

LABOUR MOBILITY REGULATION IN SOUTH-EAST EUROPE

Legislative assessment report

Albania



IOM Development Fund
DEVELOPING CAPACITIES IN MIGRATION MANAGEMENT



International Organization for Migration (IOM)

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Report prepared by: Emirjon Kaçaj under overall guidance of the Labour Migration and Human Development Unit, IOM Regional Office in Vienna. This country report is a part of the broader IOM study “Labour Mobility as a Factor of Development in South-Eastern Europe” conducted within a project funded by the IOM Development Fund and implemented by IOM in partnership with the governments in the region in 2014.

The research team produced seven separate reports for Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, UNSC resolution 1244-administered Kosovoⁱ, Serbia and one regional overview. The seven reports looked at the policies and regulative mechanisms which govern labour mobility, in terms of their approaches in facilitating movements of specific categories of migrant workers, consistency with evolving regional objectives and compliance with the EU *acquis* and standards. The regional overview presented an overall framework for regulating labour mobility from the perspective of existing international and regional norms and their relevance to the South-Eastern European (SEE) region. The regional overview explored the degree of harmonization of existing regulative frameworks within the SEE region and their coherence with the increasing labour market integration and overall socioeconomic development at national and regional levels.

The IOM study was carried out in close coordination and partnership with the Regional Cooperation Council (RCC), whose labour mobility study conducted in 2014 complements IOM’s legal assessment by looking at labour mobility from the socioeconomic perspective. It is the expectation that both IOM and RCC reports will help the governments in the region in operationalizing the South-East Europe 2020 Strategy adopted in 2013, which specifically foresees a common regional action on facilitating labour mobility as a tool towards stronger economic growth and closer integration with the EU. The initial consultations for such a common regional action took place in the SEE region in October 2014 within the framework of the RCC Working Group on Social Agenda, where representatives of various stakeholders expressed their views on possible topics and modalities of regional cooperation, including ministries of labour, education, interior, health, trade, chambers of commerce, business/employer association, trade unions, statistical offices, public employment services. The international partners and the governments in the region are committed to continuing the consultations to ensure that the proposed regional initiative addresses the needs in the region in the most effective, collaborative and realistic manner.

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ⁱ Hereinafter referred to as Kosovo/UNSCR 1244

List of abbreviations

EURES	European Employment Services
MCs	Migration Counters
MES	Ministry of Education and Sports
MFA	Ministry of Foreign Affairs
Moi	Ministry of Internal Affairs
MSWY	Ministry of Social Welfare and Youth
NES	National Employment Service
RRCs	Return and Readmission Agreements
TCN	Third-country nationals
TCs	Third Countries

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1.0. Introduction

From a country of emigrants, Albania has recently become a destination country as well for thousands of individuals. For this reason, Albania has developed several policy and legal instruments in the area of migration and in particular on labour migration over the past years. Although there is not one single comprehensive policy document in the area of migration management, the Reintegration Strategy for Returning Citizens and Action Plan 2010-2015 is one of the main policy documents being implemented in the area of migration.

During the preparation of this study, the National Strategy for Employment and Skills 2014-2020, another one of the main policy documents in the area of labour mobility, was in the process of finalization.

The aim of this regional study is to analyse and review the national policy and legislative context, and carry out a comparison with EU *acquis* in each country to assess the harmonization level and existing divergences in view of labour mobility. To this end this national report analyses the labour mobility laws and bylaws in Albania. Through past few years, several amendments have been carried out in the Albanian legislation in the field of migration, with a clear focus on harmonization with EU *acquis* still more improvement is needed in legislation and in particular in implementation.

The regulatory framework for foreign citizens residing and working in Albania has been only recently amended and it is still in its early phase of implementation.

2.0. Regulative framework and its alignment with the EU *acquis*

2.1. Overview of main policies governing labour mobility in the country

Currently there is no key policy document in the area of migration management in Albania. The National Strategy on Migration and relative Action Plan dates back to 2005-2010, and remained not fully implemented due to lack of funds and good coordination among institutions.¹ National authorities have been considering the adoption of a new strategy on migration management.ⁱⁱ Even though it was planned that the new strategy would cover the period 2013-2018, there is still no indication, when the new strategy will be adopted.

One of the main policy documents in the area of migration management, adopted in 2010 by the Albanian Government is the Reintegration Strategy for Returning Citizens 2010-2015 and its Action Plan. Even though it is a policy document, the Reintegration Strategy actually regulates concretely the position of Albanian returnees (voluntary returnees or forced returnees through readmission agreements). The reintegration strategy, adopted with Decision of the Council of Ministers (no. 461,

ⁱⁱ The order of the Prime Minister of Albania "On the establishment of the working group for the development of the national strategy on migration, 2013-2018" was adopted on 20 December 2011. The recent adopted National Action Plan on European Integration 2014-2020, states that "Albania should approve the strategy and action plan on migration" (page 564).

dated 09.06.2010) provides a system of referral for returnees to reintegration services in Albania. Reintegration services are envisaged in the national legislation namely “Law on Emigration of Albanian Citizens for Employment Purposes” (law no. 9668, dated 18.12.2006), amended by law no. 10389, dated 03.03.2011; and “law on employment promotion” no. 7995, dated 20.09.1995 as amended by law no. 10137, dated 11.05.2009).

Albania has not developed a separate labour migration and mobility policy document, however labour migration and mobility are reflected in other strategic instruments of interest in the management of migration. One of the main policy documents in the area of labour mobility has been developed and its action plan is in process of finalization namely the National Strategy for Employment and Skills 2014-2020.

The National Strategy for Employment and Skills recognises the importance of having a policy in place to manage migration flows from the country, and of establishing an effective labour mobility management system, highlighting that such a system would facilitate labour mobility to and from Albania.² Foreign investments are also dealt with by the strategy, stressing that there is still room for improvement, especially with regard to the efficiency of the legal framework and its enforcement, attracting FDI, increasing access of national enterprises to foreign markets and diversifying the export base³. In this direction, several steps have been taken to facilitate the regime of residence of foreign investors in the country. For instance, according to article 65 of Law on Foreigners, foreigners who have made an investment amounting over 1 million Euro in Albania shall be issued a permanent residence permit.

The main legal document related to the employment of foreigners in Albania is the “Law on Foreigners” (No. 108/2013, dated 28.03.2013). This law regulates the regime of entry, stay, employment and departure of foreigners into and from Albania. The law stipulates the functions and competencies of the State authorities and other public or private entities, Albanian or foreigners, carrying out activities in Albania which are related to foreigners who seek to enter, stay and exit from Albania.

2.2. Key institutions involved in labour mobility regulation and their main functions

With a new government in place in Albania since 2014, many competences of line ministries have changed. Nowadays the Ministry of Social Welfare and Youth (MSWY)ⁱⁱⁱ and its affiliated structure, the National Employment Service (NES)^{iv} are the main institutions responsible for labour market management, including labour mobility and vocational training in the country. Other fields of activity of the MSWY include: social insurance; vulnerable individuals, families and communities; gender issues; children's rights; non-discrimination; persons with disabilities; minority rights. The Directorate of Employment and Migration Policies within the MSWY is the principal department for the formulation of policies in the area of labour mobility. NES is responsible for job mediation, vocational training and

ⁱⁱⁱ The area of activity and state responsibility of the Ministry of Social Welfare and Youth is regulated by the Decision of the Council of Ministers no. 845, dated 27.09.2013 “On the determining of the field of state liability for the Ministry of Social Welfare and Youth”. The official website of the Ministry: <http://www.sociale.gov.al>. Until September 2013 the name of the Ministry was the Ministry of Labour, Social Affairs and Equal Opportunities. This name appears in all legal acts to which this report has made reference, and which were approved before September 2013.

