

LABOUR MOBILITY REGULATION IN SOUTH-EAST EUROPE

Legislative assessment report

Montenegro



IOM Development Fund
DEVELOPING CAPACITIES IN MIGRATION MANAGEMENT



International Organization for Migration (IOM)

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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

BiH	Bosnia-Herzegovina
CAT	The Convention against Torture
CRC	The Convention on the Rights of the Child
EAM	Employment Agency of Montenegro
ICCPR	The International Covenant on Civil and Political Rights
IESCR	The International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MFAEI	Ministry of Foreign Affairs and European Integration
MIPA	Montenegro's Investment Promotion Agency
MLSW	Ministry of Labour and Social Welfare
MOE	Ministry of Economy
MOH	Ministry of Health
MOI	Ministry of Interior
SAA	Stabilisation and Association Agreement
SEE	South East Europe

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1.0. Introduction

Labour migration in Montenegro has been conditioned with several natural factors of which some entail its geo-political position, relatively small territorial size and population number causing dependency on foreign labour, predominantly from the South East Europe (SEE) region. There are political factors that make an impact too, such as large numbers of displaced and internally displaced persons from Former Yugoslavia residing in Montenegro of whom many are in the process of regulating their status as foreign long-term residents. Lastly, but very relevant, is Montenegro's visible commitment towards the EU accession, as it presently holds a candidate country status. To this end, the European Commission's Progress Report 2013 stated that, overall, Montenegro continued to broadly implement its obligations under the Stabilisation and Association Agreement (SAA), signed on October 15, 2007.

Montenegro has a centralized government structure, which means that its migration legislation and policy affecting employment and labour of foreign nationals are developed by the state ministries in charge and further enforced by 21 local (municipal) self-governments. While the government admits that its domicile workforce can meet only 30% of demand for seasonal work in such industries as tourism, agriculture and that Montenegro's economy is dependent on foreign labour,¹ this issue has not been sufficiently addressed in the immigration and labour policy and legislation.² Given the current reality, a more flexible approach in treating certain categories of foreign labour, such as seasonal workers from SEE countries, would be particularly beneficial. Cumbersome and lengthy procedures have been recognized as a key obstacle to labour mobility, often spurring unregistered work.

In terms of migration legislation, it is noted that the Montenegrin authorities have committed themselves to aligning the legislation with the relevant EU migration *acquis*. Montenegro's efforts in controlling illegal migration and adjusting national legislation and practices in the context of EU accession are undisputable, but the existing capacities have to be carefully analysed and realistic estimations made in this process. In addition to adjusting the legal framework, there must be an appropriate infrastructure, trained human personnel and know-how to enforce the legislation in order to reach anticipated effects. Transparent and understandable rules are extremely important, as lack thereof leads to law evasion and adversely affects labour mobility in general as well all parties involved in the process, including migrant workers, their employers, foreign entrepreneurs/ investors, but also to a certain extent the authorities in charge. In summary, short- to medium-term objectives facing Montenegro include streamlining, facilitating and simplifying existing procedures for all categories of foreign labour interested in working and investing in Montenegro.

The main objective of this Report is to identify specific legal areas within the local legislative and institutional framework, relevant to foreigners' employment and labour migration, with a focus on labour mobility in Montenegro and within the SEE region, that require further development. This document will consider in particular findings from the IOM's Legal Assessment of Labour Migration Issues in Montenegro conducted in November 2013. In addition, it will focus on some other aspects relevant to migrant workers, such as their mobility, social rights and others. When this report was being prepared, a new draft of the Law on Foreigners (hereafter referred to as the 'