Chapter 8

Flanking Rights in the Context of Circular Migration: Entry and Residence Conditions for Family Members and Recognition of Qualifications for Migrant Workers in Bulgaria and Poland

This chapter focuses on entry conditions for family members and recognition of qualifications that are considered secondary policy areas, yet could still influence migrants' willingness to engage in circular migration. The chapter commences with an analysis of the transposition of the Family Reunification Directive into Polish and Bulgarian law. It then moves on to explore its implementation dynamics through the eyes of the migrant workers who participated in the focus groups as part of this study. As a second step, the chapter examines national instruments in the field of academic and professional qualifications. It takes physicians and nurses as case studies in order to present the challenges associated with practicing regulated professions in the context of circular migration. The chapter concludes with an assessment of existing instruments against the study's benchmarks in these two policy areas, namely the conditions for family reunification and for migrant workers to have their diplomas and professional qualifications recognised.

8.1 Entry and Residence Conditions for Family Members

This section aims to assess the conditions under which circular migrants, including seasonal workers and other migrants with temporary permits, can reunite with family members under the Family Reunification Directive¹ transposed into the national legal frameworks of Bulgaria and Poland. As emphasised earlier, this benchmark² serves as

¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2003] OJ L 251.

² Benchmark developed on the basis of ILO Guidelines on Special Protective Measures for Migrant Workers in Time-bound Activities (Doc. MEIM/1997/D.4) adopted by the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, ILO, Geneva, Annex 1, Para. 6.1. For the rest of the benchmarks, see Annex V. For more details, see Vankova (2016), p. 347.

a litmus of whether the EU is establishing a rights-based approach to circular migration or merely reviving the guest-worker model, which does not allow for family reunification.³ In order to assess the legal frameworks developed at the national level, this study also takes into account two additional policy measures that can facilitate family reunion: waiting periods, which should not exceed 12 months, and housing conditions, which should not be as restrictive as to prevent family reunification.

8.1.1 Entry and Residence Conditions for Family Members According to the Family Reunification Directive

Article 159 of the Polish Act on Foreigners⁴ provides for family reunification by allowing entitled family members to obtain a temporary residence permit.⁵ Family reunification is only possible with a foreigner (sponsor) who is resident in Poland on the basis of specific permits or visas such as: a permanent or an EU long-term residence permit; a temporary residence permit with a duration of at least 2 years, with the last one valid for a period of not less than 1 year immediately before filing the family reunification application; a national visa or a temporary residence permit for conducting scientific research or development work (in line with Article 151 (1) of the AF) or a temporary permit after completion of scientific research or development work enabling such foreigners to look for a job (in line with Article 186 (1) 7 of the AF); and, a Blue Card or an ICT permit.⁶ This means that foreigners, entering on the basis of visa, such as for work within the *Oświadczenie* procedure or on the basis of *Karta Polaka*,⁷ are not eligible for family reunification. In addition, there is generally a waiting period of 2 years before the sponsor becomes eligible to apply for family reunification in Poland.

Furthermore, the sponsor needs to have health insurance within the meaning of the Act of 27 August 2004 on Health Care Services Financed from the Public Funds⁸ or a document certifying that the costs of treatment in Poland will be covered by an insurer, as well as a source of steady and regular income sufficient to cover

³Vankova (2018), p. 170.

⁴Ustawa o cudzoziemcach z dnia 12 grudnia 2013 (*Dziennik Ustaw z 2018r., poz. 2094*, consolidated text).

⁵The definition of a family member covers the spouse, whereby the marriage needs to be recognised under Polish law, and minor children of the foreigner and their spouse, including an adopted child and a dependent child of whom the foreigner has actual parental custody and a minor child of the spouse, including an adopted child, dependent on him/her, of whom he/she has actual parental custody. Article 159 (3) AF.

⁶Article 159 (1) 1 AF.

⁷Unless they have obtained permanent residence permit.

⁸Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych (*Dziennik Ustaw z 2019, poz. 1373*, consolidated text).

subsistence costs for both sponsor and family members.⁹ Finally, the family members need to have a guaranteed place of accommodation in Poland, which is certified by, *inter alia*, a housing rental agreement or statement from a hotel.¹⁰

The regional governor (*wojewoda*) must take a decision on granting a temporary residence permit within 1 month upon receipt of the documents – although this deadline can be extended in certain cases.¹¹ The application fees, which are payable when submitting the documents, are 340 złoty (80 EUR) plus 50 złoty (11 EUR) for the residence card.¹²

A temporary residence permit for family members of a foreigner residing in Poland can be granted either while the family members are still outside the country or if already in Poland.¹³ After a positive decision from the regional governor where the sponsor is resident, if the family member granted the permit is outside Poland, they can use it to apply for visa before a Polish consul. Upon arrival in Poland, the family member needs to apply for the card and register his or her fingerprints. The permit is issued for the period of validity of the sponsor's temporary permit or for 3 years in the event that the sponsor has been granted permanent or EU long-term residence in Poland.

By way of comparison, the Bulgarian Act on Foreigners in the Republic of Bulgaria (AFRB)¹⁴ stipulates that family members¹⁵ can be granted a continuous residence permit in cases where: they have obtained a visa in accordance with Article 15 (1) following the approval of an application for family reunification; and, where they are joining a foreigner who holds a continuous permit with an authorised stay of at least 1 year or permanent residence permit, as well as the documents certifying family ties and the right to support are recognised or admitted for execution under Bulgarian legislation (Article 24 (1) 13 of the AFRB). Unlike Polish law, the Bulgarian legal framework provides more favourable conditions than Article 3 of the Directive by not requiring a criterion of reasonable prospects of obtaining the right of permanent residence.¹⁶

⁹Article 159 (1) 2 AF. For the determination of the income requirement, Article 114 (2) applies.

¹⁰Article 159 (1) 3 AF. Jacek Białas et al. (2015).

¹¹See Article 109 AF.

¹²Migrant.info.pl (2019a).

¹³Article 168 AF.

¹⁴Закон за чужденците в Република България (SG No. 153/23 December 1998, last amendment SG No. 58/23 July 2019).

¹⁵The definition of a family member in Bulgarian law covers a spouse, children of the foreigner and their spouse, including any adopted children who are unmarried minors and where one of the spouses has parental custody, and the children are dependent on him/her (Article 2 (3) of the AFRB). The children of a foreigner or their spouse, who have reached the age of 18 years and who are not married are also considered to be family members, in cases where significant medical reasons mean that they require personal care or where they are otherwise unable to provide for themselves (Article 2 (4) of the AFRB).

¹⁶European Commission (2019), p. 2.

In order to be granted this residence permit, family members need to have met the requirements contained in Article 24 (2) of the Bulgarian Act on Foreigners, such as having accommodation, compulsory health and social insurance, and sufficient means of subsistence for the period of residence without resorting to the social assistance system.¹⁷ Sponsors are required to submit evidence that these conditions are covered in line with Article 12 (1) of the Implementing Regulation of the AFRB.¹⁸ Family members of researchers (Article 246 (6) of the AFRB), Blue Card holders (Article 33к (3) of the AFRB), and ICTs (Article 33p (1) of the AFRB) are also eligible to apply for a continuous residence permit under Article 24 (1) 13 of the AFRB for the same residence period as the sponsor, provided they meet the requirements of Article 24 (2) discussed above.

The Implementing Regulation of the AFRB provides that family reunification for the ICT permit holders is not linked to a residency requirement of a specified minimum period (Article 12 (9)). Unlike Poland, Bulgaria does not set any waiting period requirement before a sponsor is eligible to apply for family reunification. However, Bulgaria is one of the two Member States that have not used the derogation to Article 5 (3) of the Directive allowing family members to submit their application while already in its territory.¹⁹

A positive decision on the family reunification application is grounds for issuing a visa for family members in line with Article 15 (1) of the AFRB under a simplified procedure (Article 12 (8) of the Implementing Regulation of the AFRB).²⁰ Upon entry into the territory of the Republic of Bulgaria, and no later than 14 days before the expiration of their visa, family members need to submit a copy of their passport, a copy of their visa as per Article 15 (1) of the AFRB, and the stamp showing their last entry into the country, as well as evidence that they possess the compulsory medical insurance valid for the entire territory of Bulgaria, before the Migration Directorate or one of the Ministry of Interior's Regional Directorates (Article 13 (1) of the Implementing Regulation of the AFRB). Within 3 days after the applicants have provided these documents, and absent of grounds for revoking the right of residence for the purpose of family reunification, family members are informed of their obligation to pay a fee (generally 150 BGN (75 EUR))²¹ in accordance with Tariff No. 4 on the

¹⁷Not less than the minimum monthly salary, the minimum stipend, or the minimum pension according to the legislation of the Republic of Bulgaria.