^{iv} The area of activity of NES is regulated by the Decision of the Council of Ministers no. 42, dated 17.01.1998, “On the approval of the National Employment Service Statute” as amended by the DCM no. 195, dated 02.04.2014. The official website of NES: <http://www.puna.gov.al>.

related policies and legislation in the country. NES operates through its 12 regional and 24 local employment offices. Within these 36 regional/local employment offices Migration Counters (MCs)^v have been established. The main roles and responsibilities of these structures are to provide information, advice and referral services to three categories of migrants: Albanian citizens willing to migrate abroad (potential migrants); returning Albanian migrants; immigrants (foreigners). The e-portal including databases of job-seekers and employers registered in these 36 employment offices is a progress with a view to future participation in the EURES (European Employment Services) network. MCs provide information about work and study opportunities abroad; procedures for obtaining visa, work and residence permits and access to health care and education in the destination country. Moreover, information is available on migrants' rights, EU Long term resident status, reintegration services in Albania, Albanian consular services and readmission procedures. With regard to the employment of foreign citizens in Albania, paragraph 6 of article 4 of the Law on Foreigners envisages that the MSWY structures are responsible for handling the employment relations of foreign citizens in Albania and for issuing work permits to foreigners.

Other central government agencies with a key role in the area of labour mobility include Ministry of Foreign Affairs; Ministry of Internal Affairs and Ministry of Education and Sports.

- The Ministry of Internal Affairs (Moi) is one of the key institutions in the area of migration management related to entry, stay, transit and departure of foreigners in Albania. Implementation of readmission agreements and the fight against irregular migration and trafficking as well as border management are the key responsibilities of this Ministry.^{vi} The Moi, jointly with the MFA, is responsible state institution for the implementation of the decision of the Council of Ministers on the "Definition of Criteria, Procedures and the Documentation for Entry, Residence and Treatment of Foreigners in the Republic of Albania" (no. 513, dated 13.06.2013). As envisaged by the Decision of the Council of Ministers no. 513 and in line with paragraph 1 of article 4 of the Law on Foreigners, requests for residence permits should be submitted to the responsible regional authority for border and migration (the Regional Directorates of Border and Migration, which are entities part of the Department of Border and Migration within the Albanian State Police).
- The Ministry of Foreign Affairs (MFA) is the institution responsible for coordinating bilateral and/or multilateral negotiations between Albania and other countries.^{vii} Among other, negotiations include readmission agreements and emigration for employment purposes. According to paragraph 5 of article 4 of the Law on Foreigners, the authorities responsible for accepting requests and issuance of visas are the diplomatic representations, the consular offices abroad (entities under the MFA) as well as the local authorities responsible for border and migration at the Border Crossing points (for cases when visas may be issued at the border). Moreover, the Albanian consular service, in cooperation with the Ministry of Interior, is

^{vi} The area of activity and state responsibility of the Ministry of Interior is regulated by the Decision of the Council of Ministers no. 942, dated 09.10.2013 "On the determining of the field of state liability for the Ministry of Interior".

^{vii} The area of activity and state responsibility of the Ministry of Interior is regulated by the Decision of the Council of Ministers no. 941, dated 09.10.2013 "On the determining of the field of state liability for the Ministry of Foreign Affairs".

responsible for issuing travel documents and permits to Albanian citizens returned under readmission agreements, and for informing them on their rights and obligations.

- The Ministry of Education and Sports (MES) is the institution in charge of integration of foreigners and returning migrants in the area of education, science and sports. The Ministry has a key role in the process of recognition of diplomas obtained abroad.^{viii}
- The Judiciary has a key involvement in labour mobility for foreign migrant workers and in particular in the area of protection of the rights of individuals such as the possibility to appeal against the order of refusal to issue, renew or annulment of the residence permit as well as other rights envisaged by the legislation.

2.3. International and regional framework regulating labour mobility to and out of the country

Participation in international and regional regulative frameworks

Albania has ratified the following international conventions on migrant workers:

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified with law no. 9703, dated 2.4.2007;
- ILO C97 "Migration for Employment Convention (Revised)", 1949, ratified with law no. 9320, dated 25.11.2004;
- ILO C143 "Migrant Workers (Supplementary Provisions)", 1975, ratified with law no. 9564, dated 19.6.2006;
- ILO C88 "Employment Service", 1948, ratified with law no. 9991, dated 18.9.2008;
- ILO C122 "Employment Policy", 1964, ratified with law no. 9992, dated 18.9.2008.
- ILO C181 "Private Employment Agencies", 1997, ratified with law no. 8350, dated 20.5.1998
- European Convention on the Legal Status of Migrant Workers, ratified with law no. 9555, dated 8.6.2006
- European Social Charter (revised), ratified with law no. 8960, dated 24.10.2002
- Convention on the Participation of Foreigners in Public Life at Local Level, ratified with law no. 9364, dated 31.3.2005

Albania is part of the following regional initiatives: Migration, Asylum, Refugees Regional Initiative (Albania held the MARRI Presidency from April 2010 to April 2011); Regional Cooperation Council (Albania is also member of the RCC Board); South-East European Cooperation Process (Albania has the Presidency of SEECP from June 2014 to June 2015); Southeast European Law Enforcement Centre (SELEC); Southeast European Cooperation Initiative (SECI); Central European Free Trade Agreement (Albania chaired CEFTA during 2012); Central European Initiative (CEI); Adriatic Ionian initiative (Albania held the Chairmanship of the AII from June 2013 to May 2014); Prague Process; Budapest Process.

Bi-lateral Agreements

Albania has signed the following agreements in the area of labour mobility:

^{viii} The area of activity and state responsibility of the Ministry of Education and Sports is regulated by the Decision of the Council of Ministers no. 843, dated 27.09.2013 "On the determining of the field of state liability for the Ministry of Education and Sports".

- Agreement between Albania and Germany on “Employment of Workers for Raising their Professional and Linguistic Skills” signed on 11.12.1991,. To date, this agreement has not yet been implemented.
- Agreement between Albania and Greece on “Hiring Seasonal Workers”, signed on 17.05.1996. Even though the scheme of sending Albanian seasonal workers in Greece under this agreement involves all seasonal professions, it was implemented solely for agricultural workers.⁴
- Agreement between Albania and Italy “On hiring seasonal workers”, dated 04.02.1998. This agreement was renewed on 2 December 2008 including its protocol of implementation^{ix}. On 19 July 2011, a Memorandum of Understanding (MoU) between the Ministry of Labour and Social Affairs of the Republic of Italy and the Ministry of Labour, Social Affairs and Equal Opportunities of the Republic of Albania was signed on the implementation of the labour migration agreement. This MoU sets the modalities for implementing the labour agreement between the two countries.

These three bilateral agreements are still operational, yet their implementation is pursued rather on an *ad hoc* basis.⁵ The Ministry of Social Welfare and Youth is in the process of negotiating labour agreements with other European and non- European countries.

At the regional level, Albania and Kosovo/UNSCR 1244 are in the process of simplifying their employment-seeking process and establishing a common labour market by signing a memorandum of cooperation in the area of labour mobility. A first step in this direction was the decision of the Council of Ministers (no. 265, dated 07.05.2014) according to which, citizens of Kosovo/UNSCR 1244 and Serbia who are part of the Albanian minority are exempted from the obligation to request a work permit and work registration certificate.

^{ix} The agreement was approved by DCM no. 866, dated on 12.08.2009 “On the approval of the Labour Agreement between the Republic of Albania and the Republic of Italy”.

