third subparagraphs and 17(2) is correct.

Article 45.2 of EREA transposing Article 17(1) second subparagraph makes employment and self-employment in Poland equal with employment and self-employment in another MS. Article 45.3 transposing the same provision of the Directive provides that provisions transposing Article 17.1(b) of the Directive apply also to workers and self-employed persons working in another Member State while retaining his place of residence in Poland.

The term “unintentional unemployment” used in transposing provision is not defined in Polish law, which could cause problems with interpretation of transposing provisions.

Article 17(2) was correctly transposed into Polish law. The sentence “...has lost the nationality of that Member State by marriage to that worker or self-employed person” was not transposed, but according to Polish law a Polish national does not lose his/her nationality in case of marriage with a foreigner.

According to Article 17(3), irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the Host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State was correctly transposed into Polish law by Article 46(1) of EREA.

Article 17(4)(a) and (b) were correctly transposed into Polish law.

Article 17(4)(c) was not transposed into Polish law (gap in the transposition).

#### **2.4.3 Acquisition of the right of permanent residence by certain family members who are not nationals of a MS (Article 18)**

Article 18 provides that the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State.

This Article is incorrectly transposed into Polish law, as Article 43 EREA imposes on third country family members the requirement of residing with an EU citizen in order for the right of permanent residence to be retained. This is an incorrect transposition of the Directive’s provisions.

#### **2.4.4 Documents certifying permanent residence for Union citizens (Article 19)**

Article 19 provides for an obligation for the Member States to issue a document certifying permanent residence of Union citizens upon application and as soon as possible. Prior to issuing the document, Member State’s authorities verify duration of residence.

This provision is correctly transposed into Polish law. Polish transposing provisions describe in more detail the procedure for filing the application. The requirements of this procedure do not seem to cause non-conformity.

Similar conditions are to be met by Polish nationals while applying for an ID or passport.

The application form as provided by Annexes to DPRR also does not specify additional requirements/restrictions regarding documents.

#### **2.4.5 Permanent residence card for family members who are not nationals of a MS (Article 20)**

Article 20 provides for the permanent residence certificate for family members who are not Union citizens. Article 20(1) about the obligation to issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application is correctly transposed into Polish law. The wording 'possession of the residence' in Article 54 EREA means that the family member has to have such a card, but not that he is obliged to carry the card with him (apart from the moment of crossing the border). Similarly, Polish citizens are obliged to possess IDs but not to carry them out.

The sanctions provided by provisions transposing Art. 20.2 of the Directive seem to be proportionate (fine between EUR 5,7 and 1428) and non-discriminatory (equal as for Polish citizens for failure to comply with requirement to apply for ID).

#### **2.4.6 Continuity of residence (Article 21)**

Article 21 providing that “for the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State and that continuity of residence is broken by any expulsion decision duly enforced against the person concerned”, is correctly transposed into Polish law.

### **2.5 Common provisions (Articles 22-26)**

#### **2.5.1 Article 22 territorial scope**

Article 22 provides that the territorial scope of the Directive is the whole of the Member State and that restrictions on movement may only be imposed where the same restrictions apply to nationals of the Member State itself. Article 22 was correctly transposed into Polish law. Poland did not use the possibility to impose territorial restrictions on the right of residence and the right of permanent residence (allowed by the second sentence of Art. 22).

#### **2.5.2 Article 23 Related rights**

Article 23 about the right to take up employment or self employment in the host Member State is correctly transposed. Promotion of Employment and Work Market Institutions Act of 2004 provides that EU citizens and their family members do not need work permit i.e. may undertake a job.

Medical benefits financed by public means Act of 2004 provides that EU citizens and their family members may undertake and carry out economic activity equally to Polish nationals.

#### **2.5.3 Article 24: equal treatment**

Article 24 provides for the principle of equal treatment for EU citizens and their third country family members. Transposition of Article 24(1) seems to be incomplete. There is no general provision on equal treatment.