¹⁸Правилник за прилагане на Закона за трудовата миграция и трудовата мобилност (SG No. 79/ 7 October 2016, last amendment SG No. 27/ 2 April 2019).

¹⁹For more details, see European Commission (2019), p. 10.

²⁰The family members are exempted from the requirement to present proof of secure accommodation, transport, and sufficient means of subsistence when applying for a visa on family reunification grounds (Article 8 (4) AFRB in conjunction with Article 20 (1) 2 of the Ordinance on the terms and procedures for issuing visas and determining the visa regime).

²¹Article 106 (1) of Tariff No 4 concerning family reunification under Articles 24 (1) 13 and 33p (1) of the AFRB. The fee is the same for family reunification under Article 33к (3) AFRB (Article 106 (5) of Tariff No 4). Family members of researchers are required to pay 100 BGN or 50 EUR in line with Article 106 (3) of Tariff No 4.

fees collected in the system of the Ministry of Interior under the State Fees Act²² (Article 13 (3) of the Implementing Regulation of the AFRB). These fees were significantly reduced in 2018 as a result of an infringement proceeding against Bulgaria.²³

In addition, the family members need to submit another application in person together with the documents proving that the requirements in terms of accommodation, income, and insurance have been met, including copies of their passports and receipt for payment of the state fee (see Article 14 (1) of the Implementing Regulation of the AFRB). The Ministry of Interior takes a final decision within 14 days after the submission of this application, which can be extended in case of ‘legal and factual complexity and necessity’ (Article 14 (2) of the Implementing Regulation of the AFRB).

Finally, it should be stressed that the agreements Bulgaria has concluded under the auspices of the Mobility Partnerships with Armenia (Article 3.2)²⁴ and Moldova (Article 3.2)²⁵ also provide for family reunification in line with the legislation discussed above.

8.1.2 Implementation Dynamics

One of the Ukrainian circular migrants who participated in the focus groups planned to settle in Poland only if he was able to reunite with his family.²⁶ He gained knowledge of the process because his friends had already gone through the application procedure. He believed that the process worked and did not expect to face any problems. The Ukrainian participant described that the family had to apply for a visa in Ukraine,²⁷ then move to Poland and apply for a residence permit based on the fact that he worked in Poland, ‘then, the office issues a residence permit and the family starts living here – the kid goes to school as it is required by the law’.

²² Tariff No. 4 on the fees collected in the system of the Ministry of Interior under the State Fees Act (adopted with Council of Ministers Decree No. 53/1998, last amendment SG No. 75/ 11 September 2018).

²³ See Chap. 6, Sect. 6.3.3.1 for more details.

²⁴ Agreement between the Republic of Bulgaria and the Republic of Armenia on labour migration management, approved by Council of Ministers Decision No. 176 of 22 March 2018, entered into force 9 October 2018/ Спогодба между Република България и Република Армения за регулиране на трудовата миграция, утвърдена с Решение No. 176 от 22 март 2018 г. на Министерския съвет. В сила от 9 октомври 2018 г.

²⁵ Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Moldova on labour migration management, approved by Council of Ministers Decision No 492 of 13 July 2018, entered into force on 11 September 2018/ Спогодба между правителството на Република България и правителството на Република Молдова за регулиране на трудовата миграция, утвърдена с Решение No. 492 на Министерския съвет от 13 юли 2018 г. В сила от 11 септември 2018 г.

²⁶ Focus group with Ukrainian migrants, Poland, November 2016, Annex IV.

²⁷ The focus groups were conducted before the introduction of a visa-free regime for Ukraine.

Yet, an interviewed NGO representative described a different picture in reality.²⁸ The interviewee did not see a lot of Ukrainians reuniting with their families in Poland because it was not easy to obtain a family reunification permit: 'It requires money, it requires very high salary which usually they don't have. You need to prove, according to the Directive, that you can support your family, so your salary should be quite substantial and most of them, even middle level sectors, cannot do so'. The NGO representative noted that the EU directives were generally transposed into Polish law by applying the minimum possible standard: 'It's a translation, it's not really a transposition'.²⁹ He explained that, therefore, most of the directives were translated and inserted into Polish legislation without any assessment as to whether they created workable solutions and fitted the legal act in question.

Several of the interviewed NGO representatives stressed that because of the demanding requirements for family reunification, such as the condition of legal residence for 2 years, many of their clients were finding other ways to reunite with their families. Some reunited on the basis of a visa and afterwards stayed in Poland through a special temporary permit.³⁰ Usually one of the spouses had a work visa and the family member would apply for a visa based on grounds that were not specified in the Act on Foreigners in line with Article 60, Para 1 (25) thereof.³¹ When the family member's visa was about to expire, the NGO advised their clients to apply for a 'temporary permit based on other circumstances' stipulated in Articles 186–187 of the Act on Foreigners. This is in fact a residence permit, which does not give its holder the right to work in Poland. However, after 2 years, the sponsor could apply for a family reunification permit.

In order to obtain the temporary permit based on other circumstances, the family members had to convince the inspector who analysed their case at the regional governor's office by explaining their situation, e.g., that the husband was working and the wife was taking care of the child and that they had enough income to support themselves: 'Then they analyse it. If they think it is enough, you can stay. It doesn't mean it always happens'; 'sometimes they give a residence permit of parents who are here. If they are old and need their children to care for them, they can stay. That is an argument'.³²

By contrast, the interviewed Blue Card holders in Poland did not encounter any problems with the application process, which lasted on average between 2 and 4 months.³³ They used both possibilities for family reunification: while family members were already present in Poland and when their families were still in their

²⁸ Interview #12 with civil society actor, Poland, November 2016, Annex II.

²⁹ Interview #12 with civil society actor, Poland, November 2016, Annex II.

³⁰ Interview #13 with expert, Poland, November 2016, Annex II; Interview #5 with civil society actor, Poland, November 2016, Annex II; Interview #6 with civil society actor, Poland, November 2016, Annex II.

³¹ Interview #13 with expert, Poland, November 2016, Annex II.

³² Interview #13 with expert, Poland, November 2016, Annex II.

³³ Focus groups with Blue Card holders: mixed group of Russian speakers, Russians and Ukrainians, Poland, December 2016, Annex IV.

country of origin. Some brought their family members to Poland on tourist visas and submitted the family reunification application after receiving the Blue Card permit.³⁴ The main problem was not related to the application for the Blue Card itself but rather to the visa application. One respondent said that his spouse had to wait roughly two-and-a-half months for an interview at the Polish consulate in Ukraine.³⁵ According to him, this delay was caused by bribery practices as other applicants were able to buy places in the queue. Another concern of the interviewed Blue Card holders was finding work for their spouses; one Ukrainian shared that his wife was a nurse and that it would be difficult for her to find a job in Poland.³⁶

In similar vein, the Ukrainian and Russian participants in the focus groups in Bulgaria, as well as the interviewed experts, shared that the biggest obstacles in relation to family reunification were the requirements laid down in Bulgarian migration law for migrants to exit the country in order to change the grounds of residence so as to switch from one visa to another.³⁷ Since the law did not allow family members to enter at the same time as the sponsors, most of them were utilising visa type C as an entry mechanism in order to avoid the waiting period inherent in the family reunification procedure. As a result, they had to exit the country after a 3-month stay in order to be able to then apply for a visa type D, which would enable them to re-enter and apply for a continuous residence permit.³⁸ This requirement significantly disrupts migrants' family life³⁹ as, in practice, it means that the parents had to continue paying for their children's kindergarten or school in order to keep their place in addition to all other financial resources they needed to spend as a result of this 'forced circularity'.⁴⁰ One parent shared that their child had a 'really bad year in school, just because they had to leave Bulgaria' as a result of this policy.⁴¹

The Blue Card permit holders raised another issue in relation to family reunification. What they found problematic was the fact that the spouses of Blue Card permit holders did not have direct access to the Bulgarian labour market; they had to find a

³⁴ Focus groups with Blue Card holders: mixed group of Russian speakers, Poland, December 2016, Annex IV.