National Institutional Mechanisms for Labour Mobility and Migration Management, Albania

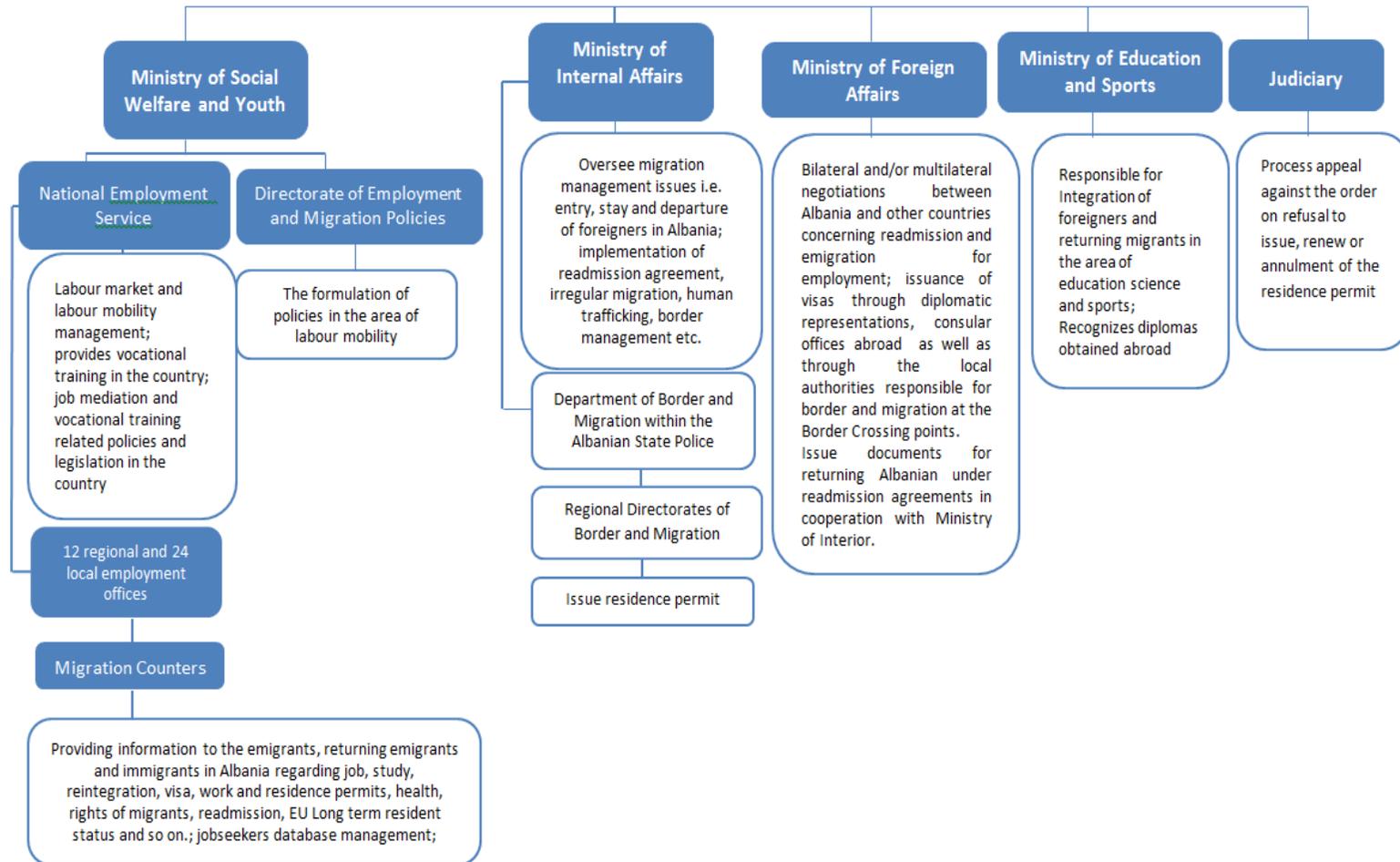


Figure 1. National Institutional Mechanisms for Labour Mobility and Migration Management, Albania

2.4. National framework regulating labour mobility to and out of the country

2.4.1. General access of foreigners to labour market

Legislation

The main law regulating the employment of foreigners in Albania is the law "On Foreigners" no. 108/2013, dated 28.03.2013 (hereinafter referred to as the Law on Foreigners). The law regulates the regime of entry, stay, employment and exit of foreigners into and from Albania (article 1 of the law).

With regard to the regime of entry into Albania, foreigners who intend to reside in Albania more than 90 days and up to 180 days and who need a visa, shall be issued a "D" visa ("D/AE" for economic activities; "D/AT" for commercial activities etc.). "D" visa is valid for one year, with a validity period of stay of 90 days, entitling the holder to apply for residence permit after entry into Albania (article 22 of the Law on Foreigners).

Citizens of the EU, citizens of Schengen countries and holders of Schengen visa, do not require a visa to enter into Albania (with the exception of Croatia, EU citizens may enter into Albania even with ID card).⁶ A free visa regime is also in place for citizens of SEE countries entering into Albania. In addition, bilateral agreements have been signed with Kosovo/UNSCR 1244, the former Yugoslav Republic of Macedonia and Montenegro to allow citizens of these countries to travel only with biometric ID cards, enabling this way the creation of the so called "Balkan Schengen Zone".

Favourable provisions have been envisaged for EU citizens and Schengen countries citizens, which are also exempted from the requirement of the residence permit and work permit. According to article 72 of the Law on Foreigners, EU citizens and Schengen countries citizens are entitled to employment as well as Albanian citizens, except where employment relates specifically to the holding of Albanian citizenship.⁷

All other foreigners, intending to enter, stay, take transit and leave Albania, except asylum seekers, must appear in person at the border crossing point and meet the following criteria: a) hold a valid travel document recognized by Albania with a validity period of at least 3 months before its expiry date; b) a valid entry visa if required or valid residence permit issued by the competent Albanian authorities, or issued by other countries recognized by Albania; c) not considered to be a threat to public order, national security and public health; d) not to have remarks in the national electronic register which prohibit the entry; e) not to be a debtor because of administrative measures imposed on him/her; f) present other documentation as specified in the Decision of the Council of Ministers no. 513, dated 13.06.2013 "Definition of Criteria, Procedures and the Documentation for Entry, Residence and Treatment of Foreigners in the Republic of Albania". The Decision of the Council of Ministers specifies that at the border crossing points, foreigners may be asked to provide the following documents: letter of invitation by a host in Albania; return ticket; confirmation of accommodation; work permit if the entry is for work purposes; sufficient financial means for the period of stay in Albania; original international certificate of vaccination when the person arrives from countries affected by an epidemic disease or illness.⁸

The Albanian competent authorities for issuing visas are the Albanian diplomatic representations and consular offices.⁹ However, in exceptional cases, the local authorities responsible for border and migration may issue a visa for a period of stay up to fifteen days, to the foreigner at the border crossing points, if he/she meets the general conditions for entry; proves impossibility to apply for a visa in advance by proving unforeseen reasons and emergency situation requiring him/her to travel to Albania; guarantees to return to the country of origin or country of transit. According to article 27 of the Law on Foreigners, the authority responsible for border and migration shall extend the period of stay indicated in the visa if the foreigner applies for its extension prior to the end of the validity of the visa, and he/she proves that because of *force majeure* or humanitarian grounds it is impossible to leave Albania before the expiry of the validity of visa.

The possession of the work permit, or business registration certificate is the main requirement for foreigners to be employed in Albania (article 71 of the Law on Foreigners). The application for a work permit can be presented by the legally-staying foreigner in Albania or by the employer. Once the work permit is granted the foreigner is obliged to stick to the reason for which the work permit was issued. He/she is obliged to notify the competent authorities on any changes to the terms on which the work permit was issued and require approval of the authority if the amendment relates to the name and address of the employer; validity of the employment contract covering the period for which the work permit is issued; activities for which the person employed is authorized (article 74 of the Law on Foreigners).

Labour market protection mechanisms and measures ensuring preferential treatment of national labour force

Article 82 of the Law on Foreigners states that the Ministry of Social Welfare and Youth in collaboration with the Ministry of Economic Development, Trade and Entrepreneurship, in consultation with central state institutions, which contribute to the field of employment, shall propose the Council of Ministers to approve annual quotas for the employment of foreigners. The annual quota for the employment of foreigners is determined in accordance with the migration policy and labour market situation. The annual quota defines the types of activities and occupations for which work permit can be issued as well as the number of work permits per each activity and occupation.

However, article 83 of the Law on Foreigners envisages some exemptions from the annual quota, and work permits may be issued in addition to the annual quota for the following categories: immigrant workers on the basis of bilateral agreements; personnel holding key positions in companies, branches and representative offices; personnel transferred within enterprises, or companies, as part of internal transfers within their staff, personnel under agreements or collaborations based on cooperation programs; self-employed persons in a company that they themselves manage or own more than 51 per cent of the shares; contracting service providers in Albania on behalf of the foreign employer; teachers and lecturers in educational establishments that conduct teaching in language learning courses/subjects for national minorities; athletes/sportsmen working in Albania; foreign artists working in Albania; employees on the basis of contracts and rewarded for their work in a foreign organization, registered as a non-profit organization in Albania; members of the board of directors of a religious or humanitarian foundation recognized and registered in Albania that will work on the basis of contracts, and rewarded

for their work; employees in the context of youth exchange activities; employees doing research in scientific research institutions, educational or legal entities with the object of conducting research work and teaching of particular subjects missing in Albania; university professors, lecturers, instructors and other guest lecturers invited by Albanian universities or schools on foreign languages; foreigners working under an international agreement.

