

‘MORE LEGAL MIGRATION WILL STEM IRREGULAR ARRIVALS’ – DOES THIS ASSUMPTION HOLD TRUE?

A CASE STUDY ON UKRAINIAN MIGRATION TO POLAND

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EXECUTIVE SUMMARY

An increase in legal migration will in all likelihood not lead to a fall in irregular migration, the case of Ukrainian workers in Poland shows.

The number of undeclared Ukrainian workers in Poland is low compared to the size of legal labour migration to the country. However, measures to stem irregular migration may lead to a fall in regular migration and an increase in foreign workers operating in a legal 'grey zone' unless they are not coupled with structural changes, mainly to the way the labour market functions.

Analysis of government statistics and interviews with experts showed that the tightening of work permit

rules by the Polish government actually led to a slight reduction in Ukrainians coming legally to the country to work.

In addition, many Ukrainian workers in Poland remain in a semi-legal status, whereby they enter the country legally, but take up irregular work. Many migrants in this position choose not to legalise their situation due to unnecessary red tape.

The Polish government, whose immigration services are inefficient at many levels, must now improve their capacity to deal with this issue. The best way to do this is to find a quick and easy procedure to grant full legal status to Ukrainian workers.

1. THE COMPLEXITY OF IRREGULAR MIGRATION: LESSONS LEARNT FROM OTHER CONTEXTS

Among its proposals for EU migration management, the European Commission has suggested an increase in legal pathways for foreign workers as a way to reduce irregular arrivals. The importance of increasing regular channels for labour migration has also been underlined in the Global Compact for Safe and Orderly Migration.

According to the 2017 International Migration Outlook, Poland became a leader at both the EU and global level – surpassing even the United States¹ - as a destination for foreign seasonal, short-term labourers. The large number of arrivals of short-term migrants from Ukraine is due to a unique combination of factors on the side of the destination state (a liberal system for the employment of foreigners geared to Eastern Partnership countries) with those in the country of origin (the political turmoil in Ukraine after the outbreak of war and economic hardship in 2014-15). Other important factors attracting Ukrainian citizens to Poland are low travel costs, the ability to maintain family ties in Ukraine, extensive migration networks, language similarities and cultural closeness.

Barslund et al. (2019)² underlines that from a theoretical perspective of maximising utility, expanding opportunities to migrate regularly are regarded as lowering the costs of regular migration relative to the cost of migrating irregularly. However, empirical studies proving this causal relationship are rather rare and indicate a more complex interdependence between both phenomena.

Studies show how the tightening of migration rules impact legal migration.³ However, those looking at the correlation between changes in migration policies and irregular migration are limited due to the absence of comparative data. A study conducted in East Asia has revealed that tightening border controls does not necessarily lead to limiting irregular migration.⁴ It appears to be important to consider links with other migration policy areas, for example border controls, returns and checks on employers to understand where and when widening legal access can effectively reduce incentives for irregular arrivals.

1 OECD (2019). International Migration Outlook, <https://www.oecd.org/migration/mig/international-migration-outlook-1999124x.htm>.
2 Barslund M., M. Di Salvo, L. Ludolph (2019), *Can regular replace irregular migration across the Mediterranean?*. CEPS Policy Brief.
3 Barslund, op. cit.
4 Auriol, E., & Mesnard, A. (2016). Sale of visas: a smuggler's final song? *Economica*, 83(332), 646-678.

However, the increase of legal ways to work does not mean the automatic reduction of a black labour market for foreigners. According to numerous studies,⁵ legal entry to the EU does not guarantee legal stay and/or employment. This is due to several factors.

Firstly, legal entry is usually not accompanied by a coherent policy that allows migrants to automatically work legally. In fact it is the opposite. The majority of visas/residence permits in the EU are not issued for work, but for other purposes: asylum claims, family reunification and educational purposes.

Secondly, even if the residence permit is issued for work, it is usually short-term. If migrants wish to stay longer, they are required to start the cumbersome procedure of obtaining work permits.⁶ Indeed, some studies⁷ show how short-term fixes may actually stimulate the undeclared employment of foreigners by making it necessary to renew time-bound permits, throwing up complicated legal procedures and connecting migrants' permits to a particular employer.

Thirdly, certain structural factors on the side of receiving countries stimulate undeclared employment. An Open Society Foundations (OSF) report from 2018 looking at the employment of foreigners in agriculture in Italy reveals that the farming sector has for years been resorting to migrants with different types of irregularities. This has exacerbated irregular practices and the harsh exploitation of farm workers which pre-dated migration to Italy.⁸ Similar patterns can be found in other southern European countries like Greece and Spain.⁹

Another sector prone to undeclared employment of third-country nationals has been domestic care. For the last few decades, a strong 'pull' effect in western and southern European countries has led to the irregular employment of foreign women in caring and cleaning services in private homes. Recently, central European countries have also witnessed this trend.

As the work is conducted in a private house, where inspectors have no access, domestic care is largely undeclared. The illegality of domestic care may take different forms, with the most popular one called semi-compliance – which involves legal stay but undeclared employment.

Finally, a relatively new phenomenon in the irregular world of work for third-country nationals in the EU is the growing role of temporary work agencies and the practice of posted workers. Evidence suggests that the work-focused and employer-dominated nature of the posted workers' social world abroad contributes to their segregation. The existing research also highlights the transnational expansion of intermediary services and the abuses migrant workers face at the hands of agencies.

The Polish case has been chosen to unveil the complex relations between legal entry and irregular employment. This study will look at whether introducing more regular routes for Ukrainian migrants to enter and work in Poland, as reflected by the number of labour and residence permits, has effectively led to a fall in irregular migration and/or visa overstays. The Polish case has also been chosen to unveil the complex relations between legal entry and irregular employment. The research is based on available data, legal acts and literature supplemented by expert interviews.

5 Pls see: OSEPI (Open Society European Policy Institute) (2018). *Is Italian Agriculture a Pull Factor for Irregular Migration - and If So why?*; Barslund et al, op. cit.

6 In practice, long-term work permits to foreigners in EU member states are usually available only to highly skilled third-country nationals.

7 Vogel, D., "The challenge of irregular migration" (in: Triandafyllidou, A. (2016) *The Routledge Handbook of Immigration and Refugee Studies*. London: Routledge.

8 OSEPI (Open Society European Policy Institute), op. cit.

9 Papadopoulos, A.G. (2012). *Transnational Immigration in rural Greece: Analysing the Different Mobilities of Albanian Immigrants*. (in: Hedberg C., do Carmo R.M. (eds.), *Translocal Ruralism: Mobility and Connectivity in European Rural Spaces*, Springer, Dordrecht, pp. 163–183.

2. ANALYSIS OF POLISH MIGRATION LEGISLATION AND OTHER FACTORS LINKED TO SHORT-TERM LABOUR MIGRATION

Since April 2017, Ukrainian citizens do not need a visa to enter the Schengen area for short-term tourist trips and business or family visits. They cannot, however, legally work in Poland. Like in other EU countries, a pre-condition to start legal employment by non-EU nationals in Poland is the possession of a work permit.

However, there are many exceptions to this rule deriving from the liberal rules for labour migration from Eastern Partnership (EaP) countries and special regulations for the Polish diaspora in Eastern Europe.