³⁵ Focus groups with Blue Card holders: mixed group of Russian speakers, Poland, December 2016, Annex IV.

³⁶ See Sect. 8.2. for more details.

³⁷ Focus group with Blue Card holders from Russia, Bulgaria, September 2016, Annex IV; Focus group with Blue Card holders from Ukraine, Bulgaria, September 2016, Annex IV; Focus groups with Russian migrants, Sofia, September 2016, Annex IV; Interview #9 with lawyer, Bulgaria, July 2016; Interview #8 with lawyer, Bulgaria, July 2016, Annex III; Interview #12 with representative of international organisation, Bulgaria, June, 2016, Annex III.

³⁸ Interview #9 with lawyer, Bulgaria, July 2016, Annex III.

³⁹ Focus group with Blue Card holders from Russia, Bulgaria, September 2016, Annex IV; Focus group with Blue Card holders from Ukraine, Bulgaria, September 2016, Annex IV; Focus groups with Russian migrants, Sofia, September 2016, Annex IV.

⁴⁰ Focus groups with Ukrainian migrants, Sofia, September 2016, Annex IV.

⁴¹ Focus group with Blue Card holders from Russia, Bulgaria, September 2016, Annex IV.

job with an employer willing to apply for work authorisation on their behalf.⁴² According to one of the interviewed business representatives, this was seen as an anti-settlement measure.⁴³

This, however, is commensurate with the provisions of the Blue Card Directive. Article 15 (6) of the Directive derogates from Article 14 (2) of the Family Reunion Directive, which has the effect of waiving the requirement of a possible waiting period for family members to access the labour market. Nevertheless, it does not waive the requirement that both sponsor and family member need to have the same level of access to employment.⁴⁴ During the first 2 years of employment, the sponsor is restricted to employment that meets the criteria of the initial admission, which means that there is not equal access to the labour market on the same conditions as nationals. Therefore, spouses of Blue Card holders are required to obtain a decision for access to the labour market from the Executive Director of the Employment Agency (Article 19 of the ALMLM). Since 2018, however, access to the Bulgarian labour market for Blue Card holders and their spouses has been further liberalised as the labour market test requirement has been waived.

One of the interviewed lawyers also stressed that the family reunification policy was extremely restrictive and 'short-sighted'.⁴⁵ She said that the more favourable visa procedure conditions that must apply to family members were not implemented in practice and that all applicants, even third-country nationals who were spouses of EU or Bulgarian nationals, had to wait for up to 40 days instead of 15. In her opinion, the main reason for this was the 'complete ignorance' of the consuls, who were appointed on nepotism-based practices and did not have even basic knowledge of the law.

The interviewee commented that she did not understand why family members of a sponsor – who had already undergone the procedure for obtaining a work permit and had thus met all required conditions related to income, insurance, and accommodation – had to face the same bureaucratic hurdle again for their family members. She found it particularly striking that sponsors could not use the same evidence for the family reunification procedure that they had already submitted for the visa application and therefore they had to request all these documents again. She said that based on her experience, the administration was allowing family reunification 'without problems' in cases where sponsors had continuous residence. One of the interviewed officials shared that family reunification was mainly refused on national security and public order grounds, as well as in cases of registered partnerships and same sex marriages, which are not recognised as valid under Bulgarian law.⁴⁶

The family reunification procedure took an average of 2–3 months to be completed after the application was submitted by the sponsor in the territory of

⁴² Focus group with Blue Card holders from Ukraine, Bulgaria, September 2016; Interview #20 with IT business representatives, Bulgaria, December 2016, Annex III.

⁴³ Interview #20 with IT business representatives, Bulgaria, December 2016, Annex III.

⁴⁴ Peers (2012), p. 61.

⁴⁵ Interview #9 with lawyer, Bulgaria, July 2016, Annex III.

⁴⁶ Interview #2 with official, Bulgaria, July 2016, Annex III.

Bulgaria.⁴⁷ Only one Blue Card holder shared that it took 4 months before his family members were able to join him.⁴⁸

8.2 Recognition of Academic and Professional Qualifications

Another policy area that can influence the willingness of circular migrants to engage in this type of migration is the recognition of qualifications. As already mentioned, the ‘triple win’ proponents of circular migration claim that it enables skill transfer back to the countries of origin, which in turn supports development. Nonetheless, some evaluations of circular migration policies stress that there are cases when migrants return home and their new skills cannot be recognised or are not needed.⁴⁹ Therefore, this policy area is considered important for the purposes of this research.

The study’s benchmarks in this policy area focus on the availability of provisions for recognition of occupational qualifications acquired outside the EU, including certificates and diplomas, and other means for recognising professional qualifications (see Annex V). Instruments for implementing these benchmarks include international cooperation tools and active information policies in relation to the recognition of academic qualifications that would make circular migration beneficial for the migrant worker and support both skill and knowledge transfer.⁵⁰

8.2.1 *Recognition of Academic and Professional Qualifications – Instruments at the National Level*

8.2.1.1 Academic Qualifications

The adoption of the Act of 20 July 2018 on Higher Education and Science (AHES)⁵¹ was part of Poland’s reform in the field of education, research, and university governance.⁵² The Act, however, did not introduce any substantial changes concerning the recognition of academic qualifications.

Recognition of academic qualifications is regulated by Chapter VIII ‘Foreigners in the system of higher education and science’ of the AHES. The Act provides for

⁴⁷ Focus groups with Ukrainian migrants, Sofia, September 2016, Annex IV. Focus group with Blue Card holders from Russia, Bulgaria, September 2016, Annex IV; Focus group with Blue Card holders from Ukraine, Bulgaria, September 2016, Annex IV.

⁴⁸ Focus group with Blue Card holders from Russia, Bulgaria, September 2016, Annex IV.

⁴⁹ K. Hooper and M. Sumption (2016), pp. 20–21.

⁵⁰ Vankova (2016), p. 348.

⁵¹ Ustawa z dnia 20 lipca 2018 r. – Prawo o szkolnictwie wyższym i nauce (Dziennik Ustaw z 2018 poz. 1668).

⁵² Eurydice (2018).

two different recognition regimes, that is, based on either national law or international agreements. Pursuant to Article 326 (1) thereof, there is automatic recognition of diplomas issued by an authorised higher education institution operating within the higher education system of a Member State of the EU, the OECD, or the European Free Trade Association (EFTA) – party to the Agreement on the European Economic Area.⁵³ This means that if a degree gives access to further studies or the right to start doctoral studies in the country where it was awarded, it also gives the same rights in Poland.⁵⁴ In case of doubt with regards to the appropriateness of the diploma or status of an issuing higher education institution, upon request of the institution concerned, the Director of the Polish Agency for Academic Exchange (NAWA) provides information about the diploma issued by a foreign university, the level of study, and the status of the university in question.⁵⁵

In addition, pursuant to Article 327 (1) of the AHES, international agreements determining equivalence provide another option for recognition of a higher education diploma or a professional title obtained outside Poland as equivalent to the relevant Polish diploma or professional title. Concerning the Eastern Partnership countries, as of 2005 Poland had concluded bilateral agreements on the recognition of education for academic purposes with Ukraine⁵⁶ and Belarus.⁵⁷

Finally, if a country is not covered by an international agreement, pursuant to Article 328 (4), a higher education diploma or a professional title obtained outside Poland can be recognised through the ‘nostrification’ procedure on the basis of Article 328 (3) of the AHES. The procedure is further detailed in a Regulation of the Minister of Science and Higher Education of 28 September 2018 on the recognition of academic degrees and degrees in the field of art awarded abroad.⁵⁸ Foreigners seeking recognition of higher education diplomas obtained outside Poland, together

⁵³ According to Article 326 (1) AHES provides for the equivalence at the different levels: 1) a 3-year degree programme or a first-cycle degree programme lasting at least 3 years, confirms in the Republic of Poland that its holder has a higher education at the level of the first-cycle degree programme; 2) a second-cycle degree programme confirms in the Republic of Poland that its holder has a higher education at the level of the second-cycle degree programme; 3) at least 4-year-cycle of studies confirms in the Republic of Poland that its holder has a higher education at the level of the second-cycle degree programme if it is recognized as equivalent to a diploma of completion of the second-cycle degree programme in the country in which it has been issued.