In filling a job vacancy, as foreseen in paragraph 2 of article 84 of the law on foreigners, priority shall be given to: a) unemployed Albanians; b) foreign family members of Albanian nationals; c) nationals of European Union Member States and Schengen countries; d) family members of a legally-staying foreigners in Albania; e) citizens of the countries, with which Albania has signed bilateral or multilateral employment agreements; f) foreign nationals who enjoy advantages of involvement in the Albanian labour market, according to the provisions of this law.

This disposition (article 84 of the law on foreigners), by defining a list of priority persons to be employed for a given vacancy, is partially in contradiction with disposition of article 71, point 9, of the same law where it is foreseen that EU and Schengen countries citizens enjoy equal rights with the Albanian citizens in the field of employment and self-employment.

The employment of Albanian citizens abroad is regulated by the “Law on Emigration of Albanian Citizens for Employment Purposes” (no. 9668, dated 18.12.2006), as amended by law no. 10389, dated 03.03.2011 (hereafter referred to as the Law on emigration). The law, by regulating the relations in the field of emigration for employment purposes or vocational training on the job of Albanian citizens who leave the country aims at managing migration processes; at protecting political, economic and social rights of migrants; at preventing irregular migration and human trafficking through expansion of regular migration channels and at enhancing cooperation with social partners, non-profitable national and international organizations and private employment agencies (article 2 of the law).¹⁰

2.4.2. Access to labour market of specific categories of foreigners/ Gap Analysis with EU

Highly skilled workers: Article 33 of the Law on Foreigners states the regulation regarding renewable residence permit for highly skilled foreign workers for a defined period of time under ‘AL Blue Card’ scheme. The card offers highly skilled foreign nationals the right to enter, work, stay and leave Albania. Residence Permits for highly qualified workers under “AL Blue Card”, scheme are issued for a 2 year period and are renewable for an additional 3 year period. If the work permit for the highly qualified worker is issued for a period of validity of less than 2 years the “AL Blue Card” residence permit shall be issued for the period of validity of the work permit and an additional 3 month period.¹¹ The conditions of refusal to issue, revocation, annulment and refusal to renew the “AL Blue Card” residence permit, as envisaged by article 46 on the law on foreigners, shall be made according to the provisions of point 1, 2, 3 and 4 of article 40 of the law on foreigners¹²: a) if obtained fraudulently; b) when conditions in article 39 point 3, letter (a)¹³, (b)¹⁴, are not met. The law on foreigners, with regard to the legal provisions for highly skilled workers, is approximated with the *acquis communautaire*, and in particular with the Council Directive 2009/50/EC.

Article 85 of the Law on Foreigners determines that work permits shall be issued to highly skilled workers regardless of the state and labour market developments and without restrictions. According to article 85 of the Law on Foreigners, highly skilled workers shall be provided a "A/KL" type work permit that shall be issued for the first time for a period of not less than 2 years, with the possibility of 3 year extension and then for permanent.¹⁵ Article 98 of the same law defines the circumstances when such a work permit is issued: a) a valid work contract for an occupation which requires special skills and qualification for a duration of at least 2 years in Albania; b) meeting the requirements defined in the legislation in force for the exercise of a regulated profession in Albania; c) document for non-regulated professions, the high professional qualification in the profession or sector specified in the work contract; d) minimum salary specified in the work contract concluded with the employer is triple the minimum gross monthly salary set by national legislation in force. Implementing bylaws have been adopted with regard to highly skilled workers, namely the Decision of the Council of Ministers on "The Establishment of Criteria, Documentation and Procedure for Obtaining, Refusing and Annulment of the Work Permit, as a Highly Skilled Workers, "A/KL" type" (no. 66, dated 12.02.2014).

The Law on Foreigners envisages the issuance of a residence permit for **scientific research** with a validity period of no longer than 1 year if the foreigner has concluded an agreement for this purpose with an Albanian institution (article 54 of the law). Legal dispositions on scientific research are in compliance with Council Directive 2005/71/EC.

Students and Trainees: Article 52 of the Law on Foreigner discusses the issuance of residence permit for the students and trainees. Residence permit for the student or trainee who has been admitted in an educational establishment, or is attending training, or is participating in a professional internship shall be issued for a period of no longer than one year with a possibility of extension until the completion of the studies or internship. If the duration of the course is less than one year, the period of the residence permit shall correspond to the duration of the course. The above mentioned provisions on students are in compliance with the EU *acquis*, namely the Council Directive 2004/144/EC.¹⁶

Student are entitled to be employed, up to 20 hours per week, and to exercise self-employed economic activity (article 91 of the Law on Foreigners regulates the regime of issuing work permit for students "A/S" type). The regime of issuing, refusing and annulling the work permit for students is foreseen by the Decision of the Council of Ministers no. 76, "On the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for students, "A/S" type" (dated 12.02.2014).

The law on foreigners envisages that the foreigner shall be issued a residence permit for **voluntary service** with a validity period of no longer than 1 year if the intended activity is closely linked with the voluntary service scheme recognized legally and it is limited in duration (article 50 of the law on foreigners). The Law on Foreigners envisages that foreigners who pursue activities as employed persons within youth exchange or voluntary service schemes shall be provided a work permit "A/SHV", provided that their activity will be limited in duration to one year (article 95). In this context, the Decision of the Council of Ministers no. 74, on " Establishment of Criteria, Documentation and Procedure for Obtaining,

Refusing and Annulment of the Work Permit for Voluntary Services "A/SHV" (dated 12,02,2014) was approved.

Cross-border work permits of type "A/NK" are envisaged by article 86 of the Law on Foreigners. Implementing legislation has been adopted with regard to cross-border workers, namely the Decision of the Council of Ministers on " The Establishment of Criteria, Documentation and Procedure for Obtaining, Refusing and Annulment of the Work Permit for Cross-Border Employment, "A/NK" type" (no. 77, dated 12.02.2014). According to this by-law, a foreigner shall be provided a "A/NK" work permit if he/she satisfies the following criteria: has a working contract or carries out an activity at the geographical border area within the territory of Albania; has residence in the country of origin; he/she returns to the country of origin at least once in a week; lawfully enters the Albanian territory.

Seasonal workers: According to the provisions of article 47 on the Law on Foreigners, foreigners shall be issued with a residence permit for seasonal employment if he/she meets the requirements for being issued a residence permit with a validity period of no longer than 6 months within a calendar year with the right to renewal of up to 5 consecutive years, provided that the interruption from one residence permit to the other exceeds a 6 month period.

"A/PS" work permit type shall be provided to seasonal workers for a duration of up to six months of each calendar year, for specific regions, employers, occupations and employment contracts, with specific timeframe and provided that the foreigner returns to the country of origin upon completion of the employment. The work permit for seasonal workers shall not be issued more than 5 consecutive times (article 88 of the law on foreigners). Moreover, the same article of the Law on Foreigners envisages that requests for seasonal employment are regulated by bilateral agreements with other countries. For seasonal workers, by-laws have been approved as well, namely the Decision of the Council of Ministers on "The establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for seasonal workers, "A/PS" type" (no. 75, dated 12.02.2014).

Intra-Corporate Transfers: A work permit, in compliance with article 89 of the law on foreigners, shall be issued for intra-corporate transfers, if the foreigner meets the following criteria: a) is an employee employed by a foreign employer; b) is intra-corporate transferee in Albania on behalf of and under the direction of foreign employer, based on a contract concluded between him and the foreign employer, who assigns him to a job or service, in the context of the foreign employer's business in Albania; c) is transferred to another institution or to a company owned by the same group to which the foreign employer belongs to; d) is posted by a temporary employment agency for foreigners to a business in Albania.