Firstly, work permits are not required if a person possesses a long-term residence permit such as the so-called 'Ethnic Polish Card' (*Karta Polaka*), which is granted to members of the Polish diaspora. Secondly, students and graduates of Polish universities can work on similar terms to Polish citizens. Thirdly, there are certain professions (for instance language teachers and researchers) that do not need to obtain a work permit. Finally, since 2007, Poland has introduced an accelerated procedure for hiring short-term foreign workers based on an employment declaration registered by a future employer at the local employment

office, which requires minimal formalities. This mechanism became permanent in 2011 following a Ministry of Labour and Social Policy Regulation and constitutes the legal basis for Ukrainians moving to Poland for work, who do not need to apply for a visa. The so-called employer's declaration system has been linked to an increase in arrivals of Ukrainian migrants.

However, in January 2018, significant legal changes regarding the employment of foreigners came into force. Firstly, the categories of work that can be performed on the basis of the declaration of intention to employ a foreigner have been reduced. They currently cover all types of work that are not seasonal and can be carried out by citizens of EaP countries for up to six months within a 12-month period. There have also been changes to the system of granting declarations: a fee for their issue is charged now, and the employer must notify that the employee who issued the statement has actually taken up a job. A new type of work permit has also been introduced: a seasonal work permit which entitles any foreigner (not just nationals of EaP countries) to work for a period of no more than nine months within a 12-month period.¹⁰

¹⁰ Ibid.

Ukrainians who wish to stay longer in Poland can apply for a residence permit and afterwards a work permit. Or they can apply for a single permit allowing them to legally reside and work simultaneously. According to the Polish law on foreigners, non-EU nationals who have been granted a single permit

do not need to obtain an additional work permit. However, to obtain such a permit, they need to comply with additional obligations. These include registration with the social security system, receiving an income that covers the cost of living and possession of a permanent place of residence.¹¹

11 For details pls see: Górny A., Kaczmarczyk P. (2018). "A known but uncertain path: The role of foreign labour in Polish agriculture". *Journal of Rural Studies* 64: 177-188. Górny A., Kaczmarczyk P., Szulecka M., Bitner M., Okólski M., Siedlecka U., Stefańczyk A. (2018). *Immigrants in Poland in the context of accelerated employment procedure for foreigners. Research report. [Imigranci w Polsce w kontekście uproszczonej procedury zatrudniania cudzoziemców. Raport z badań]*, WISE Europa and Centre of Migration Research University of Warsaw, in Polish.

3. UKRAINIANS IN THE POLISH LABOUR MARKET

Poland has a very recent history of immigration. As recently as 2015, Poland hosted only 110,000 foreign residents, which was 0.3% of the general population (Eurostat 2015). Then migration to Poland originated from a few countries (mainly Ukraine and Vietnam) and was mainly temporary. Moreover, the foreign population was located mainly in Warsaw and its neighbourhood and in limited employment sectors: construction, agriculture and domestic care.¹²

Since 2015, the patterns of Ukrainian migration have changed dramatically. The immigration boom is a result of complex factors on both the side of the destination state and the country of origin. Among others, after Poland's entry into the EU in 2004 there was a mass migration of Polish citizens towards the United Kingdom.¹³ According to the UK Office for National Statistics, the number of Poles in the UK in 2017 totaled 1,021,000 and Poles became the largest group of foreign nationals in the country (Szkudlarek 2019).

The departure of Polish emigrants has resulted in an overall decline in the labour force. Ukrainian migrants have not, however, automatically taken over the working places previously occupied by the local population as Polish emigrants mainly consisted of previously unemployed youth from underdeveloped regions. Aside from the overall numbers, the second change in patterns of Ukrainian migration to Poland is that the Ukrainian population has moved outside Warsaw and other main cities and outside the job sectors they used to work in before.

Finally, there have also been demographic changes – the mainly female migration of the past has become dominated by male workers. There are also certain grounds to argue that Ukrainian migration has become less short-term. However in this aspect, much depends on local context and the sectors where Ukrainians work.¹⁴ One of the terms given to current migration from Ukraine to Poland is 'local mobility', meaning a specific system of circular migration

12 Górny A., S.Toruńczyk-Ruiz (2011). *Integration of migrants from the perspective of social ties and neighbour relations*. Centre for Migration Research Working Paper. Górny A. (2017). All circular but different: variation in patterns of Ukraine-to-Poland migration. *Population Space and Place* 23, 8: 1-10.2017.

13 The United Kingdom's withdrawal from the European Union ends the European Freedom of Movement and the privileged migration status of EU Citizens in the UK, which will likely affect Polish migrants.

14 Pls see: Górny A., K. Kołodziejczyk, K. Madej, P. Kaczmarczyk (2019). *New destination areas in the migration from Ukraine to Poland. The cases of Bydgoszcz and Wrocław against other cities*. [Nowe obszary docelowe w migracji z Ukrainy do Polski. Przypadek Bydgoszczy i Wrocławia na tle innych miast.] CMR Working Papers 118/176. In Polish Wendt J.A., Lewandowska I., Wiskulski T. (2018). Ukrainian migrants in Poland in 2014-2017. [Migranci ukraińscy w Polsce w latach 2014-2017]. *Zeszyty Naukowe Politechniki Śląskiej*, 126: 223-236. In Polish.

via frequent short-term journeys to Poland. In this case, time spent within Poland is limited and most activities are concentrated in Ukraine. This contrasts with migration in the classical sense, which assumes a permanent change in abode.¹⁵

Due to the predominantly temporary character of the migration, it is difficult to estimate the exact number of Ukrainian migrants resident in Poland. The assessment is complicated further by the existence of different types of work permits Ukrainian citizens may obtain, described earlier. Ukrainians possessed over 1.7 million so-called declarations of intent from employers in 2017, including those issued for the first time. In 2018, after the tightening of the rules, 1.4 million declarations of intent were registered by Polish employers (see Figure 1). The number of people who actually took up work on the basis of the statements was smaller because, according to the verification system, in the case of about a third of the declarations issued, the foreigner did not take the position.

At the same time, over 192,000 people held work permits in 2017 and 262,461 in 2018 - including those issued for the first time (see Figure 2).¹⁶ More than 61,000 Ukrainians worked with seasonal permits introduced in the first half of 2018 (see Figure 2). The demand for seasonal permits is, nonetheless, much higher and the relatively small number of issued permits is due to the novelty of the instrument.¹⁷

FIGURE 1

Number of short-term labour permits issued to Ukrainian citizens under the simplified procedure in 2008-2018

YEAR	ALL FOREIGNERS	UKRAINIANS	%
2008	156,713	142,960	91%
2009	188,414	180,133	95%
2010	180,073	169,490	94%
2011	259,777	239,646	92%
2012	243,736	223,671	91%
2013	235,616	217,571	92%
2014	387,398	372,946	96%
2015	782,222	762,700	97%
2016	1,314,127	1,262,845	96%
2017	1,824,464	1,714,891	93%
2018	1,582,225	1,446,304	91%

Source: Ministry of Family, Labour, and Social Policy of Poland (2019).

15 Brunarska Z., Kindler M., Szulecka M., Toruńczyk-Ruiz S. (2016). "Ukrainian migration to Poland: A 'local mobility'?", w: O. Fedyuk, M. Kindler (red.), *Ukrainian migration to the European Union: Lessons for migration studies*, s. 115-131. Heidelberg-New York-Dordrecht-London: Springer. Jaroszewicz M. (2018) *Migration from Ukraine to Poland. Trend Stabilises*, Centre for Eastern Studies Reports. Warsaw.