⁵⁴ For details see, Article 326 (2) AHES.

⁵⁵ Article 326 (4) AHES.

⁵⁶ Signed in April 2005, in force since 20 June 2006.

⁵⁷ Signed in April 2005, in force since 12 December 2005. For full list of the bilateral agreements, see Ministry of Science and Higher Education, ‘Bilateral cooperation’: <https://www.gov.pl/web/nauka/wspolpraca-dwustronna> Accessed 25 September 2019.

⁵⁸ Rozporządzenia Ministra Nauki i Szkolnictwa Wyższego z dnia 28 września 2018 r. w sprawie nostryfikacji stopni naukowych i stopni w zakresie sztuki nadanych za granicą (Dziennik Ustaw z 2018, poz. 1877).

with a title conferred as a result of this education, are required to submit an application initiating the nostrification procedure before a nostrification entity.⁵⁹

During the procedure, the nostrification entity performs a formal assessment of the application⁶⁰ and can request the applicant to submit a translation into Polish of some of the documents attached to the application.⁶¹ For instance, the institution may ask for a translation of the Master's thesis or Ph.D. dissertation into Polish, which could make the whole recognition process expensive.⁶² The nostrification entity recognizes or refuses to recognize a degree as equivalent to the relevant Polish degree within 90 days from the date of submission of the application that meets the formal requirements.⁶³

The applicant must pay a fee for the nostrification, regardless of the outcome. The maximum amount of the fee is specified in relation to a full professor's salary as not exceeding 50% of this rate.⁶⁴ In justified cases, the applicant may be exempted from payment. The nostrification entity itself sets the procedure for exemption from payment.

On the day of issue of a certificate, its holder acquires the right to use the Polish degree and exercise the rights arising from it. The applicant may appeal against the decisions taken by the nostrification entity pursuant to Article 127 of the Code of Administrative Procedure of 14 June 1960.⁶⁵

In the case of secondary education (e.g., concerning the profession of technician, which is referred to as a secondary-level profession) this process is not implemented by universities but by local authorities through an administrative decision.⁶⁶

⁵⁹ See Article 328 (4) AHES. Nostrification proceedings are conducted by an entity with the scientific category A+ or A in the discipline to which the application relates. According to the information of the Ministry of Science and Higher Education of 29 May 2019, until the university is parameterized (scheduled for 2021), nostrification proceedings should be conducted by units with the right to confer a post-doctoral degree of a particular field of science or a post-doctoral degree of a specific field of art in the field of scientific or artistic discipline to which the academic degree relates. <https://konstytucjadlanauki.gov.pl/cudzoziemcy> Accessed 3 September 2019.

⁶⁰ Para 4 (2) of the Regulation.

⁶¹ Para 5 of the Regulation.

⁶² [Migrantinfo.pl](https://migrantinfo.pl) (2019b).

⁶³ Para 7 (1) of the Regulation.

⁶⁴ Article 328 (6) and (7) AHES. The minimal remuneration of a professor is 6410 PLN according to the Regulation of the Minister of Science and Higher Education of 25 September 2018 regarding the amount of the minimum basic salary for a professor at a public university /Rozporządzenia Ministra Nauki i Szkolnictwa Wyższego z dnia 25 września 2018 r. w sprawie wysokości minimalnego miesięcznego wynagrodzenia zasadniczego dla profesora w uczelni publicznej (Dziennik Ustaw z 2018 r. poz. 1838).

⁶⁵ Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego Dziennik Ustaw z 2018 r., poz. 2096, consolidated text).

⁶⁶ Interview #13 with official, Poland, November 2016. For more details, see also: <https://www.gov.pl/web/edukacja/recognition-of-foreign-school-certificates-and-diplomas-in-poland>

By way of comparison, the recognition of academic qualifications in Bulgaria is regulated by the Act on Higher Education,⁶⁷ which stipulates that the Council of Ministers is to approve the state requirements for the recognition of higher education providing professional qualifications that have been acquired in foreign higher education institutions and the recognition of a degree acquired abroad corresponding to the educational and scientific degree 'doctor' (Article 9 (3) 9). In compliance with the Convention on Recognition of Qualifications Concerning Higher Education in the European Region (the Lisbon Recognition Convention),⁶⁸ the Council of Ministers adopted a Regulation on the State Requirements for Recognition of Higher Education Acquired or Periods of Education Completed in Foreign Higher Education Institutions.⁶⁹ It provides the general regulatory framework for recognising academic qualifications and the specific administrative procedures in relation thereto which are subject to the internal regulations of the relevant authorities.

According to the Regulation, recognition of higher education degrees acquired at a foreign higher education institution is carried out in order to provide access to further education in the higher education system, to upgrade training, and to doctoral studies (Article 6 (1)); to facilitate access to the labour market, to doctoral studies at a scientific research institution as well as for other purposes where the applicant has a legal interest (Article 6 (2)). The recognition procedure is organised by the higher education institution in the cases under Article 6 (1) of the Regulation, and by the Minister of Education and Science through the National Centre for Information and Documentation (NCID) in the cases under Article 6 (2) of the Regulation in line with the respective regulations of the higher education institutions and the Rules of Procedure of the NCID (Article 7 of the Regulation).

The Regulation stipulates the documents that applicants need to submit (Article 8 of the Regulation) and the main elements of the recognition procedure that the higher education institutions are required to follow (Article 10 of the Regulation). The procedure for recognition of higher education (Master's or Bachelor's degree)⁷⁰ that was acquired abroad must provide verification of the status of the foreign higher education institution and the diploma's authenticity; an assessment of the conformity of the data in the submitted documents with the State requirements for acquiring higher education in Bulgaria; and, finally, a decision for recognition of a higher education degree with a professional qualification, when it is indicated in the

⁶⁷ Закон за висшето образование (SG No. 112/ 27 December 1995, last amendment SG No. 98/ 27 November 2018). The Act on Pre-school and School Education/Закон за предучилищното и училищното образование (SG No. 79/13 October 2015), also contains provisions on academic recognition in the pre-school and school education. However, these matters fall outside the scope of this study.

⁶⁸ Ratified by the adoption of the Act on the Ratification of the Convention on Recognition of Qualifications Concerning Higher Education in the European Region (SG No. 51/28 March 2000).

⁶⁹ Наредба за държавните изисквания за признаване на придобито висше образование и завършени периоди на обучение в чуждестранни висши училища (adopted by a Council of Ministers Decree No. 168 of 14 August 2000, SG No. 69/22 August 2000, last amendment SG No. 28/ 5 April 2019). In Bologna Process and European Higher Education Area, (2003), p. 4.

⁷⁰ For a doctoral degree, see Articles 13-13a of the Regulation.

diploma, a refusal to recognise it, or termination of the procedure (Article 10 of the Regulation). Amongst other things, the following indicators are taken into account: the student admissions procedure; duration of study; total tuition hours of studied subjects or acquired credits or both; and, learning outcomes of the training as a collection of the acquired knowledge, skills and competences obtained during the period of study (Article 11 (2) of the Regulation).

The recognition of higher education acquired at a foreign higher education institution is refused when there are significant differences between the submitted data and the Bulgarian state requirements for the acquisition of higher education, as well as in other cases detailed in Article 12 (1) of the Regulation. The refusal may include a recommendation stipulating the possible measures that an applicant may take in order to obtain recognition at a later stage, including sitting additional exams (Article 12 of the Regulation).