The transferee is an employee transferred from a foreign employer to work in Albania for a limited period of time over 3 months. The initial validity period of the work permit for the intra-corporate transferee shall be equal to the length required for the performance of specified work, starting from the time of his/her transfer, up to a maximum period of validity of five years.

Investors: With regard to investors, article 100 of the Law on Foreigners envisages the issuance of the work permit for a period of three years if the following conditions are met: investment amount is at

least EUR 200 000; the ratio of employees in the economic activity is one foreigner and five Albanian nationals; their salary is at least the average salary paid in Albania; the investor possesses valid documents which prove that the activity is not bankrupt and has no tax obligation. If the investment exceeds EUR 1 million and over 10 Albanian nationals are employed, the foreign investors and the key personnel shall be provided with permanent work permits. The implementing secondary legislation for investors is the Decision of the Council of Ministers no. 79, "On the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for independent economic activity, as investor "B/I" type" dated 12.02.2014.

Foreigners may be provided with a **work permit for special categories** (article 101 of the Law on Foreigners) for up to one year, when he/she takes part in one or more of the following categories: a) is resident for a period of no more than one year; b) stays in the territory for more than three months as follows: staff of cross-border transport of goods and persons, which headquarters are registered abroad; pupils or students in a job exchange program during summer holidays; persons who install machinery or constructions that are delivered by a foreign corporation and provide machinery repair service, as well as training on their use; representatives of non-profit organizations, who are remunerated for their work; employees of recognised and registered humanitarian and religious institutions; members of crews of ships or aircrafts; key personnel residing temporarily; c) foreigners performing contractual services for the purpose of professional technical assistance in business activities; d) refugees; e) victims of trafficking or potential victims of trafficking.

Foreigners who provide services in the area of science, culture, sports, health and education may be provided with a work permit for a validity period of up to one year (paragraph 4 of article 102 of the law on foreigners).

Diplomas and Qualifications: regarding the recognition of diplomas and qualifications, specific by-laws are in place, namely the Decision of the Council of Ministers on "The Recognition of the Diplomas and Certificates acquired in Foreign Higher Schools" (no. 523, dated 01.08.2003) which was later amended by the DCM no. 601, dated 31.08.2006. According to this by-law (in its article 3), the Ministry of Education and Sports has a key role in the process of establishing *ad hoc* commissions, which are composed of lawyers and field specialists unless an agreement has been signed a specific professional field and/or the type of diploma to be recognised has already been dealt with by a previous *ad hoc* commission; in these cases a direct recognition takes place. With regard to the recognition of **professional qualifications**, the law on "Regulated Professions in the Republic of Albania", (law no. 10171, dated 22.10.2009) which was later amended on 16.12.2010 by law no. 10357, sets out the rules for the organization and operation of regulated professions. In the framework of this law, implementing legislation was adopted to allow exemptions from state examinations for the regulated professions for professionals who have successfully passed the state exam in one of the EU Member States, the EFTA countries (Iceland, Liechtenstein, Norway and Switzerland), the United States of America, Canada, Japan and others as per specific signed agreements in this field. Further efforts are needed to fully align the legislation in the field of regulated professions with the EU *acquis*¹⁷, since the present vocational training system in Albania does not recognize qualifications and skills gained abroad (both for Albanians and foreigners), thereby not allowing for the human development impact of migration.¹⁸

With regard to **long-term residents**, the Law on Foreigners regulates the issuance and refusal of permanent residence permits. Article 61 of the Law envisages the following conditions for issuing a permanent residence permit: a continuous residency in the country for at least 5 years, sufficient financial means, sickness insurance, accommodation, payment of taxes. The article also mentions the condition of a refugee status as being a condition for a permanent permit issuance. It is recommended to amend the formulation of this article to make it clearer whether all above conditions (including the presence of the refugee status) have to be fulfilled in order for a foreigner to qualify for the permanent residence status, or only some combination of them. Such an amendment would benefit the clarity of the law and, hence, facilitate its application in practice, reducing unnecessary ambiguity.

Other than that the Law on Foreigners is harmonised with the Council Directive 2003/109/EC. However, in regard to the protection from expulsion, the EU *acquis* envisages a stronger protection for long-term residents compared to the Albanian law on foreigners. According to the EU disposition, long-term residents may be expelled "solely where he/she constitutes an actual and sufficient *serious threat* to public policy or public order"¹⁹, while the Albanian Law on Foreigners states that long-term residents may be expelled even if he/she poses a *threat* to public order and security and he/she constitutes a threat to national security²⁰. Furthermore, the law on foreigners does not envisage the set of factors, as envisaged by Directive 2003/109/EC, to be taken into consideration by national authorities before taking a decision on expelling long-term residents such as: duration of the residency; age of the person; consequences for the person concerned and his/her family members; links with the country of residence and absence of links with the country of origin.²¹

Foreigners may acquire the **Albanian citizenship** if they have lawfully been residing in Albania for not less than five consecutive years. Additional requirements are envisaged by article 9 of law no. 8389 on "Albanian Citizenship" (dated 05.08.1998), which was amended by law no. 8442 on 21.01.1999, including age above 18; available dwelling and sufficient income; never been sentenced for a criminal offense with prison of not less than three years; elementary knowledge of Albanian language; his/her acceptance as an Albanian citizenship does not affect the security and defence of Albania.

The regulation of **return of migrant workers** following the cessation of the contract/legal status of stay in the destination is provided in the law no. 9466, dated 23.01.2006 "On the agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorization".

In addition to the framework of readmission agreement with the EC, Albania has signed several bilateral agreements and protocols with individual states, including: Austria, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, France, former Yugoslav Republic of Macedonia, Germany, Greece, Hungary, Iceland, Italy, Kosovo/UNSCR 1244, Malta, Moldova, Montenegro, Norway, Portugal, Rumania, Serbia, Slovakia, Slovenia, Switzerland, Turkey, the United Kingdom and Northern Ireland.

It should be pointed out that the Reintegration Strategy for Returning Citizens 2010-2015 and its corresponding Action Plan also regulates the position of Albanian returnees (voluntary returnees or forced returnees) through readmission agreements. The strategy provides for a referral system for returnees to reintegration services in Albania which is being implemented through the following legal provisions: a) law on "Law on Emigration of Albanian Citizens for Employment Purposes" (no. 9668,

dated 18.12.2006) which was amended by law no. 10389, (dated 03.03.2011), foresees in article 8 the right to benefit from state services such as: information and counselling free of charge in the field of vocational training, job brokering services, social protection, freedom of association, possibilities for housing, education and social security etc., in article 9 the exemption from the custom obligations and taxes concerning personal items and movable property of the migrant workers and members of their families, belonging to the family unit and a reasonable quantity of hand tools and movable equipment, necessary for the exercise of his/her profession and in article 12 that Albanian returnees registered in the "Emigrants' register" shall benefit from information and referral service to be provided by state authorities, which are responsible for the delivery of reintegration services for returned migrants; b) law on "Employment promotion" (no. 7995, dated 20.09.1995), which was amended by law no. 10137, (11.05.2009), foresees in article 2(2) among beneficiary categories also returned migrants with economic problems.

With regard to the return of foreigners to their country of origin, article 106 of the Law on Foreigners says that removal orders to a foreigner may be issued if a) he/she does not fulfil conditions for entry and stay in Albania; b) the foreigner has served a sentence given by the Albanian courts for a criminal offence with a minimum period of 2 years of imprisonment; c) in case the foreigner is apprehended while working at variance with the criteria defined by the legislation in force. The removal order shall not be enforced (article 108 of the law on foreigners) if the foreigner declares voluntary removal from the territory. The foreigner has the right to appeal against the expulsion order of the authority responsible for border and migration. Until termination of the appeal proceedings, the foreigner shall be kept under conditions of alternative measure of supervision or detention in the closed centre, pending immediate removal, according to the order issued for this purpose (article 110 of the Law on Foreigners).