16 Ministry of Family, Labour and Social Policy (2019).

17 Ministry of Family, Labour and Social Policy (2019).

FIGURE 2

Number of work permits issued to Ukrainian citizens in 2008-2018

YEAR	ALL FOREIGNERS	UKRAINIANS	SHARE OF UKRAINIANS
2008	18,022	5,400	29%
2009	29,340	9,504	32%
2010	36,622	12,894	35%
2011	40,808	18,669	45%
2012	39,144	20,295	51%
2013	39,078	20,416	52%
2014	43,663	26,315	60%
2015	65,786	50,465	76%
2016	127,394	106,223	83%
2017	235,626	192,547	81%
2018	366,898	262,461	71%

Source: Ministry of Family, Labour, and Social Policy of Poland (2019).

FIGURE 3

Number of permits for seasonal work issued to foreigners in Jan-Jun 2018

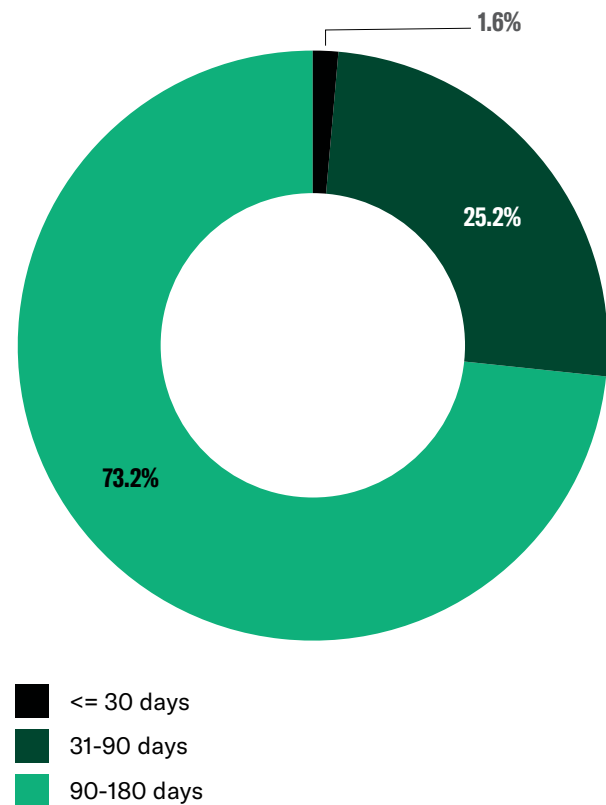
All foreigners	62,103
Ukrainians	61,367
Share of Ukrainians	99%

Source: Ministry of Family, Labour, and Social Policy of Poland (2019).

Ukrainian migration to Poland is predominantly temporary or seasonal. However, it is difficult to judge to what extent this is caused by the migrants' preferences and to what extent it is affected by existing legislation that gives a strong preference to short-term migration. As we can see in Figure 4, Ukrainian migrants prefer to obtain short-term permits valid for more than 90 days. However, as Figure 5 shows, work permits with an even longer validity are issued rather rarely. The most popular ones are permits issued for 3 months – 1 year.

FIGURE 4

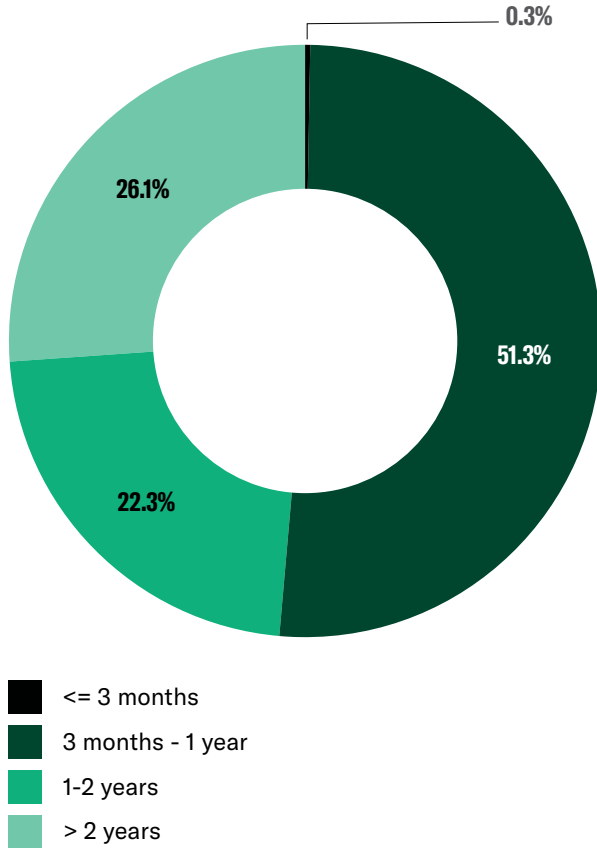
The distribution of simplified procedure permits for short-term employment among Ukrainian migrants in Poland



Data: Ministry of Family, Labour, and Social Policy of Poland (2019).

FIGURE 5

Work permit distribution among Ukrainian migrants in Poland



Data: Ministry of Family, Labour, and Social Policy of Poland (2019).

As numerous studies show, agriculture was initially the main sector where Ukrainian migrants worked. It was still among the dominant sectors of employment for Ukrainian citizens under the simplified procedure in 2017 (see Figure 6). However, Ukrainian workers have gradually moved to other sectors including industrial production, construction, transportation and storage, administrative and support services (this category often concerns migrants employed by recruitment agencies).

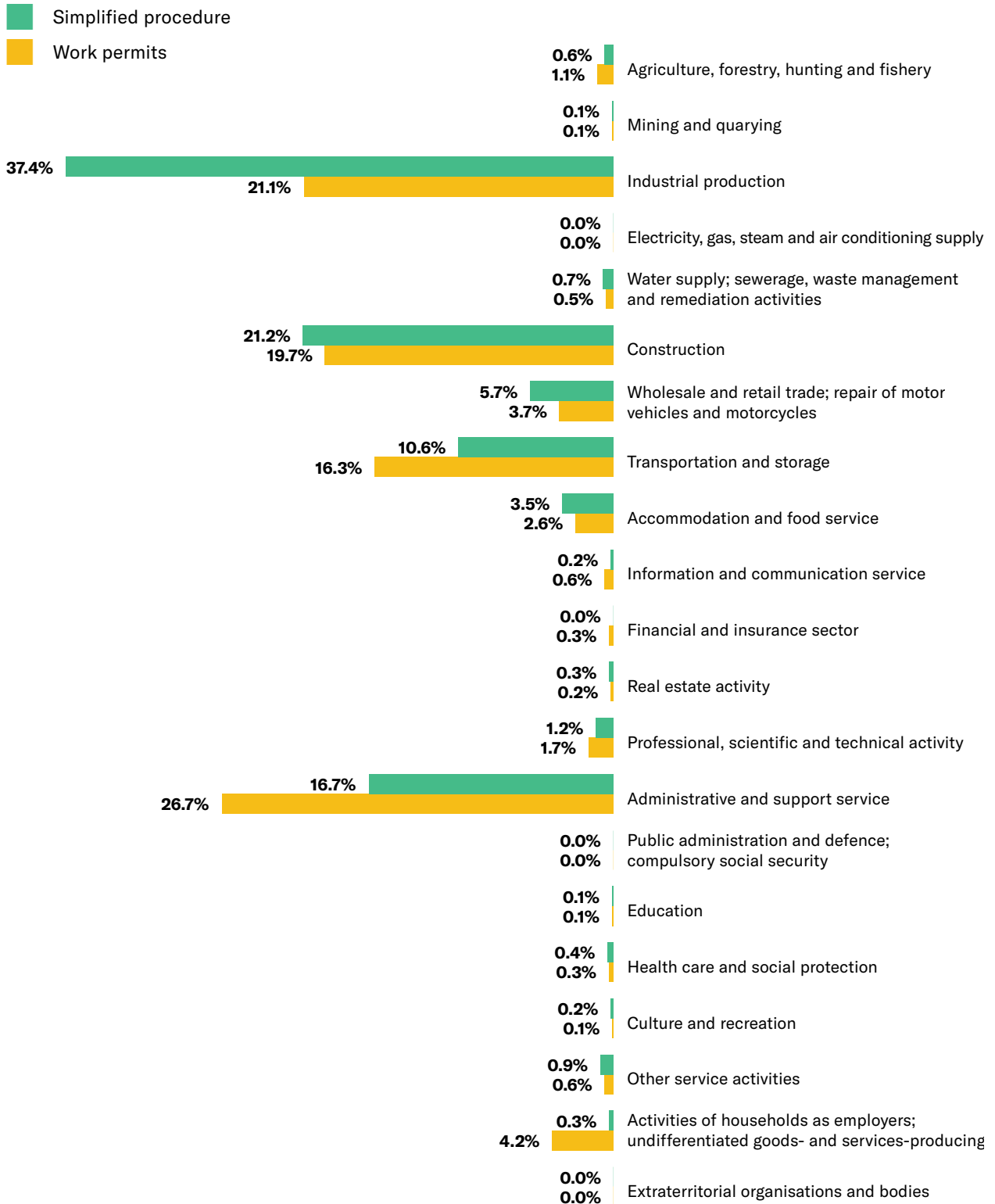
If the growing number of migrants with work permits are taken into account, Ukrainians are currently employed in a majority of sectors, even those that until recently had a very low number of employed foreigners, such as industry. Ukrainians are also highly involved in the Polish gig economy. From a sample of 1.9 million application users in Poland, the Selektyw company discovered that Uber is the most popular taxi application in Warsaw. Ukrainians are up to 35 percent of its drivers, mainly middle-aged men. Many of them do not have a taxi license, slipping into the shadow area of semi-legal employees.¹⁸