Some specific provisions partially implementing this rule are provided in columns 4 and 5. However, those provisions do not provide for guarantees for self-employed persons. For example:

- Promotion of Employment and Work Market Institutions Act provides EU citizens with a right to social aid for job-seekers.
- Social Pension Act of 2003 gives them the right to education.
- Higher Education Law Act - right to higher education, PhD studies, participation in scientific research. There is however, also a conformity problem with this Act: it grants rights to migrating employees. But the rights of self-employed persons are subject to the condition that they must have the necessary funds to cover the costs of providing for themselves in the course of their studies (Article 43.5)

Article 24(2) seems to be correctly transposed into Polish law. The wording “where appropriate, the longer period provided for in Article 14(4)(b)” was not transposed into Polish law, but it does not cause non-conformity as does not allow for longer periods of being deprived of social assistance. SAA concerns social assistance and SPA - to social pensions. According to their provisions, EU citizens and their family members who enjoy ‘right of residence’ or ‘right of permanent residence’ according to EREA are entitled to social assistance. EREA uses the words ‘right of residence’ in the meaning ‘right of residence for more than 3 months’, which means that this wording used in transposing provisions cited in columns 4 and 5 apply to persons residing more than 3 months. Thus, Article 5 of SAA and Article 2 of SPA apply to workers, self-employed persons, students, “other persons with sufficient resources’. Job seekers are treated in the same way as the latter category. HELA concerns undertaking studies, PhD studies etc. as well as seeking financial assistance by students. Provisions of HELA on seeking financial assistance do not apply to self-employed persons, as they may become students only if they have sufficient funds to cover their studies (see comment re Article 43.5 of HELA above). However, this may cause non-conformity with Article 24(1) but seem be irrelevant for the assessment of transposition of Article 24(2).

#### **2.5.4 Article 25: general provisions concerning residence documents**

Article 25(1) provides that possession of a registration certificate as referred to in Article 8; of a document certifying permanent residence; of a certificate attesting submission of an application for a family member residence card; of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.

Article 25(1) providing that possession of residence documents may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof was not transposed into Polish law.

Article 25(2) is correctly transposed into Polish law. The charges as provided for by transposing provisions are not higher than those for issuing ID card for Polish nationals (both are 30 PLN).

#### **2.5.5 Article 26 checks**

Article 26 provides that Member States may have checks to ensure that beneficiaries of the Directive carry their residence cards in the same way as nationals carry their identity card. The provision was not transposed but this does not cause any conformity problem (transposition is not needed) as in Polish law there no obligation to carry an ID.

## **2.6 Restrictions on the right of entry and residence on grounds of public policy, public security and public health**

### **2.6.1 General principles (Article 27)**

Article 27(1) about general principles concerning restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health, is correctly transposed by EREA.

According to EREA the aforementioned grounds justify:

- issuing an expulsion decision,
- refusal to issue a visa for a family member in case when his or her data are included into the list as referred to by FA (list of personae not grata),
- refusal to enter the territory of the Republic of Poland in case when his or her data are included into the list as referred to by FA,
- refusal to register a residence for longer than three months,
- cancellation of registration of a residence for longer than three months,
- cancellation of the residence card for a family member,
- cancellation of the document certifying permanent residence,
- cancellation of the permanent residence card for a family member.

According to Article 77.1 of EREA the data of EU citizens or their family members may be included into the “list” as referred to by FA only on grounds of public policy, public security or public health.

Article 27(2) first sentence (saying that the measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned) is also correctly transposed into Polish law. Transposition of the second sentence is, however, incomplete since the sentence: “Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted” was not transposed.

Transposition of Article 27(3) concerning consultation with the Member State of origin is incomplete as the requirement to give answer by the Member State consulted is not transposed.

Article 27(4) was not transposed into Polish law. Poland is not a party to Protocol 4 of the ECHR.

### **2.6.2 Protection against expulsion Article 28**

Article 28 about the specific protections against expulsions is correctly transposed.

### **2.6.3 Public health (Article 29):**

Article 29(1) and (2) of the Directive is correctly transposed into Polish law. The list of diseases justifying measures restricting freedom of movement as provided by Polish law is in line with WHO requirements.