In cases where the recognition procedure is carried out to facilitate access to the labour market, to doctoral studies at a scientific research institution, or for other purposes where the applicant has a legal interest (Article 6 (2) of the Regulation), the applicant is issued a certificate by the Executive Director of NCID. In the cases under Article 6 (1) of the Regulation, the recognition of higher education is valid only for continuing education at the higher education institution that carries out the recognition and does not provide rights that can be used in relations with third countries (Article 14 (3) of the Regulation).

8.2.1.2 Professional Qualifications

Professional qualifications obtained in third countries are recognised in Poland in accordance with national legislation. How the professional qualification is recognised generally depends on whether the profession is regulated. In the case of unregulated professions, the employer takes a decision on the recognition of the foreign qualification. The latter may require confirmation of the equivalence of migrant's educational qualification with the relevant Polish award or written information on recognition of his or her degree issued by NAWA.⁷¹ One of the officials interviewed in late 2016 said that some of the regional governors also sought confirmation of the equivalence within the Blue Card application procedure.⁷²

Foreigners wishing to practice a regulated profession need to have their foreign certificate or higher education diploma recognised in the first instance. Only then can they apply for the professional rights in accordance with the regulations pertaining to the exercise of a given profession in Poland.⁷³ For example, the conditions for migrants to obtain the right to practice the profession of a physician are: possession of a medical diploma awarded by a state outside the EU, provided that it has been

⁷¹ NAWA (2019).

⁷² Interview #13 with official, Poland, November 2016.

⁷³ NAWA (2019).

recognised through a nostrification procedure at a medical school in Poland as being equivalent to a Polish medical diploma;⁷⁴ the completion of an obligatory post-graduate internship⁷⁵ lasting 13 months (*staż podyplomowy*); a positive result in the Final Medical Exam (*Lekarski Egzamin Końcowy*);⁷⁶ appropriate physical and mental health (full legal capacity); an impeccable ethical attitude;⁷⁷ and, a sufficient command of the Polish language, which is certified by an examination organised by the Polish Chamber of Physicians and Dentists in Warsaw.⁷⁸ In addition, foreigners also need to present a document certifying their right to reside in Poland.⁷⁹

Foreigners who have their diplomas recognised, and who have passed the Polish language examination and satisfied the health and ethical requirements, can apply to the Regional Chamber of Physicians and Dentists to obtain 'a right to practice the profession awarded in order to complete the postgraduate internship' or apply to the Minister of Health for recognition of previous professional experience or an internship completed abroad that is equivalent to the Polish internship. Provided that the ethics and health conditions are still satisfied, after the completion or the recognition of the internship and a positive result in the Final Medical Exam, the foreigner can apply to the Regional Chamber of Physicians and Dentists for the right to practice the profession and can then subsequently become a member of the Regional Chamber.

The Bulgarian procedures for recognising professional qualifications likewise differ depending on the type of the profession, i.e., regulated or non-regulated. Foreigners with diplomas for non-regulated professions do not generally need to have their diplomas recognised.⁸⁰ A recognition procedure may be conducted in cases where a potential employer or a Bulgarian authority expressly requires a recognition certificate that is issued by the NCID in line with Article 14 (1) of the Regulation on the State Requirements for Recognition of Higher Education Acquired or Periods of Education Completed in Foreign Higher Education Institutions. The recognition procedure is organised by the Minister of Education and Science through the NCID in accordance with its Rules of Procedure (Article 7

⁷⁴ In line with Article 7 (1) 1c of the Act of 5 December 1996 on Doctors' and Dentists' Professions/ Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty (Dziennik Ustaw, z 2019 r. poz. 537, consolidated text).

⁷⁵ Or obtained recognition of a post-graduate internship completed outside the territory of the Republic of Poland as equivalent a post-graduate internship in the Republic of Poland. See Article 5 (3) of the Act of 5 December 1996 on Doctors' and Dentists' Professions.

⁷⁶ Or an exam completing a doctor's post-graduate internship. See Article 5 (4) of the Act of 5 December 1996 on Doctors' and Dentists' Professions.

⁷⁷ See Article 7 (1) 2 and 3 of the Act of 5 December 1996 on Doctors' and Dentists' Professions.

⁷⁸ In line with the Regulation of the Minister of Health from 26 September 2012 on the post-graduate internship of a doctor and dentist/Rozporządzenie Ministra Zdrowia z dnia 26 września 2012 r. w sprawie stażu podyplomowego lekarza i lekarza dentysty (Dziennik Ustaw z 2014 r., poz. 474; z 2017 r., poz. 2194)

⁷⁹ Article 7 (1) 8 of the Act of 5 December 1996 on Doctors' and Dentists' Professions.

⁸⁰ Interview #3 with representative of NCID, Bulgaria, July 2016, Annex III.

of the Regulation) and follows the provisions of the Regulation that was described in the academic qualifications section above.

With regards to regulated professions, the Act on the Recognition of Professional Qualifications (AR PQ)⁸¹ states that specific categories of third-country nationals who have acquired professional qualifications in a Member State will enjoy the same rights as EU nationals in having their professional qualifications recognised. These categories are family members of a Bulgarian citizen or citizen of another Member State when that citizen has moved to Bulgaria, EU long-term residence or permanent residence holders or highly-qualified workers who hold a visa under Article 15 (1) of the AFRB (Article 8 (1) of the AR PQ). In cases where Bulgaria has concluded an international agreement with a third country that includes provisions for the mutual recognition of professional qualification in a particular profession, such as in the Agreement between Israel and Bulgaria,⁸² the recognition of third-country nationals' qualifications that fall within the scope of the agreement is conducted under the agreed procedure (Article 8 (2) of AR PQ).

In cases where third-country nationals do not fall within the scope of either of these two categories, the recognition of professional qualifications in a regulated profession that was acquired outside of the EU can take place under mutual recognition conditions that are established on a case-by-case basis. This may apply where the qualification complies with the Bulgarian regulatory requirements for the acquisition of the same professional qualification (Article 8 (3) of the AR PQ). In such cases, the responsible professional bodies of the regulated profession concerned have full discretion to assess the conformity of the acquired professional qualification with the current rules in Bulgaria and, if necessary, to impose compensatory measures if there are any significant differences.⁸³

As with Poland, the procedure for recognising qualifications in order to obtain the right to practice the profession of a physician is taken as an example. In accordance with Article 186 (3) of the Act on Health,⁸⁴ foreigners who wish to practice this profession need to have a command of the Bulgarian language and professional terminology in the Bulgarian language, which is certified on the basis of an exam regulated in an Ordinance issued by the Minister of Education, Youth and Science and the Minister of Health.⁸⁵ Applicants also need to pass the state exams, which are

⁸¹ Закон за признаване на професионални квалификации (SG No. 13/8 February 2008, last amendment SG No. 17 /26 February 2019).

⁸² According to the procedure for the implementation of the Agreement, at the request of the Office for Population and Immigration at the Ministry of the Interior of the State of Israel, some or all of the pre-selected workers included in a database by the Bulgarian Employment Agency may be required to take professional exams or sit interviews or both. <https://www.az.government.bg/pages/posrednistvo-po-spodobata-mezhdu-pravitelstvoto-na-republika-bulgaria-i-pravitelstvoto-na-darzhavata-izrael-za-posrednistvo-i-vremenna-zastost-na-grazhdanite-na-dvete-darzhavi/> Accessed 2 June 2019.

⁸³ Interview #3 with representative of NCID, Bulgaria, July 2016, Annex III.

⁸⁴ Закон за здравето (SG No. 70/ 10 August 2004, last amendment SG No. 58/23 July 2019).