18 AntyWeb, 31.07.2018. „A jednak to prawda – Już co trzeci kierowca Ubera w Polsce pochodzi z Ukrainy”, <https://antyweb.pl/co-trzeci-kierowca-ubera-w-polsce-pochodzi-z-ukrainy/>.

FIGURE 6

Main sectors of employment of Ukrainian migrants as registered under the simplified and long-term employment procedure

SIMPLIFIED PROCEDURE & WORK PERMITS, Jan-Jun 2018



The salary expectations of Ukrainians working in Poland have changed and Ukrainians tend to earn more on average than in previous years. However, according to a survey conducted by the Polish National Bank in 2018 in Bydgoszcz and Wrocław, Ukrainian migrants earned about 20% less than Polish workers in the same jobs.¹⁹ Some of the difference can be explained by the education and work experience of migrants. But some of this is also due to deliberate discrimination by employers.²⁰

Ukrainians are not just paid less for the same jobs. They also work longer hours. According to the 2019 EWL survey²¹, about 90% of the Ukrainian migrants surveyed were ready to work longer than eight hours a day. This is especially the case for short-term or circular migrants who are interested in working and

earning as much as possible during a short period of time.²² This, as well as possible discrimination, might be a reason why about half of Ukrainians surveyed have no friends among Poles and a majority stay within their migration networks.²³

All these structural factors contribute to sub-standard labour conditions for Ukrainian migrants. Circular migrants work longer, do not have time for professional training, mainly contact other Ukrainians and struggle to integrate into the host society. However, as existing literature and our interviews have shown, Ukrainian migrants are getting better acquainted with Polish labour regulations and market needs and the wage gap between them and national workers is decreasing.²⁴

19 Polish National Bank (2019). Information from the survey of immigrants in Bydgoszcz and Wrocław in 2018 and 2019. [Informacja z badań ankietowych imigrantów w Bydgoszczy i Wrocławiu w 2018 i 2019 roku]. In Polish. https://www.nbp.pl/publikacje/migracyjne/raport_imigranci_Bydgoszcz_Wroclaw_2019.pdf

20 Ibidem.

21 Carried out by by East West Link, Foundation for the Support of Migrants on the Labour Market, Centre for East European Studies at University of Warsaw.

22 East West Link, Foundation for the Support of Migrants on the Labour Market, Centre for East European Studies at University of Warsaw. *Ukrainians on the Polish Labour Market: Experiences, Challenges and Perspectives*. A sociological study, 2d edition.

23 Kindler et al. (2018).

24 Expert interviews, Warsaw, January (2020).

4. MIGRATION POLICIES AND THEIR IMPACT ON THE LEGALITY OF EMPLOYMENT

The rise of labour migration is a new phenomenon for Poland, which has been an emigration country for decades. According to the International Migration Outlook 2018, Poland experienced one of the highest rates of arrivals of a foreign, seasonal, short-term workforce in 2017 and 2018. However, Poland faces challenges with effective migration management. The improvement of migration management has been further hampered by growing support for far-right views and parties.

As a new country of immigration with an underdeveloped migrant integration policy, Poland prefers short-term labour migration. Moreover, it suffers from insufficient control over the provisions of legal contracts, social insurance and decent working conditions by Polish employers hiring Ukrainians. This might be a factor contributing to the irregular status of some Ukrainian workers.

In mid-2019 Poland's Supreme Audit Office published a report assessing whether the existing system functioned effectively and whether supervision was carried out correctly. The inspection spanned a four-year period (2014–2018) and 19 institutions, including the Ministry of the Interior and Administration, the main body responsible for migration policy. It also included voivodeship offices, the provincial authorities that issue the permits.

The report provides a wealth of empirical material. Earlier assessments of the efficiency of the country's migration policy, formulated by experts who did not have full access to official figures, were inevitably incomplete. Based on data from across Poland, the new report concludes that the public administration is unprepared to smoothly process the rapidly growing number of foreigners coming to Poland.

When foreigners first arrive in Poland, attracted by the simplicity and speed of obtaining a short-term labour permit, it is relatively easy to live and work in the country for six months. But if they want to stay for additional months or years, they encounter serious barriers. Obtaining a residence or work permit is a long and arduous process.

According to the Supreme Audit Office report, in 2014 it took 64 days on average to legalise a foreigner's temporary stay in Poland. By 2018, this had risen to 206 days. Some 70% of cases at the regional level and over 30% of those at the central level were handled in a way that violated administrative provisions, the report adds. Specifically, filing a request for a permit was made more difficult, including having to do it in person, with no way to register online, causing long queues. Most of the job centres and regional offices responsible for issuing residence permits lacked directions and plans

for processing foreigners' paperwork. The rules were not formalised and officials failed to inform users properly.

Polish businessmen propose allowing employers to register declarations online, lifting the administrative burden which is currently offloaded onto the workers or onto temporary recruitment agencies. Another proposal is to further simplify procedures

for verified and law-abiding companies (see Figure 8). The possibility to stay longer without the need to undergo complex administrative procedures could ease the situation. This resonates with the desire of Polish employers to increase the allowed period of stay under the simplified procedure to a year. 72% of those surveyed made this suggestion during the 2019 research of the Personnel Service.²⁵

FIGURE 8

What labour legislation changes does your company expect?