Article 29(3) was not transposed. On one hand there is no legal basis to require the medical examination (which would more liberal measure), but on the other hand there is no guarantee that such a potential requirement may be justified only by ‘serious indications that it is necessary’, and that ‘such medical examinations may not be required as a matter of routine’.

### **2.6.4 Expulsion as a penalty or legal consequence (Article 33)**

Article 33 was not transposed into Polish law but this does not cause any conformity problem. On the contrary, Polish law may be regarded as more favourable in this respect, as it does not provide for a penalty or legal consequence in a form of expulsion at all.

## **2.7 Procedural safeguards against decisions restricting free movement (Article 15, and Articles 30-31)**

### **2.7.1 Notification of decisions (Article 30)**

Article 15.1, Article 30 and Article 31 – procedural safeguards. These three articles envisage certain procedural protections that apply when decisions are taken to restrict the free movement of EU citizens and their family members. Article 15 makes reference to the procedural guarantees actually contained in Articles 30 and 31.

Article 30 is correctly transposed into Polish law by EREA and by general rules of the Administrative Procedure Code (APC).

Regarding transposition of Article. 30(2), the APC provides for a general rule for administrative decisions to include justification and EREA provides for an exception from this rule.

Transposition of Article. 30(3) is incorrect. The APC provides for a general rule guidance re-challenging a decision. According to EREA, the general rule is that expulsion is within 31 days. When national defence, national security or public security and order so require, the expulsion may be executed immediately.

### **2.7.2 Procedural safeguards under Article 31**

Article 31 about procedural safeguards is correctly transposed.

EREA provides for provisions on administrative redress procedures as required by Article 31(1). Moreover, such redress is guaranteed by APC as well. The Administrative Courts Procedure Law Act of 2002 provides for the right to challenge the decision of second instance authority to an administrative court.

Measures transposing Article 31(2) are more favourable than requirements of the Directive: they mention only one reason out of the three listed in the Directive.

Regarding Article 31(3) - general rules of ACP and the Administrative Courts Procedure Law Act provide that the second instance authority as well as the administrative court shall examine the legality of the decision, as well as the facts and circumstances on which the proposed measure is based. The legality includes i.e. conformity of the decision with proportionality as well as other requirements laid down in the provision transposing Art. 28 of EREA

### **2.7.3 Exclusion orders (Article 32)**

Article 32 about the duration of exclusion orders is correctly transposed.

As far as Article 32(1) is concerned, it seems the transposition is correct, although EREA does not specify the procedure of revoking the decision, however under APC it is clear that an administrative decision is to be issued on the motion of a person concerned. This initiation can happen at any time. According to general rules of APC an administrative decision shall be made within 2 months at the latest.

Article 32(2) was transposed by Articles 10.2 and 11.1.1 of EREA. Those provisions refer to the list as referred to by FA. As long as the decision on expulsion is not revoked, data about the person concerned are included into the list. After the decision is revoked data about that person are deleted.

## **2.8 Final provisions (Chapter VII)**

Final provisions are correctly transposed.

### **2.8.1 Article 34: publicity**

The questionnaire filled in by CA indicated certain practical arrangements to disseminate information which included publication of information on the website of the Office for Foreigners, in newspapers, as well as sending them out to Voivodeship Offices.

### **2.8.2 Abuse of rights (Article 35)**

Article 35 was correctly transposed into Polish law. EREA contains a number of provisions providing for consequences of marriage of convenience.

According to Article 25 of EREA, if during the proceedings concerning the issue of a residence card of a member of a Union citizen's family, the circumstances point the fact that the marriage was ostensible, the competent authority is obliged to examine this issue.

If the authority states the marriage was ostensible it:

- refuses issuing a residence card or,
- refuses issuing a permanent residence card.

If the marriage was ostensible the residence card or the permanent residence card is to be cancelled.

### **2.8.3 Sanctions (Article 36)**

Article 36 was correctly transposed. The sanctions as provided by Polish law seem to be proportionate (fine between EUR 5,7 and 1428) and non-discriminatory ( as with Polish citizens).

### **2.8.4 More favourable provisions (Article 37)**

More favourable measures were indicated throughout the report.

### **2.8.5 Transposition (Article 40)**

Main transposing Act, EREA came into force on 29 July 2006 i.e. with a three month delay.