In accordance with article 109 of the same law, foreigners are subject to forced removal if the he/she: 1) has entered illegally the territory of Albania; 2) has failed to leave Albania within the time limits set in the removal order; 3) has not left Albania for a period of up to 60 days after expiry of the period of stay indicated in the visa, residence permit or period of stay foreseen by this law for the citizens who enter visa-free; 4) has been readmitted to another country under Readmission Agreements in force in Albania; 5) has been declared undesirable person according to the provisions of article 9 of this law; 6) has been convicted for a criminal offence which is sentenced to a minimum of three years of imprisonment according to Albanian legislation.

2.4.3. Family reunification and formation for foreign workers and access of family members to the labour market

According to article 55 of the Law on Foreigners, a foreigner who is a spouse of an Albanian national, shall be issued a residence permit with a period of validity of no longer than one year when the residence permit is issued for the first time and is renewed for a validity period of two years. Family reunification is envisaged as well if a foreigner has been issued a residence permit for a validity period of at least one year and has a possibility to renew the permit and fulfils all other requirements set by article 56 of the law on foreigners. Dispositions on the Law on Foreigner are in compliance with the

Council Directive 2003/86/EC. As foreseen by article 94 of the Law on Foreigners, a work permit "A/AF" type may be issued for each adult member of the family of the foreign worker who has residence permit in the Albania, for the purpose of family reunification. For the issuing of the work permit, with a duration of one year, some requirements need to take place: the family member has to have a working contract with an employer, or proof of employment in the family business; moreover, the work permit shall be issued provided that the family member has lived with the foreigner, legally and without interruption, for at least three years.

The regime of issuing, refusing and annulling the work permit for family members, is regulated by the Decision of the Council of Ministers no. 80 on the "Establishment of Criteria, Documentation and Procedure for Obtaining, Refusing and Annulment of the Work Permit for Family Members, "A/AF" type"(12.02.2014).

2.4.4. Social protection and labour rights

According to article 144 of the Law on Foreigners, direct and indirect **discrimination** by legal persons, public and private entities, during the entire process of immigration for employment shall be prohibited. In addition, article 4 of law for "Protection against Discrimination" (no. 10221, dated 04.02.2010) stipulates that the law against discrimination applies to "all persons who stay and reside in Albania, including Albanian and foreigners citizens". Other fundamental rights are protected and promoted by the Albanian constitution²², including access to justice, education and other fundamental rights. The Albanian Ombudsman institution is the constitutional institution mandated to protect and promote human rights in the country, including rights of foreign citizens in Albania, as indicated in article 2 of the law "On the Albanian Ombudsman"(no. 8454, dated 04.02.1999), which was amended by law no. 9398 on 12.05.2005.

With regard to the exercise of trade union rights, it should be stressed that article 50 of the Albanian Constitution states that employees have the right to freely unite in trade unions in order to protect their rights. This principle is also part of the law on "The trade unions in the Republic of Albania" (no. 7516, dated 07.10.1991) ", which was amended by law no. 7795 on 16.02.1994. The freedom of association is regulated by the Labour Code of the Republic of Albania (article 10 of the labour code). Yet, no trade union of foreign migrant workers in Albania has been established to date. The foreigners working in Albania have the right to join existing trade unions. The minimum standards set in the Albanian Code of labour²³ are mandatory for every working relation established in Albania, and in any case more favourable conditions may be applied in individual contracts.

Long-term residents (foreigners with a permanent residence permit) must be registered with the civil registry office as a long-term resident. In line with article 70 of the law on foreigners, long-term residents shall enjoy economic rights, health-related and social rights, on the same terms as Albanian nationals, in line with the legislation in force. However, foreigners may not be employed for job positions that have as a requirement Albanian nationality.

The law on Foreigners does not provide a scheme of recognition of export of pension rights, neither does the law on "Social Insurance in the Republic of Albania", 7703, dated 13.05.1993, which was

amended by law no. 13 on 13.02.2014. However bilateral agreements have been signed with other states in the area of social security. Albania and Turkey have signed a bilateral agreement on social protection, which has entered into force by law no. 9066, dated 15.05.2003. This includes provisions for recognition of pensions of migrant workers in both countries. The latest development in the area of social security is related to the agreement signed between Albania and Belgium, an agreement that was ratified with law no. 35/2014 "On the ratification of the agreement between the Republic of Albania and Kingdom of Belgium on social security", dated 03.04.2014. Mutual recognition of pension benefits constitutes the main element of the agreement. According to the Albanian Ministry of Social Welfare and Youth, this agreement enables pension transfers for around 35,000 Albanian emigrants in Belgium. Negotiations on bilateral agreements on social security are on-going with Italy, Hungary, Czech Republic, former Yugoslav Republic of Macedonia, Romania and Luxembourg.

Foreign workers, in compliance with article 94 of the law on foreigners, shall be provided with a work permit to attend a vocational training course in Albania, restricted in time and closely linked with the deepening of skills and professional qualification after preliminary admission to a vocational training course, licensed by the relevant authorities in the country. The work permit shall be issued for the same time validity period as the period of the vocational training activity.

2.4.5. Recruitment, facilitation and regulation of private recruitment agencies (PRAs)

Articles 37, 38, 39 and 40 of the law on "Emigration of Albanian citizens for employment purposes" (no. 9668, dated 18.12.2006) that was amended by law no. 10389, dated 03.03.2011, includes provisions on private recruitment agencies. These articles set the conditions of cooperation between the Ministry of Social Welfare and Youth and private recruitment agencies in Albanian on recruitment and employment of Albanian citizens abroad.

These agencies assess requests and applications for employment mediation; seek new job vacancies; negotiate to determine the conditions and employment relations between job-seekers and employers. The Ministry of Social Welfare and Youth is the competent authority issuing the licenses for private recruitment agencies. Presently, in Albania there are 8 registered private recruitment agencies, located in Tirana, Durrës and Elbasan respectively.

The main functions of the private recruitment agencies include²⁴:

- services for information, consultancy and also assessment of applications for mediating employment;
- job seeking;
- negotiations between employers outside the Albanian territory and job-seekers in Albania;
- training of job-seekers for making them suitable to requirements of physical or judicial employers in host countries;

- cooperation and coordination of activities with authorities of relevant countries for provision of necessary information and for conducting formation and orientation courses;
- exchange of information between them and responsible state authorities on the number of persons registered in “the registry of emigrants”^x;
- Determining a certain quota for the employment of Albanian nationals, when host countries make available to the Ministry of Social Welfare and Youth special quotas for the employment of Albanian nationals. The Minister of Social Welfare and Youth, after the evaluation of the activities of the private recruitment agencies, determines the quotas for the selected agencies. Conditions for the selection of agencies and determination of respective quotas are approved under the Order of the Minister of Social Welfare and Youth.

Regarding the rights and liabilities of private recruitment agencies, they have to:

- Ensure for Albanian nationals, who wish to migrate, including returning migrants, the right to information and free consultancy in the field of vocational training , intermediating services for employment, social assistance, housing, education, etc.²⁵;
- Protect the rights of Albanian citizens who have been employed outside the territory of Albania through their negotiations, with regard to the implementation of contract conditions, to their non-discrimination and the respect for their rights and freedoms²⁶;
- Send report to the Ministry of Social Welfare and Youth about Albanian nationals for who they have negotiated employment abroad and on any other information required about their activity in foreign countries (at the end of each six months period)²⁷.
- Promptly inform the responsible state authorities when they notice or are being informed that legal provisions or international acts are not being respected in host countries²⁸.
- Private recruitment agencies are also governed by the Decision of the Council of Ministers no. 708, “On procedures for licensing and operating of private recruitment agencies”, dated 16.10.2003.

2.4.6. Roles and responsibilities of employers

The main obligations of an employer are envisaged by article 137 on the law on foreigners:

- prior to employing a foreigner request the latter to present a residence permit or other authorization of stay, valid for the employment period
- Prior to the start of employment keep a copy or record of the residence permit, or other authorization of stay,

^x Albanian citizens willing to emigrate for employment purposes, as well as Albanian returnees shall be registered in the “Emigrants’ register”, at the migration counters of the relevant employment offices”. The emigrant’s central register shall be managed by the General Directorate of National Employment Service. The “Emigrant’s register” shall consist of data, which are recorded in the relevant forms, according to the declarations of the citizens who are willing to emigrate and the Albanian returnees (such as: personal data; training capacities; education; work experience; preferred occupation; employment contract information; reasons for the return; vocational retraining needs; reintegration support etc.