Streamlined procedures prolonging the stay of Ukrainians in Poland	84.4%
Extended time of legal work under the simplified procedures from six months to a year	71.6%
Extended work permit stay from 3 to 5 years	67.9%
Online submission of declarations of intention to entrust work to foreigner	58.0%
List of verified employers who can employ workers from Ukraine more easily	57.9%

Source: Personnel Service (2019).

25 Personnel Service „Barometr Imigracji Zarobkowej - II półrocze 2019,” <http://personnel-service.pl/en/press-office/reports>

5. UNDERLYING CAUSES OF IRREGULAR MIGRATION FROM UKRAINE AND OF UNDECLARED OR EXPLOITATIVE WORK

Irregular migration is a very complex term and there is no single generally accepted definition. The definition provided by Tapinos²⁶ identifies six categories of 'irregularity' such as: 1) legal entry, legal stay but illegal work; 2) legal entry, but illegal residence and illegal work; 3) legal entry, illegal residence, no work; 4) illegal entry, legal (legalised) residence, but illegal work; 5) illegal entry, illegal residence, illegal work; and 6) illegal entry, illegal residence, no work.

There are no estimates of the number of migrants who stay or work irregularly in Poland. Neither are there studies that comprehensively assess the phenomenon in a more quantitative manner. Perhaps this is due to the fact that the vast majority of Ukrainian migrants possess a valid permit of stay. Also, irregular migration is not an important topic in the Polish public debate. However, existing studies

and the interviews conducted for this report give some clues about the proportions of the phenomenon and the main models of irregularity.

Irregular migration appears to be a marginal phenomenon. However, according to qualitative data, foreigners in the Polish labour market are subject to different forms of mistreatment or deliberately prefer certain legal loopholes which are generically referred to as semi-legality. Among the expert community in Poland, there is a common belief that irregular entry is much rarer than undeclared employment. Sometimes the character of work is mixed: a migrant can work regularly with one employer and without a contract with another one.²⁷ Many Ukrainians stay in Poland for only three months on the basis of the EU visa-free regime and may therefore prefer not to spend much time on procedures related to the legalisation of their work.

26 G. Tapinos (1999). "Illegal immigrants and the labour market". *The OECD Observer*. Paris. Tom 2019: 35.

27 Szulecka M. (2016) "Forms of Irregular Migration in Poland". [Przejawy nielegalnej migracji w Polsce]. *Archiwum Kryminologii*. Tom XXXVIII: 191-268. In Polish.

Semi-legality of employment is not a specific feature of migrant work. Poles also suffer from these practices. They include: working on a different type of contract than stipulated by the law (civil law contracts that do not require employers to insure employees, instead of work contracts), or declaring only part of their income in work contracts to avoid taxation.²⁸

According to reports from the National Labour Inspectorate of Poland (NLI), the most widespread form of irregularity is where Ukrainian migrants work for other companies than those registered in the declaration (State Labour Inspection 2009). In this case, they should have work permits, but do not.

Over time, new patterns of undeclared employment have appeared. Since 2015, NLI has observed that Ukrainians establish outsourcing companies in Poland and exploit them to hire people from Ukraine. They issue and register declarations under the simplified procedure with the aim of placing them with other real companies. They do not have the capacity to employ these people themselves.

Migrants often work under civil law contracts instead of employment contracts, thus depriving them of their labour rights, including an equal and decent salary and fair working conditions. Another form of undeclared work employment is by virtual offices which provide employees to other bona fide companies afterwards.²⁹

About a third of Ukrainians working in Poland were victims of dishonest employers in 2019, according to the EWL survey.³⁰ They did not receive remuneration or were paid less than they should have in the majority of cases. Aside from this, Ukrainians' actual employment conditions were often different from

the employers' offer. About a third of Ukrainians were also victims of harassment because of their nationality.

Some sectors attract more irregular Ukrainian migrants than others. A study by the EU's Fundamental Rights Agency investigated the basic rights of irregular migrant domestic workers. In some countries (especially Hungary and Poland), the latter were mostly Ukrainians working in private households who did not have valid documents allowing them to stay in the country. Access to fundamental rights for migrants working irregularly is often at the discretion of their employers, and the study found that their main strategy in cases of sickness or exploitative practices was to change employer and to rely on social networks.³¹

Studies by the Centre for Migration Research at the University of Warsaw confirm that agriculture is another sector where migrants are more prone to semi-legality. Small companies (up to 25 employees) which employ migrants are also rarely controlled by labour inspectors.

Higher salaries can be another factor luring Ukrainian workers into the grey zone. According to the EWL study, about 38% of those surveyed said they would work without an employment contract if it guaranteed higher earnings. About 6% said they were ready to work in this way to dodge taxes and maximise their earnings.

The burden of administrative procedures is another risk factor which leads to abuse. About 44% of EWL respondents said they preferred streamlined employment procedures (see Figure 10). In particular, 8.5% of EWL respondents said they were willing to engage in undeclared work because of the

28 Expert interviews, Warsaw, January (2020).

29 National Labour Inspectorate of Poland annual reports for 2015, 2016 and 2017.

30 East West Link, Foundation for the Support of Migrants on the Labour Market, Centre for East European Studies at University of Warsaw (2019), op. cit.

31 EU's Fundamental Rights Agency (2011). *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Members*. https://fra.europa.eu/sites/default/files/migrants_in_an_irregular_situation_employed_in_domestic_work_en.pdf

long waiting period for a decision on residence work permits.³²

About 36% of Polish employers surveyed by the Personnel Service resort to the services of recruitment agencies, which can also lead to abuse (see Figure 9).

FIGURE 9

How does your company look for Ukrainian employees?

Contact friends and families of Ukrainians who are already in Poland	49.0%
Post announcement on online work platforms in Ukraine	39.3%
Via recruitment agencies	35.8%
Social media	19.8%
Polish employment offices	7.2%
Ukrainian employment offices	0.5%

Source: Personnel Service (2019).

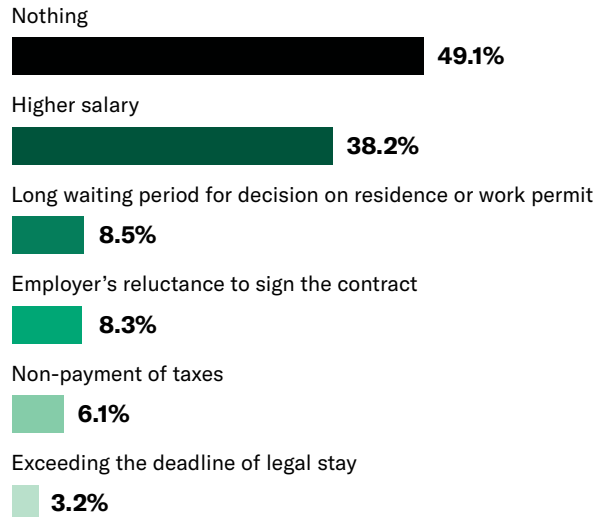
The popularity of intermediary agencies is due to the fact that they deal with all administrative formalities to hire foreigners. As a result, streamlined administrative procedures may make legal work more attractive if combined with longer stays.

In some cases, employers are reluctant to sign a work contract. 8% of Ukrainians surveyed by EWL said it was a reason for undeclared work.