⁸⁵ Наредба No. 15 от 13.12.2005 г. за установяване на владенето на български език и професионалната терминология на български език от чужденците за упражняване на

determined in the Ordinance on the unified state requirements for the exercise of a regulated profession in the field of 'Medicine' (Article 186 (3) 3a in conjunction with Article 177 of the Act on Health).⁸⁶

In order to be admitted to take the examination under Article 186 (3) 3a of the Act on Health, third-country nationals need to submit an application to the Minister of Health, containing amongst other things: copies of their diplomas with an officially notarised translation; an academic transcript; a certificate of command of the Bulgarian language; a medical certificate; and, documents certifying the lack of a criminal record and any disciplinary or administrative punishment that is related to the exercise of the profession.⁸⁷ The procedure for admission to an examination is organised and implemented by the Health Ministry's Directorate 'Medical Activities'.⁸⁸ The applications are examined by an Expert Commission that is designated by an order of the Minister of Health⁸⁹ under Article 79 of the Act on the Recognition of Professional Qualifications. The Commission issues a reasoned proposal to admit the applicant to the examination when the following conditions are met: the submitted documents certify a professional qualification that was acquired by the applicant in a regulated medical profession or specialty in Bulgaria; the specialty acquired by the applicant is relevant or can be assimilated to a specialty from the Bulgarian nomenclature of specialties in the healthcare system⁹⁰; and the applicant has not received any administrative, judicial, or disciplinary penalties in relation to the exercise of the medical profession (Article 7 (2) of Regulation No. 4 of 27 May 2011).

медицинска професия в Република България/Ordinance No. 15 of 13 December 2005 on establishing the knowledge of Bulgarian language and professional terminology in Bulgarian by foreigners for practicing a medical profession in the Republic of Bulgaria (SG No. 104 /27 December 2005, last amendment SG No.96/ 20 November 2018).

⁸⁶ Currently covering five exams. For the exercise of a medical specialty, applicants are required to cover certain study programmes and successfully pass practical and theoretical exams before the State Examination Commission, which are determined by an order of the Minister of Health (Article 186 (3) 3b in conjunction with Article 180 (3) of the Act on Health).

⁸⁷ The procedure is regulated in Ordinance No. 4 of 27 May 2011 on the conditions and procedure for admission and examination of third-country nationals in line with Article 186 (3) 3 of the Act on Health, who have acquired a professional qualification in the medical profession and/or a specialty in the field of healthcare in a third country/Наредба No. 4 от 27 май 2011 г. за условията и реда за допускане и явяване на изпит по чл. 186, ал. 3, т. 3 от Закона за здравето на граждани на трети държави, придобили професионална квалификация по медицинска професия и/или специалност в областта на здравеопазването в трета държава (issued by the Minister of Health, SG No. 43 of 7 June 2011, last amendment SG No. 64/ 3 August 2018).

⁸⁸ In accordance to Article 33, Para 18 of the Rules of Procedure of the Ministry of Health/ Устройствен правилник на Министерството на здравеопазването (adopted by Council of Ministers Decree No. 55/ 28 March 2019, SG No. 26 of 29 March 2019).

⁸⁹ In accordance with Article 6 (1) of Regulation No. 4 of 27 May 2011 on the conditions and procedure for admission and examination of Article 186 (3) 3 of the Act on Health, third-country nationals who have acquired a professional qualification in a medical profession and/or a specialty in the field of healthcare in a third country.

⁹⁰ Defined by the Regulation under Article 181 (1) of the Act on Health.

The examination under Article 186 (3) 3a of the Act on Health is organised and carried out by the higher education institutions twice a year (Article 10 (1) of Regulation No. 4 of 27 May 2011). After the applicants have successfully passed the Bulgarian language exam and the state exams, in order to be allowed to practice as a physician, they also need to register with the National Register of the Bulgarian Medical Association. Along with the documents certifying that they have successfully passed the exams, they also need to present a certificate of good standing, a residence permit, and other such documents that are stipulated in Article 32 of the Act on the Professional Organisations of Doctors and Doctors of Dental Medicine.⁹¹

8.2.2 *Implementation Dynamics*

None of the participants in the focus groups in Poland were working in regulated professions. One of them had a professional qualification to work in such a profession (i.e. as a construction engineer) but she could not find a job in either Ukraine or Poland and was no longer interested in pursuing that career.⁹² Apart from one participant who mentioned that recognition of her Ukrainian diploma took a very long time, none of the other interviewees reported problems in this regard.⁹³

The interviews with experts involved in the process of academic and professional recognition, however, revealed the cumbersome procedures that migrants face if they wanted to work in a regulated profession. One of the main challenges was the equivalence of degrees. For example, an interviewed official stressed that the education for becoming a physician required 6 years of study and if a third-country national just had a Bachelor's degree, it would not be possible to have the qualification recognised as being equivalent to the Polish medical degree.⁹⁴ Such foreigners could be admitted to a Polish university, take additional exams, and obtain a medical degree in Poland. This did not pose a problem for recent graduates. Still, according to the interviewee's experience, migrant doctors who had exercised this profession for a longer period could find it challenging to go back to university. In addition, there were no possibilities for doctors to practice in Poland while they were still in the recognition process.

⁹¹ Закон за съсловните организации на лекарите и на лекарите по дентална медицина (SG No. 83/21 July 1998, last amendment SG No. 102/11 December 2018).

⁹² Focus group with Ukrainian migrants, Poland, November 2016, Annex IV.

⁹³ Focus group with Ukrainian migrants, Poland, November 2016, Annex IV.

⁹⁴ Interview #19 with official, Poland, November 2016, Annex II.

The interviewees shared that nurses⁹⁵ coming from the Eastern Partnership countries generally faced problems with the recognition of their academic degrees.⁹⁶ Those coming from Ukraine very often had graduated from a secondary-education school that was later upgraded to tertiary education.⁹⁷ Nevertheless, in order to practice the profession of a nurse in Poland, one had to have at least a Bachelor's level degree, which over 90% of the Ukrainians did not possess at the time of the interviews. This meant that their degree could not be recognised through a nostrification procedure and that they had to enrol in a Bachelor's program and complete their studies in either Ukraine or Poland. According to the interviewed representative of the professional body, a better option for the nurses was to complete their studies in Poland because this would exempt them from the requirement of undertaking an additional internship and the Polish language exam.⁹⁸ The professional body would recommend the latter option to the applicants, even though it was more costly, because it gave nurses a degree that would be recognised throughout the EU. When there was a possibility of having some of the subjects recognised by the university in Poland, this would have the effect of shortening the study period.⁹⁹

Another challenge related to recognition of the academic qualifications via nostrification was the time it took to complete the process.¹⁰⁰ The universities sometimes did not have the capacity to finalise the procedure within the 3-month period due to the large number of foreigners applying for recognition. After the Regulation on nostrification was adopted, according to the interviewee, the universities saw many applications from Ukraine, Belarus, and other post-Soviet countries and they gained knowledge about the programmes, their differences, and knew what to expect. Thus, processing was faster for new graduates. Yet, for older qualifications, the nostrification procedure was beset with difficulties. If there were substantial

⁹⁵The conditions for practicing the profession of a nurse are very similar to the criteria applied for physicians and are stipulated in the Act of 15 July 2011 on Nurse and Midwife Professions/*Ustawa z dnia 15 lipca 2011 r. o zawodach pielęgniarzy i położnej* (*Dziennik Ustaw* z 2019 r., poz. 576, consolidated text). The limited right to exercise the profession is granted on the basis of a command of the Polish language; a nursing certificated recognised as being equivalent to those issued in Poland; and, unlimited legal capacity and satisfactory health conditions that are conducive to the exercise of the nursing profession. After obtaining the limited right to exercise the profession, the nurse is directed by a District Chamber of Nurses to participate in an obligatory 6-month adaptation internship in a healthcare facility. Upon completion of this internship, assuming that the nurse has a residence permit in Poland, displays impeccable ethical conduct, has not been deprived of the right to practice in their country of origin, and provided that all other requirements are still satisfied, the foreigner can be granted a right to practice the profession by the District Chamber of Nurses.

⁹⁶Interview #19 with official, Poland, November 2016, Annex II; Interview #21 with professional body representative, Poland, November 2016, Annex II; Interview #11 with trade union representative, Poland, November 2016, Annex II; Interview #5 with civil society actor, Poland, November 2016, Annex II.

⁹⁷Interview #21 with professional body representative, Poland, November 2016, Annex II.

⁹⁸Interview #21 with professional body representative, Poland, November 2016, Annex II.

⁹⁹Interview #21 with professional body representative, Poland, November 2016, Annex II.