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**ANNEX I: Table of concordance for Directive 2004/38/EC**

## **ANNEX II: List of relevant national legislation and administrative acts**

- 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 - Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin (OJoL of 2006 No. 144 item 1043 amended by: OJoL of 2007 No. 120 item 818) - <http://www.abc.com.pl/serwis/du/2006/1043.htm> - **EREA**
- Minister of Health Regulation of 18 January 2007 on the list of diseases justifying decision on expulsion of nationals of the European Union Member States and their family members from the territory of the Republic of Poland on grounds of public health - Rozporządzenie Ministra Zdrowia z dnia 18 stycznia 2007 r. w sprawie wykazu chorób, które uzasadniają podjęcie decyzji o wydaleniu z terytorium Rzeczypospolitej Polskiej obywatela UE lub członka rodziny niebędącego obywatelem UE z powodu zagrożenia dla zdrowia publicznego (OJoL: of 2007 No. 18 item 112) - <http://www.abc.com.pl/serwis/du/2007/0112.htm> - **LDR**
- Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of residence on the territory of the Republic of Poland of nationals of the European Union Member States and their family members - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin (OJoL of 2006 No. 154 item 1105, amended by: OJoL of 2007 No. 172 item 1214) - <http://www.abc.com.pl/serwis/du/2006/1105.htm> - **DRR**
- Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of permanent residence on the territory of the Republic of Poland of nationals of the European Union Member States and their family members - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów dotyczących prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin (OJoL of 2006 No. 154 item 1106, amended by: OJoL of 2007 No. 172 item 1215) - <http://www.abc.com.pl/serwis/du/2006/1106.htm> - **DPRR**
- Minister of Internal Affairs and Administration Regulation of 31 August 2006 on charges for issuing or exchange of a registration certificate for nationals of the European Union Member States and for issuing or exchange of a residence card for their family members - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wymianę zaświadczenia o zarejestrowaniu pobytu obywatela Unii Europejskiej oraz karty pobytu członka rodziny obywatela Unii Europejskiej (OJoL of 2006 No. 160 item 1133) - <http://www.abc.com.pl/serwis/du/2006/1133.htm> - **RCHR**
- Minister of Internal Affairs and Administration Regulation of 31 August 2006 on charges for issuing or exchange of a document certifying permanent residence or a permanent residence card for a family members of nationals of the European Union Member States - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wymianę dokumentu potwierdzającego prawo stałego pobytu lub karty stałego pobytu członka rodziny obywatela Unii Europejskiej - (OJoL of 2006 No. 160 item 1134, amended by: OJoL of 2007 No. 172 item 1215) - <http://www.abc.com.pl/serwis/du/2006/1134.htm> - **PRCHR**
- Foreigners Act of 13 June 2003 - Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach (cons. text: OJoL of 2006 No. 234 item 1694, amended by: OJoL of 2007 No. 120 item 818, OJoL of 2007 No. 165 item 1170) - <http://www.abc.com.pl/serwis/du/2006/1694.htm> - **FA**