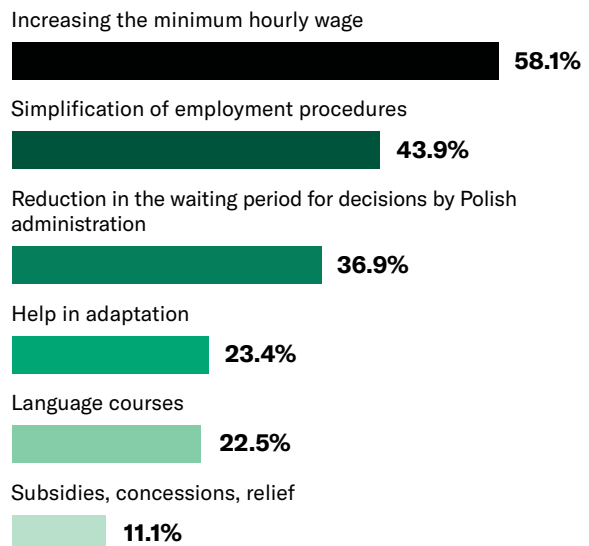
FIGURE 10

Factors pushing migrants into 'grey' zone

WHAT WOULD MAKE YOU START WORKING IN POLAND WITHOUT SIGNING AN EMPLOYMENT CONTRACT?



WHAT ACTIONS OF THE POLISH AUTHORITIES COULD IMPROVE YOUR EMPLOYMENT EXPERIENCE IN POLAND?



Source: "Ukrainians on the Polish Labour Market: Experiences, Challenges and Perspectives," A sociological study, 2d edition, EWL, <https://www.ewlhr.eu/news/ukrainians-on-the-polish-labour-market-experiences-challenges-and-perspectives-a-report-by-ewl/>

32 East West Link, Foundation for the Support of Migrants on the Labour Market, Centre for East European Studies at University of Warsaw, op. cit.

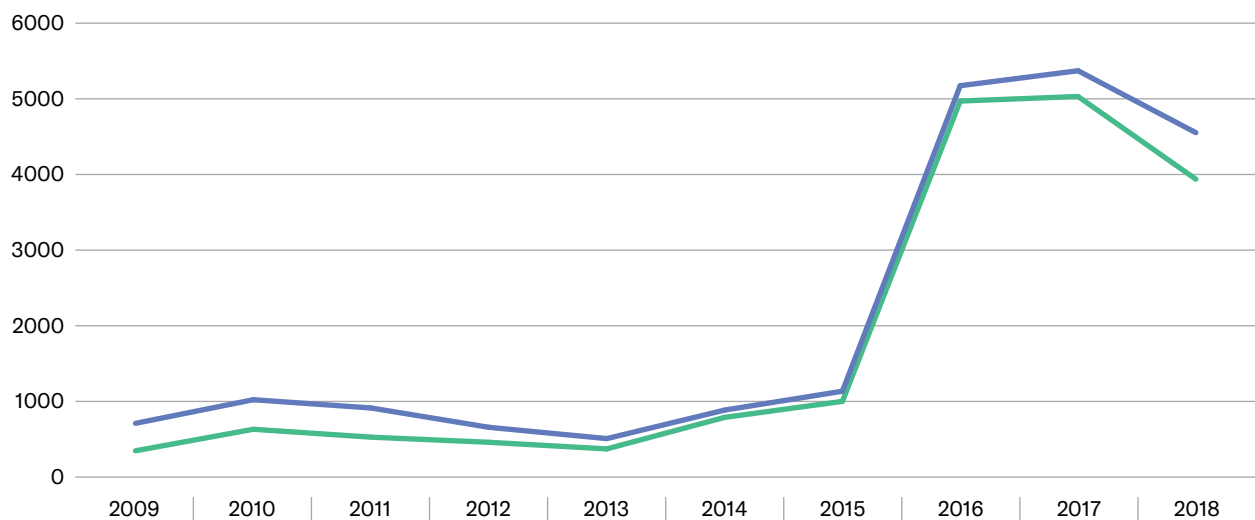
6. ARE LEGAL LABOUR CHANNELS REDUCING IRREGULAR MIGRATION, OR HAVING AN IMPACT ON UNDECLARED WORK AMONG MIGRANTS?

Irregular migration to Poland appears to be marginal. This is one of the reasons why there are no assessments that compare the proportion of irregular migrants before and after the introduction of a visa-free regime for Ukrainians. On the other hand, different types of semi-legal work exist, among both locals and migrants. Ukrainians are the largest group

of foreigners doing undeclared work in Poland. Their share has not dropped below 80% since 2014 (see Figure 11). Nevertheless, the number of undeclared workers is low when compared with the number of all Ukrainians who work in the country (see Figures 11 & 12).

FIGURE 11

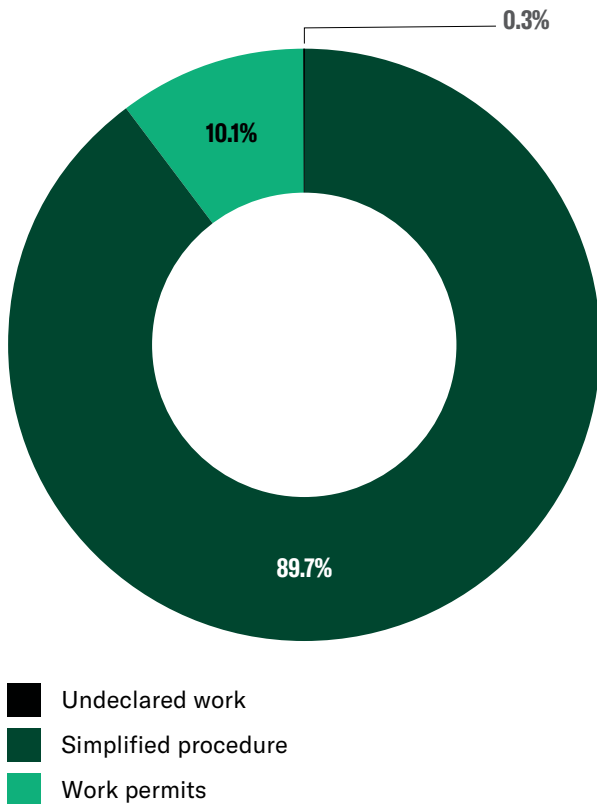
Ukrainians are the largest group of undeclared workers



Source: National Labour Inspectorate of Poland (2019).

FIGURE 12

Undeclared work is very low



Source: National Labour Inspectorate of Poland (2019).

The State Statistical Committee of Ukraine 2018 survey showed the positive impact of liberal Polish legislation regarding the temporary employment of foreigners. Only 19% of Ukrainian respondents who used to live in Poland said they did not have a regulated legal status. The popularity of Poland among Ukrainian migrants also results to a large extent from the enormous activity of employment agencies, which operate in virtually every region of Ukraine. It is one of the fastest growing sectors of the economy in both Poland and Ukraine.

The simplified procedure for obtaining labour permits is the channel which is most used by those working under semi-legal conditions. However, the blanket introduction of tighter rules over the issuance of employers' declarations has also affected legal workers, who have nothing in common with the handful of abusers of the system. A more tailored approach is therefore needed.