- store copies or records at least for the duration of employment, which must be made available for inspection to the responsible state authorities controlling foreigners in the territory and also to the inspectorate responsible for employment;
- Notify the responsible authorities of the start and end of employment of the foreigner within at least one week
- cover return costs of a foreigner employed unlawfully by the employer, in case of application of the return procedure
- pay the arrears for the work of the foreigner employed unlawfully
- pay the arrears of taxes and social contributions, including administrative fines for the foreigner employed unlawfully;

According to article 137 of the Law on Foreigners, the regional authority responsible for border and migration, in case of unlawful employment of the foreigner, shall presume he/she has started the employment relation for at least for six months. The regional authority responsible for border and migration, in case of employment of foreigners staying illegally in the territory, may propose to responsible state institutions the following measures against the employer: a) exclusion from the right to public benefits, assistance or funds for a period of up to five years; b) exclusion from participation in public contracts for a period of up to five years; c) temporary or permanent closure of enterprises of legal or natural persons where the violation was committed.

According to article 140 of the Law on Foreigners, data shall be collected and administered by the state authorities responsible for the treatment of foreigners^{xi}. Such data shall be recorded in the national electronic registry for foreigners. Responsible authorities for the treatment of foreigners shall administer and use the data collected in accordance with the principles of data protection (article 141 of the law on foreigners).

Based on the provisions of article 142 of this law the collection, processing, recording, and deletion of personal data of foreigners after the end of their term shall be governed by a joint order of the Minister of the Interior, Minister of Foreign Affairs and Minister of Social Welfare and Youth.

Collected data are stored by the responsible authorities for the treatment of foreigners for a period of 5 years after the expiry of visa validity or temporary residence permit, or ten year period from the completion of administrative penalties or criminal proceedings. In cases of persons declared undesirable for a period of more than ten years, data are stored for the term as specified in the order declaring the foreigner an undesirable person.

^{xi} According to article 141 of the law on foreigners these authorities are the following: authorities responsible for citizenship; authorities responsible for employment of aliens; authorities responsible for finance and customs issues; authorities responsible for civil registry issues in the administrative of residence of the alien; authorities responsible for public health; authorities responsible for education and science.

3.0. Main findings, recommendations and conclusions

3.1. Overall compliance and key gaps with EU *acquis*

Labour mobility has had relevant repercussions on the development of the country. It is estimated that around 1.4 million Albanian citizens live and work abroad (mainly in Greece^{xii}, Italy^{xiii}, former Yugoslav Republic of Macedonia, USA, Germany, Canada etc.). Moreover, more and more foreign citizens are attracted to the Albanian labour market. Throughout last years, several initiatives have been undertaken to tackle migration. Mainly, these interventions consisted in having policy documents in place and adopting the needed legislation in order to regulate migration flows. Still, gaps exist at the policy level: the main gap is related to the absence of a comprehensive strategy on migration. For these reasons, having in mind the EU integration path of Albania for the years to come, a migration strategy would clearly contribute to setting up a comprehensive migration management system.

3.2. Key legislative provisions acting as barriers to labour mobility towards the country and within the SEE region

With regard to the employment of Albanian citizens outside of the country, in its first report on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Albanian government has indicated that it aims at the adoption of a system of state management for labour migration. However, due to the complexity, and lack of experience in relation to this process, this commitment requires more time. Still the Government declares that *“it is making good steps towards the establishment and operation of such system”*.²⁹ And indeed, a positive development has been the establishment of a network of Migration Counters throughout the country (12 at the regional level and 24 at the local level). However, with regard to the employment of Albanian citizens abroad, there are still legal gaps and discordances in the national legislation. Law no. 9668 on, *“Emigration of Albanian Citizens for Employment Purposes”*, which remains largely unimplemented due to unclear and contradictory provisions.

The implementation of the provisions of this law have encountered significant challenges due to a failure of the law to clearly distinguish between *“emigrants”* and *“returning migrants”*, with a corresponding distinct set of criteria of benefits for returnees. Despite the fact that in article 1 of the law it is established that this law regulates the emigration for employment purposes or vocational training on the job of Albanian citizens who leave Albania, the amendments done in 2011 added also returning migrants.

^{xii} According to the National Statistical Institute of Greece (ELSTAT), 480,824 Albanian citizens (52.7% of the total foreign population, the largest share of foreign citizens, residents in Greece) are issued with a residence permit in Greece, on June 2013.

^{xiii} According to the National Statistical Institute of Italy (ISTAT), 497,761 Albanian citizens are issued with residence permit in Italy, on January 2013.

Moreover, one of the main issues with regard to the employment of Albanian citizens abroad is the lack of proper secondary legislation and the need to revise the current by-laws. The main by-laws are the Order of the Minister of Labour, Social Affairs and Equal Opportunities^{xiv} no. 83 “On the form, content, and procedure of acquiring the Emigrant Status”, dated 06.06.2011, as amended; and the Order of the Minister of Minister of Labour, Social Affairs and Equal Opportunities no. 84 “On the form, content of Emigrant’s Register and registration procedures” as amended, dated 06.06.2011,. The registration to the “Emigrants’ Register” (regulated by order 84 as mentioned above) is also linked to the granting of Emigrant Status (regulated by order 83), both for those registered as emigrants and those registered as returnees, however, the modalities for obtaining the status are, to a certain extent, contradictory particularly for the returnees. For example, the law foresees that the status is given to the returnees, following submission of proof of stay abroad for at least one year without specifying if it should be proved by residence permit or other documentation, including health cards, diplomas etc. In this sense, this disposition excludes those migrants who cannot document their stay abroad.

Also the role of private recruitment agencies should be further clarified, with a regulatory framework in compliance with EU *acquis*, supporting Albanian citizens willing to migrate abroad. For these reasons the national legislation regulating the employment of Albanian nationals abroad should be revised in accordance with EU *acquis*, with clear legal provisions on Emigrant's Status and Emigrants Register, including returning migrants. Given the fact that in the period 2009-2013 a total of 133.544 Albanian citizens have returned to Albania³⁰, Migration Counters should be institutionally strengthened in providing services themselves and not solely referring migrants to other institutions. The EU Progress Report for Albania in 2013 highlights that *“the Reintegration Strategy and Action Plan should be implemented and its institutions supported”*.³¹

Regarding the employment of foreigners in Albania, significant improvements have been undertaken to align the Albanian legislation with the EU *acquis*. The new law on foreigners (law no. 108/2013) aims at facilitating EU and Schengen countries citizens’ access to Albanian labour market and guaranteeing equal treatment. Still, there is the need to have proper policies in place regulating the status of foreign workers in the Albanian labour market. Moreover, as highlighted by the EU Progress Report for Albania in 2013, *“preparations in the area of freedom of movement for workers are at an early stage”*.³²

Free movement of workers within the SEE region is as well in early phases. Positive steps have been adopted, such as the Decision of the Council of Ministers no. 265 on “Movement of workers from Kosovo/UNSCR 1244 and the Albanian minority in Serbia”, dated 07.05.2014. However, other citizens of the SEE region cannot benefit from the new law on foreigners as do EU and Schengen countries citizens. Therefore positive actions in liberalizing the labour market should be extended also to other SEE countries, in order to facilitate the employment of SEE countries citizens in the region.

^{xiv} The Ministry of Social Welfare and Youth

3.3. Recommended steps in the mid-term perspective (up to 2020)

- Policy level: Adoption of the national strategy on migration and effective implementation of the Reintegration Strategy for Returning Citizens 2010-2015 and Action Plan.
 - Strengthening of Migration Counters, by providing more effective reintegration services and more referral services to Albanian citizens willing to migrate abroad and immigrants.
 - Legal revision: Amendment, in line with the EU *acquis*, of the law no. 9668 "On emigration of Albanian Citizens for Employment Purposes", dated 18.12.2006, and revision of the secondary legislation related to the Emigrants Register (DCM 84, dated 06.06.2011) and Emigrants Status (DCM no. 83, dated 06.06.2011)
 - Adoption of the relevant legislation related to the law on foreigners, in particular regulating the status of foreigners in Albania and ensuring proper integration services.
 - The legal basis and the role of the private employment agencies in ethical recruitment of migrant workers should be revised and their role furthermore strengthened.
- Development of a common regional labour market: liberalizations/facilitations, as foreseen for EU citizens and citizens from Kosovo/UNSCR 1244 (and Albanian minorities in Serbia), for SEE countries with regard to employment.