- Promotion of Employment and Work Market Institution Act of 20 April 2004 Act - Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (OJoL of 2004 No. 99 item 1001; since then amended 20 times) - <http://www.abc.com.pl/serwis/du/2004/1001.htm> - **PEA**
- Population Records and ID Cards Act of 10 April 1974 - Ustawa z dnia 10 kwietnia 1974 r. o ewidencji ludności i dowodach osobistych (cons. text: OJoL of 2006 No. 139 item 993, amended by: OJoL of 2006 No. 104 item 711, OJoL of 2006 No. 144 item 1043, OJoL of 2007 No. 21 item 125) - <http://www.abc.com.pl/serwis/du/2006/0993.htm> - **IDA**
- Passport Documents Act of 13 July 2006 - Ustawa z dnia 13 lipca 2006 r. o dokumentach paszportowych (OJoL of 2006 No. 143 item 1027) - <http://www.abc.com.pl/serwis/du/2006/1027.htm> - **PA**
- Stamp Duty Act of 16 November 2006 - Ustawa z dnia 16 listopada 2006 r. o opłacie skarbowej (OJoL of 2006 No. 225 item 1635; amended by: OJoL of 2007 No. 64 item 427 OJoL of 2007 No. 124 item 859 OJoL of 2007 No. 127 item 880 OJoL of 2007 No. 128 item 883) - <http://www.abc.com.pl/serwis/du/2006/1635.htm> - **SDA**
- Administrative Courts Procedure Law Act of 30 August 2002 - Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi (cons. text OJoL of 2002 No. 153 item 1270 amended by: OJoL of 2004 No. 162 item 1692; OJoL of 2005 No. 94 item 788; OJoL of 2005 No. 169 item 1417; OJoL of 2005 No. 250 item 2118; OJoL of 2006 No. 38 item 268; OJoL of 2006 No. 208 item 1536; OJoL of 2006 No. 217 item 1590; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 121 item 831; OJoL of 2007 No. 221 item 1650) - <http://www.abc.com.pl/serwis/du/2002/1270.htm> - **ACPLA**
- Medical benefits financed by public means Act of 27 August 2004 - Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych (OJoL of 2004 No. 210 item 2135, since then amended 22 times) - <http://www.abc.com.pl/serwis/du/2004/2135.htm> - **MBPA**
- Business Activity Freedom Act of 2 July 2004 - Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej (cons. text OJoL of 2007 No. 155 item 1095) - <http://www.abc.com.pl/serwis/du/2007/1095.htm> - **BABA**
- Education System Act of 7 September 1991 - Ustawa z dnia 7 września 1991 r. o systemie oświaty (cons. text OJoL of 2004 No. 256 item 2572; since then amended 19 times) - <http://www.abc.com.pl/serwis/du/2004/2572.htm> - **ESA**
- Higher Education Law Act of 27 July 2005 - Ustawa z dnia 27 lipca 2005 r. - Prawo o szkolnictwie wyższym (OJoL of 2005 No. 164 item 1365, amended by: OJoL of 2006 No. 46 item 328; OJoL of 2006 No. 104 item 708; OJoL of 2006 No. 104 item 711; OJoL of 2006 No. 144 item 1043; OJoL of 2006 No. 227 item 1658; OJoL of 2007 No. 80 item 542; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 176 item 1238; OJoL of 2007 No. 176 item 1240) - <http://www.abc.com.pl/serwis/du/2005/1365.htm> - **HELA**
- Social Assistance Act of 12 March 2004 - Ustawa z dnia 12 marca 2004 r. o pomocy społecznej (OJoL of 2004 No. 64 item 593; since then amended 21 times) - <http://www.abc.com.pl/serwis/du/2004/0593.htm> - **SAA**
- Social Pension Act of 27 June 2003 - Ustawa z dnia 27 czerwca 2003 r. o rencie socjalnej (OJoL of 2003 No. 135 item 1268, amended by: OJoL of 2005 No. 94 item 788; OJoL of 2006

No. 144 item 1043; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 176 item 1241) - <http://www.abc.com.pl/serwis/du/2003/1268.htm> - **SPA**

- Misdemeanour Code of 20 May 1971 - Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń (cons. text OJoL of 2007 No. 109 item 756, amended by: OJoL of 2007 No. 82 item 558) - <http://www.abc.com.pl/serwis/du/2007/0756.htm> - **MC**
- Administrative Procedure Code Act of 14 June 1960 - Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (cons. text OJoL of 2000 No. 98 item 1071 amended by: OJoL of 2001 No. 49 item 509; OJoL of 2002 No. 113 item 984; OJoL of 2002 No. 153 item 1271; OJoL of 2002 No. 169 item 1387; OJoL of 2003 No. 130 item 1188; OJoL of 2003 No. 170 item 1660; OJoL of 2004 No. 162 item 1692; OJoL of 2005 No. 64 item 565; OJoL of 2005 No. 78 item 682; OJoL of 2005 No. 181 item 1524) - <http://www.abc.com.pl/serwis/du/2000/1071.htm> - **APC**

### **ANNEX III: Selected national case law**

No relevant case-law on the interpretation of Directive 2004/38/EC was identified.