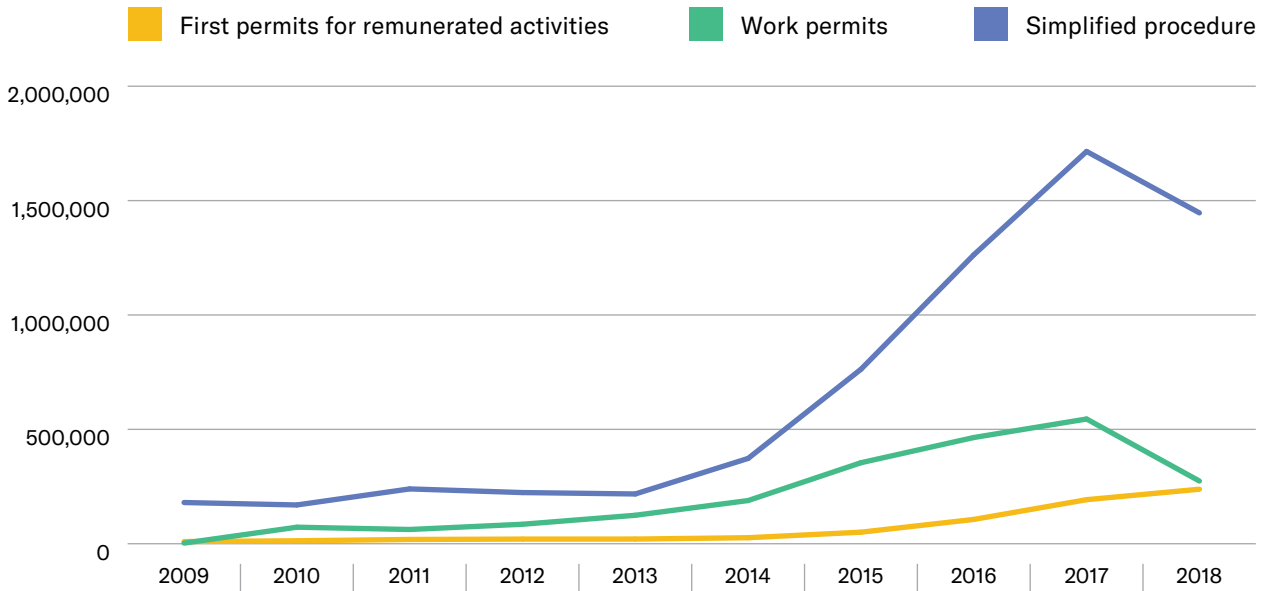
There are no estimates of the possible stock of irregular migrants, let alone undeclared workers. Instead, this study will therefore use data on the number of undeclared employment detections. However, these figures depend not just on the actual scale of undeclared employment but also on the robustness of migration enforcement legislation. Undocumented migrants are often not detected. Nevertheless, a very basic analysis of data for regular and irregular labour migration proxies reveals some trends.

There appears to be a statistically significant correlation between the proxies of legal work (work permits, numbers accessing the simplified procedure) and irregular labour (illegal worker detection). This association is positive, i.e. more legal workers go hand in hand with more irregular ones. There is therefore no evidence that an increase in regular workers leads to the replacement of or a drop in the number of irregular workers. Perhaps this is because both enter Poland legally in the same ways - i.e. via the simplified procedure - with some then ending up employed irregularly (see Figures 13 and 14 for more details).

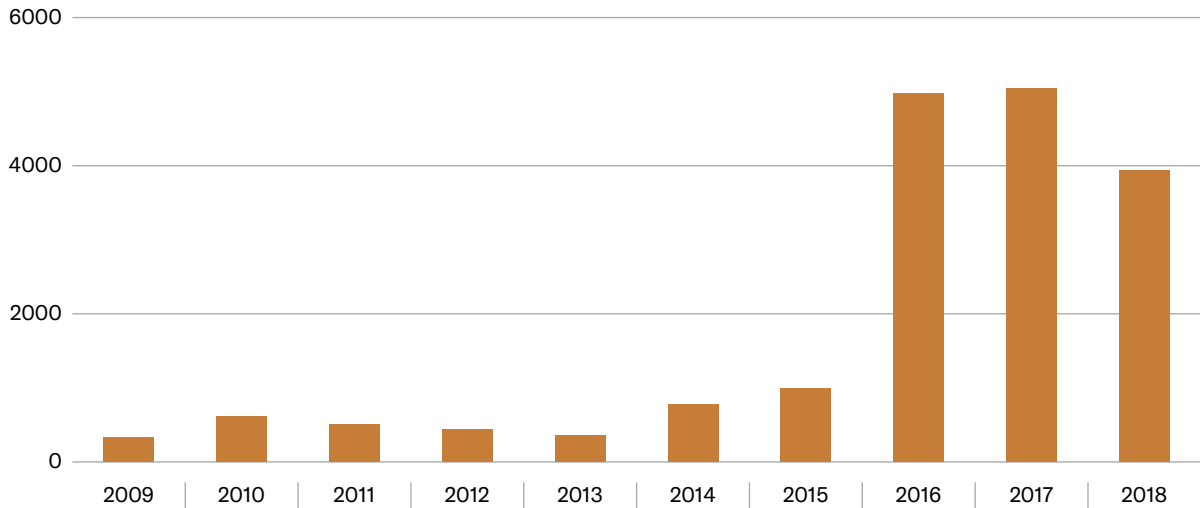
FIGURE 13

No replacement between regular and irregular labour migration

Regular labour migration



Irregular Ukrainian workers



Data sources: Eurostat, Ministry of Family, Labour, and Social Policy of Poland; National Labour Inspectorate of Poland (2019).

According to qualitative interviews conducted for this study, the majority of migration experts and practitioners do not think that opening up legal migration channels has affected the number of irregular arrivals to Poland. Instead they believe that a liberal migration policy, particularly the relative accessibility of short-term employment

permits, eliminates the most severe cases of irregular migration – for example, when a migrant possesses neither a residence nor labour permit. However, it may lead to different forms of semi-legality, including undeclared work, particularly when it comes to the simplified procedure of employment that is usually taken up by newly arriving immigrants.

7. UKRAINIAN ONWARD MOBILITY TO OTHER EU COUNTRIES

Poland is often treated as a waiting room for migrants to attempt to enter other EU countries. Existing research emphasises that this migration takes place with the help of Polish migration networks, including Polish intermediaries.³³

In Czech research in particular, the so-called 'Polish mark' clearly appears when Ukrainian migrants in the Czech Republic declare they have arrived from Poland. Media outlets in Prague regularly report about employment checks in which migrants are found to have certificates from Polish employers about their intention to employ a worker, even though these do not authorise them to work in the Czech Republic.

Direct Ukrainian migration to the Czech Republic is difficult, as the country has had a very restrictive migration policy since 2012, practically closing off any possibility of new economic migrants arriving there. For instance, almost 3,000 Ukrainians were found to be working there illegally in 2018.³⁴ A certain loophole in this practice arose with the launch in July 2016 of the government's *Režim Ukrajina* programme for qualified migrants. However, this ended in 2019 and was relaunched as a universal

programme attracting skilled workers. Generally, it was estimated in May 2018 that about 85,000 Ukrainians were working legally in the Czech Republic.

A new, under-researched phenomenon is the posting of Ukrainian migrants by Polish companies (often founded by Ukrainian nationals) to other EU Member States using the EU Posted Workers Directive (96/71/EC). These letterbox companies, frequently established by Ukrainians registering declarations for Ukrainian labour migrants, delegate them to work in other EU countries like the Czech Republic, Germany, Lithuania, Estonia and the Netherlands. Letterbox companies established by Ukrainian citizens generally do not conduct any activity in Poland, but recruit people from Ukraine and register declarations for them under the simplified procedure. Later on, these employees are transferred to other real Polish companies or delegated to work in other EU countries. The latter is what pushes this employment type into the 'grey zone'. These employees often do not have Polish social security protection as the relevant requirements are not fulfilled.