¹ Republic of Albania, Ministry of Interior. *National Strategy for Employment and Skills 2014-2020*, page 40. Forthcoming

² Idem, page 31.

³ Idem, page 8.

⁴ European University Institute (MEITKOS project). *Circular Migration between Albania and Greece: A case Study- draft report*, (2011). Available from: <http://www.eui.eu/Projects/METOIKOS/Documents/METOIKOSComparativepaper.pdf>

⁵ Republic of Albania, Ministry of Interior. *National Strategy for Employment and Skills 2014-2020*, page 31. Forthcoming

⁶ Decision of the Council of Ministers on the establishment of criteria, procedures and documentation for entry, residence and treatment of foreign citizens in the Republic of Albania (no. 513, as amended by DCM no. 275)

⁷ Law on foreigners (no. 108/2013), article 72

⁸ Decision of the Council of Ministers on the establishment of criteria, procedures and documentation for entry, residence and treatment of foreign citizens in the Republic of Albania (no. 513, as amended by DCM no. 275)

⁹ Law on foreigners (no. 108/2013), article 25

¹⁰ Law on Emigration of Albanian Citizens for Employment Purposes" (no. 9668, dated 18.12.2006)

¹¹ Law on foreigners (no. 108/2013), article 44

¹² Law on foreigners (no. 108/2013), article 46

¹³ Law on foreigners (no. 108/2013), article 39 point 3, letter (a) of the law on foreigners: "name and address of employer, and address of place of residence and place of work".

¹⁴ Article 39 point 3, letter (b) of the law on foreigners: "valid employment contract"

¹⁵ Law on foreigners (no. 108/2013), article 98

¹⁶ Council Directive 2004/144/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

¹⁷ European Commission. *Albania Progress Report*, (Brussels, 2013) page 20. Available from:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/al_rapport_2013.pdf

¹⁸ Republic of Albania, Ministry of Interior. *National Strategy for Employment and Skills 2014-2020*, page 32. Forthcoming

¹⁹ Article 12 (1) of the Council Directive 2004/144/EC

²⁰ Article 113 of the law on foreigners

²¹ Article 12 (3) of the Council Directive 2004/144/EC

²² *Adopted by law no. 8417, dated 21.10.1998 and as amended by law no. 88/2012, dated 18.09.2012.*

²³ Law no. 7961, dated 12.07.1995, as amended by law no. 10053, dated 29.12.2009.

²⁴ Law on emigration of Albanian citizens for employment purposes (no. 9668 as amended by law no. 10389), article 37

²⁵ Law on emigration of Albanian citizens for employment purposes (no. 9668 as amended by law no. 10389), Article 8

²⁶ Law on emigration of Albanian citizens for employment purposes (no. 9668 as amended by law no. 10389), Article 38

²⁷ Law on emigration of Albanian citizens for employment purposes (no. 9668 as amended by law no. 10389), Article 39

²⁸ Idem

²⁹ Page 39 paragraph 243 of the Albania's Report to CMW

³⁰ IOM & INSTAT, Return Migration and Reintegration in Albania, 2013, forthcoming

³¹ European Commission. Albania Progress Report, (Brussels, 2013) page 46. Available from:
http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/al_rapport_2013.pdf

This statement was also pointed out by EU Progress Report of 2012: "the institutions in charge of implementing the strategy and action plan for returned migrants should be reinforced".

³² European Commission. Albania Progress Report, (Brussels, 2013) page 20. Available from:
http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/al_rapport_2013.pdf

4.0. Annexes

4.1. List of key national legal documents

Laws and regulation

1. Law on the Constitution of the Republic of Albania (no. 8417 as amended by law no. 88/2012)
2. Law on emigration of Albanian Citizens for Employment Purposes (no. 9668 as amended by law no. 10389)
3. Law on employment promotion (no. 7995as amended by law no. 10137)
4. Law on Foreigners (no. 108/2013)
5. Law dated on regulated professions in the Republic of Albania (no. 10171 as amended by law no. 10357)
6. Law on Albanian citizenship (no. 8389 as amended by law no. 8442)
7. Law on the agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorization (no. 9466)
8. Decision of the Council of Ministers on the adoption of the Reintegration Strategy for Returning Citizens 2010-2015 and its Action Plan (no. 461)
9. Decision of the Council of Ministers on definition of criteria, procedures and the documentation for entry, residence and treatment of foreigners in the Republic of Albania (no. 513)
10. Decision of the Council of Ministers on the exemption from the obligation to be issued with a work permit and work registration certificate for the citizens of Kosovo/UNSCR 1244 and citizens of Serbia part of the Albanian minority (no. 265)
11. Decision of the Council of Ministers on the recognition of the diplomas and certificates acquired in foreign higher schools (no. 523 as amended by the DCM no. 601)
12. Decision of the Council of Ministers on the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for cross-border employment, "A/NK" type (no. 77)
13. Decision of the Council of Ministers on the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for seasonal workers, "A/PS" type" (no. 75)
14. Decision of the Council of Ministers on the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit, as highly skilled workers, "A/KL" type (no. 66)

15. Decision of the Council of Ministers on the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for independent economic activity, as investor "B/I" type (no. 79)
16. Decision of the Council of Ministers on the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for students, "A/S" type (no. 76)
17. Decision of the Council of Ministers on the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for voluntary services "A/SHV" type (no. 74)
18. Decision of the Council of Ministers on the establishment of criteria, documentation and procedure for obtaining, refusing and annulment of the work permit for family members, "A/AF" type (no. 80)
19. Decision of the Council of Ministers on procedures for licensing and operating of private recruitment agencies (no. 708)
20. Order of the Minister of Social Welfare and Youth on the form, content, and procedure of acquiring the Emigrant Status (no. 83)
21. Order of the Minister of Social Welfare and Youth on the form, content of Emigrant's Register and registration procedures (no. 84)

4.2. List of key international and regional agreements

1. International Convention on the Elimination of All Forms of Racial Discrimination;
2. International Covenant on Economic, Social and Cultural Rights;
3. International Covenant on Civil and Political Rights;
4. Optional Protocol to the International Covenant on Civil and Political Rights;
5. Convention on the Elimination of All Forms of Discrimination against Women;
6. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against women;
7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
8. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
9. United Nations Convention on the Rights of the Child (1989) (UNCRC)
10. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
11. Convention relating to the Status of Refugees;

12. Convention relating to the Status of Stateless Persons;
13. Protocol relating to the Status of Refugees;
14. United Nations Convention against Transnational Organized Crime;
15. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
16. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;
17. European Convention on the Legal Status of Migrant Workers;
18. European Convention on the Exercise of Children's Rights;
19. European Social Charter (revised) ;
20. Convention on the Recognition of Qualifications concerning Higher Education in the European Region;
21. Council of Europe Convention on Action against Trafficking in Human Beings;
22. ILO C88 - Employment Service Convention;
23. ILO C97 - Migration for Employment Convention (Revised) ;
24. ILO C111 - Discrimination (Employment and Occupation) Convention;
25. ILO C143 - Migrant Workers (Supplementary Provisions) Convention;
26. ILO C181 - Private Employment Agencies Convention;
27. ILO C182 - Worst Forms of Child Labour Convention;

List of European Union Directives

1. Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals. OJ L 157, 15.06.2002, p. 1–7
2. Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. OJ L 343, 23.12.2011, p. 1–9
3. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. OJ L 155, 18.06.2009, p. 17–29
4. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. OJ L 255, 30.09.2005, p. 22–142

5. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. OJ L 94, 28.03.2014
6. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. OJ L 289, 03.11.2005, p. 15–22
7. Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. OJ L 157, 27.05.2014, p. 1–22
8. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. OJ L 168, 30.06.2009, p. 24–32
9. Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers. OJ L 199, 31.07.2007, p. 23–29



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