¹⁰⁰Interview #19 with official, Poland, November 2016, Annex II.

differences regarding the learning outcomes and the direction of studies, the applicants had to make up for the differences by sitting an examination. The university decided what the differences were, which exams migrants had to take, and the time frame for sitting exams on a case-by-case basis.

The requirement for command of the Polish language in the academic qualification process was also a challenge identified by the interviewed official.¹⁰¹ Another issue was associated with the fees charged for the process. When the first large wave of foreigners applied for recognition of their medical qualifications after Poland's accession to the EU, 'universities were charging for everything'.¹⁰² The Regulation capped the fees that could be collected for the nostrification procedure. However, applicants had to pay for the additional courses and the language exam, which cost 400 zloty (94 EUR) for doctors. In addition, the obligatory internships were not always remunerated, placing an additional financial burden on the applicants.

These cumbersome procedures raised a logical question about the interplay of the entry and residence requirements for migrants and the process of recognition of qualifications for regulated professions. One of the interviewed lawyers stressed that these categories of professionals could not come to Poland and immediately start working.¹⁰³ Therefore, what they did instead was enter on the basis of a visa, such as for work within the *Oświadczenie* procedure or on the basis of *Karta Polaka*, for example, as a domestic worker or they used a permit for different work or one that was not work-related (i.e. for family reasons). Once they had arrived in Poland, they commenced the recognition procedure, looked for a job, or started working in most of the cases in positions that were at a level below their qualifications.¹⁰⁴ They also started learning the language because this was another barrier to practicing a regulated profession. The interviewed representative of the physicians' professional body confirmed that, to his knowledge, the Blue Card procedure was not used in the doctors' profession because doctors could not be hired without having obtained the right to practice, which could take between 6 months and 3 years depending on the nature of the individual case.¹⁰⁵

Asked whether they had encountered any migrants who had managed to have their degrees recognised and were circulating, one of the interviewees said that nurses were investing so much time, effort, and money to obtain the right to practice that their main goal was to stay in Poland.¹⁰⁶ Another interviewee said that he did not think that the circular migration concept was feasible with regards to doctors.¹⁰⁷

¹⁰¹ Interview #19 with official, Poland, November 2016, Annex II.

¹⁰² Interview #19 with official, Poland, November 2016, Annex II.

¹⁰³ Interview #13 with expert, Poland, November 2016, Annex II.

¹⁰⁴ Interview #13 with expert, Poland, November 2016, Annex II; Interview #21 with professional body representative, Poland, November 2016, Annex II; Interview #6 with lawyers, Poland, November 2016, Annex II; Interview #5 with a civil society actor, Poland, November 2016, Annex II.

¹⁰⁵ Interview #20 with professional body representative, Poland, December 2016, Annex II.

¹⁰⁶ Interview #21 with professional body representative, Poland, November 2016, Annex II.

¹⁰⁷ Interview #20 with professional body representative, Poland, December 2016, Annex II.

A civil society representative stressed that the few nurses whom she knew had gone through the whole recognition process successfully and obtained a Polish diploma, then ultimately moved to Germany to earn a higher salary.¹⁰⁸ She stressed that even nurses who were interested in circulating back and forth between Poland and Ukraine would face additional bureaucratic hurdles because the newly-obtained Polish diploma needed to be recognised anew in Ukraine due to the lack of a special agreement to facilitate this process.

The interviewed official said that existing policies for academic recognition were not working fast enough and that these were expected to change with the new act on higher education (adopted in 2018). On the other hand, the professional bodies did not plan any specific measures to foster the procedure for the recognition of professional qualifications of foreigners. An interviewee from one of the professional bodies emphasised that they still had doubts as to whether the requirements in certain Member States were met and they did not have any knowledge or control over the medical degree qualifications in countries outside the EU.¹⁰⁹ His experience showed, for example, that the specialist training of doctors coming from the Eastern Partnership countries was at a lower level compared to what was required in Poland thus, in practice, requiring additional exams for obtaining recognition of the relevant diploma.

The interview with a representative of the ENIC/NARIC centre in Bulgaria revealed that the centre did not have information on problems with academic recognition within the EU.¹¹⁰ However, he mentioned that there were sometimes problems in relation to the recognition of diplomas between Bulgaria and third countries. The interviewee said that the ‘best known’ example concerned Turkey. According to him, a few years ago Turkey had ceased recognising academic qualifications for a period of time and did not give access to its higher education system. This issue was, however, resolved.

One of the Ukrainian participants in the focus groups had qualified as a physician and shared her experience with the recognition procedures.¹¹¹ The respondent moved to Bulgaria in 2015 as a family member of a migrant worker. She stressed that she was determined to start working as a doctor so she did everything to learn the Bulgarian language in order to pass the required language exam. The Ukrainian focus group participant was surprised to find out that she had to pass seven exams in medicine (five state exams and two speciality exams) and a language exam. She added:

‘I feel insecure because these exams will take more than one year, maybe two years. We cannot work – neither as middle medical staff nor as doctors – and anyone looking for a job in a specialty cannot find anything, absolutely nothing (...) Many good specialists just go

¹⁰⁸ Interview #5 with a civil society actor, Poland, November 2016, Annex II.

¹⁰⁹ Interview #20 with professional body representative, Poland, December 2016, Annex II.

¹¹⁰ Interview #3 with representative of NCID, Bulgaria, July 2016, Annex III.

¹¹¹ Focus groups with Ukrainian migrants, Bulgaria, September 2016, Annex IV.

back to Ukraine. And all my friends who wanted to work as doctors just want to go back to Ukraine because it is an unreal situation.’¹¹²

She remarked, however, that although the language exam was free and very accessible, she had to pay 250 BGN (125 EUR) per state exam. Furthermore, she pointed out that she had graduated 27 years ago and the requirement to pass all these state exams was very burdensome and unreasonable because she had chosen to specialise in neurology, and if she wanted to have her professional qualifications recognised, then she would have to pass exams in areas such as gynaecology, obstetrics, surgery, and anaesthesiology.¹¹³ Meanwhile, she had to work as a consultant for an insurance company in order to make a living. Her only ‘access’ to the medical profession was to work as a doctor at private medical centres at Black Sea resorts during the summer months, where Russian-speaking doctors were in demand: ‘It’s also unofficial, we work as students like paramedics and sometimes they say that we are translators or secretaries (...) It’s just very humiliating for our specialists’.¹¹⁴

In her opinion, the current legislation complicated the situation for migrants who wanted to have their diplomas recognised and be able to work as doctors. This meant that they were looking for other opportunities to work in Western Europe, which essentially turned Bulgaria into a ‘transit point’. She stressed that she could not go back to Ukraine because her home was too close to the Donbas region.¹¹⁵

One of the interviewed lawyers reiterated the problems migrants faced in having their qualifications recognised in regulated professions.¹¹⁶ She stressed that unless one falls under EU legislation, there was ‘a huge gap’ in the field of recognition of qualifications. According to the interviewee, the equivalency exams were the only instrument that the administration used to recognise a profession and for the migrants, this meant spending additional financial resources and wasting time on a qualification that they had already acquired just so that they could practice in Bulgaria. For third-country nationals who obtained their education outside the EU, there was no other option for recognition such as, for example, to go through some brief testing and verification of the diploma that would give them the right to work in that profession in Bulgaria.

Against this background, the interview with a representative of the Bulgarian Medical Association revealed that Bulgaria was experiencing an increased emigration rate of graduates with medical qualifications; up to 90% were leaving Bulgaria upon graduation from Bulgarian medical universities.¹¹⁷ In response to the question of whether the recruitment of foreign doctors was a measure that the Association could pursue, the representative answered that, currently, there was no working

¹¹²Focus groups with Ukrainian migrants, Bulgaria, September 2016, Annex IV.

¹¹³Focus groups with Ukrainian migrants, Bulgaria, September 2016, Annex IV.

¹¹⁴Focus groups with Ukrainian migrants, Bulgaria, September 2016, Annex IV.

¹¹⁵Focus groups with Ukrainian migrants, Bulgaria, September 2016, Annex IV.