33 Drbohlav D., Jaroszewicz M. (eds.) (2016). *Ukrainian migration in times of crisis: Forced and labour migration*. Prague: Charles University Press.

34 Hospodářské Noviny, 25.02.2019, "U nelegálů to máme za polovinu a hned. V Česku pracuje nelegálně až čtvrt milionu cizinců, firmy volají po zjednodušení pravidel," <https://archiv.ihned.cz/c1-66492970-u-nelegalu-to-mame-za-polovinu-a-hned-v-cesku-pracuje-nelegalne-az-ctvrt-milionu-cizincu-firmy-volaji-po-zjednoduseni-pravidel>.

For instance, a person should have residence in Poland and work there at least a month before secondment in order to be entitled to social protection. Since Ukrainians move to Poland for a short period, they are interested in immediate work. Many also aim to reach other EU countries, not Poland, in the first place. Therefore, these companies provide a conduit to other EU countries.³⁵

The evidence of Ukrainian migrants in Germany is so far limited and anecdotal, although this may change with the entry into force of the new German labour migration law in March 2020. A fear that Ukrainian immigrants might leave for Germany is quite often raised in the Polish public debate. However, there appears to be a disconnect between the qualifications of Ukrainian migrants working in Poland and German employment regulations for foreigners.³⁶

35 K. Matuszczyk (2018). „Delegowanie pracowników w Unii Europejskiej”. [Workers posting in the European Union]. *INFOS*. Biuro Analiz Sejmowych. Nr 8 (246). In Polish.

36 Expert interviews, Warsaw, January (2020).

8. CONCLUSIONS AND POLICY RECOMMENDATIONS

As we have seen, there is no evidence in the case of migration from Ukraine to Poland that an increase in legal migration leads to a fall in irregular migration, unless it is accompanied by structural changes, mainly in the labour market.

Secondly, irregular migration is getting more diverse and should rather be called semi-legality. The Polish experience also shows that mass migration needs to be accompanied by an efficient service provision system for foreigners. Finally, there is clear evidence that short-term migration makes migrants more vulnerable to this semi-legal status.

The number of undeclared Ukrainian workers in Poland is low compared to the size of legal labour migration to the country. Measures to reduce undeclared labour further, such as tightening the rules for granting labour permits under the simplified procedure, have slightly decreased the number of illegal workers, but also affected legal migration. An urgent issue to tackle now is improving the Polish state's capacity to provide incoming migrants with a quick and easy procedure to receive full legal status. Many migrants remain in the 'grey' zone because they either cannot or would rather not legalise their status because of procedural difficulties.

The following measures could be implemented to reduce the number of undeclared workers without affecting the majority of legal ones:

1. Extend the period of stay for workers under the simplified procedure and reduce the time they are not allowed to work in Poland before they can apply for another permit.
2. Streamline legal and administrative procedures for foreigners, in particular:
 - a. Reduce the waiting period to obtain residence and work permits;
 - b. De-link the employer's declaration from a specific employer so migrants can change employers without submitting a new declaration;
 - c. Simplify legalisation for short-term migrants wishing to obtain a regular residence permit;
 - d. Further simplify procedures for verified and law-abiding companies.

EPILOGUE

IMPACT OF NOVEL CORONAVIRUS PANDEMIC ON UKRAINIAN MIGRATION TO POLAND

May 2020

It is too early to measure even the approximate impact of the COVID-19 pandemic on the European economy as well as on mobility and migration patterns, including irregular migration. What appears to already be evident, however, is that the crisis has created additional factors of vulnerability for Ukrainian migrants working in Poland, albeit not to a dramatic extent thus far. This is due to the fact that Ukrainian migrants tend to work in sectors that have not yet experienced the economic downturn. If the pandemic's current trends in Poland and Ukraine continue, it will probably not cause a major rise in irregular migration, although some of the most vulnerable migrants may find themselves in worsened economic and social conditions, as they may accept illegal working terms to keep their job and remain in Poland. In addition, if restrictions on mobility continue, they may impact circular migration, with large numbers of migrants facing the dilemma of having to choose between repatriation and permanent migration. The worst-case scenario for migrants would be if unemployment among Polish nationals grows significantly, which could lead to the adoption of harsh policies aimed at limiting migrants' work.

Ukrainian migrants' conditions were difficult in the first two weeks after the pandemic reached Poland, after the decision of the Polish authorities to close the borders on 15 March and Ukraine rapidly doing the same. The decisions of both governments were not coordinated and the relevant information campaigns lacked clarity, prompting a wave of panic. Some migrants were afraid that they would not be able to return to their home country, while others were not sure what whether they would be able to further extend national visas enabling them to work in Poland³⁷. In particular, Ukrainian migrants were concerned following the announcement by Ukrainian president Vladimir Zelensky that the country's borders would be closed on 27 March and that even Ukrainian citizens would not be able to cross them³⁸. This led to huge queues building up at border crossing points which were still open and were unprepared for the volumes of traffic. In practice the decision has however meant that Ukrainian citizens are not stopped from crossing the borders, but that Ukraine will stop organizing returns.

37 Klauziński S. (2020). „What will happen to Ukrainian nationals in Poland? Prime Minister an abolition is required for those whose legal stay ends”. *Oko.Press*, 18 March. [Co z Ukraińcami w Polsce? Premierze potrzebna abolicja dla tych którym się kończy się legalny pobyt]. In Polish. Babakova O. (2020). „Will Migrants Stay in Poland. We will find out on April, 10.” *Krytyka Polityczna*. March 24 [Czy migranci zostaną w Polsce? Dowiemy się 10 kwietnia]. In Polish.

38 Interfax Ukraine (2020). „Zelensky: Ukraine to completely shut border on March 27.” <https://www.kyivpost.com/ukraine-politics/zelensky-ukraine-to-completely-shut-borders-on-march-27.html>

Initially the Polish Border Guard issued a statement saying that foreigners would not be punished for staying on beyond the legal period of stay and that all decisions would be made on an individual basis at the border when a migrant leaves Poland. This information was supplemented on 18 March by a decision by the Office for Foreigners that non-nationals who cannot leave Poland may ask for an extension of stay by sending the relevant request via the mail³⁹. An automatic extension of the foreigners' term of stay was then rolled out as part of the "anti-crisis shield" bill prepared by the government and approved by parliament.

According to data from the Ukrainian border authorities, as of April 7th up to 145,000 Ukrainian migrants had returned from Poland since the outbreak of the pandemic. Only three border crossing points currently operate on the Polish-Ukrainian border and all travellers who return to Ukraine are subjected to a compulsory 14-day quarantine. It is likely that these barriers have effectively limited the possibilities for Ukrainian migrants to leave Poland

and that many are therefore stranded in Poland, where, however, they now have legal grounds to stay. On the other hand, some Ukrainian labour migrants would like to return to Poland, a viable option if media reports about Polish consulates re-opening in Ukraine are confirmed and labour visas effectively issued. Thus far, no flights from Ukraine to Poland have been chartered, but this may be a question of time.

Poland has joined other EU member states in their quest for so-called essential migrant workers in the context of the restrictions on economic activity due to the pandemic, including those needed to guarantee harvesting and food production. However, EU countries often fail to guarantee the same safety conditions to migrants and nationals. Migrant workers' salaries have also not increased, despite the fact that the labourers take on additional risks by travelling via charter flights during the pandemic and staying in the overcrowded accommodation and working places provided by employers.

39 <https://udsc.gov.pl/skladanie-wnioskow-za-posrednictwem-poczty/>

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