¹¹⁶Interview #9 with lawyer, Bulgaria, July 2016, Annex III.

¹¹⁷Interview #21 with representative of the Bulgarian Medical Association, Bulgaria, January 2017, Annex III.

mechanism for the recognition of qualifications and the Association was not aware of the quality of the medical diplomas granted in third countries.

Most of the foreign doctors working in Bulgaria had either obtained their medical education in the country or had studied in one of the former Soviet republics. Therefore, the Bulgarian Medical Association representative concluded that it would make sense in the future to recruit doctors from the former Soviet republics because they were willing to come to Bulgaria since they had lower living standards in their countries of origin. The interviewee gave an example of good practice that was present in a former bilateral agreement between Bulgaria and Russia/USSR for the exchange of specialists in the medical field.¹¹⁸

8.3 Conclusions

Bulgaria and Poland present two different approaches when it comes to eligibility for family reunification in the context of circular migration. Bulgaria allows migrant workers holding continuous residence permits with an authorised stay of at least 1 year to reunite with family members; Poland constrains sponsors with temporary permits by imposing a 2-year delay. Polish legislation explicitly excludes migrant workers resident on the basis of a visa who therefore need to transfer to a single permit in order to be able to apply for family reunification. In the case of Bulgaria, this exclusion covers all migrants whose permit is for a period of validity of less than 1 year, such as seasonal workers. In both countries, Blue Card holders, researchers, and ICTs are the only categories of migrant workers able to benefit from some type of family reunification facilitation.

The analysis of the collected empirical data showed that the income and fee requirements for families to reunite in Poland were made difficult to satisfy for migrants employed in low-skilled sectors and middle-skilled jobs. Even though Polish legislation imposes a basic legal income requirement, the sum is required per family member; additionally migrants face relatively high application fees. No problems were raised in this regard in Bulgaria, even though before the amendments to Tariff No. 4, the family reunification fees were regarded as being disproportionately burdensome.

The restrictive and cumbersome procedures, however, do not prevent migrants from finding ways to reunite with their families. Migrants in both countries used circumvention practices in order to overcome the demanding 2-year waiting period requirement in Poland or the practice of ‘forced circulation’ that is inherent in Bulgarian migration law, which requires family migrants to exit the country in order to change their visas. Therefore, the legislation in both countries is not considered to be in line with the study’s benchmarks in this field. The analysed transposition of

¹¹⁸ Interview #21 with representative of the Bulgarian Medical Association, Bulgaria, January 2017, Annex III.

the Family Reunification Directive and the existing national legal frameworks demonstrate that it is impossible to be both a short-term circular migrant in a low-skilled occupation and at the same time be entitled to family reunification.

The analysis of the national legislation and the gathered empirical data in Bulgaria and Poland suggest that the main issues in the field of the recognition of qualifications concerns entry to regulated professions. Both countries have established long and demanding procedures for recognising qualifications in regulated professions, consisting of several stages: demonstrating proficiency in the native language and the specific terminology; undergoing a diploma recognition procedure, which might require undertaking additional studies at a university and completing an internship; passing final state exams; and, registration with a respective professional body. Neither Poland nor Bulgaria offer any facilitation with regards to access to medical professions, which was taken as an example in both countries. This leads to several challenges for migrant workers.

Firstly, migrants who seek to practice the regulated profession of a doctor or a nurse cannot enter the country on the basis of a standard work permit because they cannot have their diplomas recognised and gain the right to practice while they are still in their countries of origin. Therefore, in the case of Poland, migrants often have recourse to the *Oświadczenie* procedure, while in Bulgaria family reunification permits or other circumvention practices are used in order to enter the country and secure residence. Furthermore, the length and complexity of the current procedure generally prevents migrants who wish to work in the medical profession from applying for a Blue Card. Once they have entered the country, and while they are preparing for the stages of the recognition procedure, they are likely to work in low-skilled occupations.

Secondly, the established procedures in both Bulgaria and Poland are time-consuming and have the effect of putting migrants' lives on hold for a couple of years, depending on the differences between the national system and the third country. As some of the respondents pointed out, these procedures are even more challenging for migrant doctors who obtained their degrees many years ago and were required to enrol in a university as part of the recognition procedure. Another challenge stems from the relatively high fees that are part of the recognition process in both countries and the Polish requirement to undertake an unpaid internship, which engenders additional financial burdens.

All these challenges result in two different options for migrant workers, neither of which involve circular migration. After investing so much time, effort, and resources in the recognition procedures and learning the language, migrants are prone to settle in the country of destination upon gaining the right to practice rather than engaging in circular migration. Furthermore, as one of the interviewees stressed, going back to their country of origin might require further recognition procedures there. An alternative option in this regard involves migrating to another Member State that has higher standards of living where the additional effort would be financially rewarded. In the case of Bulgaria, the empirical data analysis suggests that migrants choose the latter option even before commencing the recognition procedure. In the case of Poland, some medical specialists were migrating to other

countries after being enrolled in an additional degree as part of the recognition procedure, which ultimately provided them with a diploma that would be recognised throughout the EU.

The research findings lead to the conclusion that circular migration and the recognition of qualifications in regulated professions are two incompatible processes within the current legislative and policy frameworks. The main reason is the lack of special measures that would allow the recognition process to be facilitated. These could be based on the conclusion of bilateral agreements between Member States and third countries using EU law provisions and mechanisms that are applied to the recognition of qualifications in regulated professions for EU citizens. However, in order to do that, countries like Bulgaria and Poland first need to articulate the need for such foreign specialists, at both the political level and the level of the professional bodies involved in the recognition process.

References

- Bologna Process and European Higher Education Area (2003) National Report regarding the Bologna Process Implementation. Bulgaria. http://www.ehea.info/media.ehea.info/file/Bulgaria/34/0/National_Report_Bulgaria_2003_576340.pdf Accessed 1 March 2020.
- Bialas, J., et al. (2015) How to Make It in Poland – Information Brochure for Foreigners. Residence Legalisation and Employment, Warsaw.
- European Commission (2019) Report on the implementation of Directive 2003/86/EC on the right to family reunification, COM (2019) 162 final, 29 March 2019, Brussels.
- Eurydice (2018) How does the new Poland law impact the Higher Education Institution's landscape? 13 September 2018. https://eacea.ec.europa.eu/national-policies/eurydice/content/how-does-new-poland-law-impact-higher-education-institutions-landscape_en Accessed 19 December 2019.
- Hooper, K. and M. Sumption (2016) *Reaching a 'Fair' Deal on Talent. Emigration, Circulation and Human Capital in Countries of Origin*. Migration Policy Institute, Washington DC.
- Migrant.info.pl (2019a) Temporary residence permit for family members of a foreigner residing in Poland. <http://www.migrant.info.pl/temporary-residence-permit-for-family-members-of-a-foreigner-residing-in-poland.html> Accessed 1 September 2019.
- Migrant.info.pl (2019b) Nostrification of diplomas. http://www.migrant.info.pl/Nostrification_of_diplomas.html Accessed 3 September 2019.
- NAWA (2019) Practicing Regulated Professions. <https://nawa.gov.pl/en/recognition/recognition-for-professional-purposes/employment-in-higher-education-institutions> Accessed 2 June 2019.
- Peers, S. (2012) Family Reunion. In S. Peers, E. Guild, D. A. Arcarazo, K. Groenendijk and V. Moreno-Lax (eds), *EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition. Volume 2: EU Immigration Law*. Leiden: Martinus Nijhoff Publishers, pp. 247–286.
- Vankova, Z. (2016) EU Circular Migration Policies: Dead or Alive? Developing a Rights-based Benchmark Framework for Policy Assessment. *Journal of Immigration, Asylum and Nationality Law* 30 (4): 332–352.
- Vankova, Z. (2018) The EU's Approach to Circular Migration in the Context of the Eastern Partnership Neighbourhood. In S. Carrera, L. den Hertog, D. Kostakopoulou, and M. Panizzon (eds), *EU external migration policies in an era of global mobilities: Intersecting policy universes*. Immigration and Asylum Law and Policy in Europe; Vol. 44. Leiden: Brill/Nijhoff, pp. 155–176.

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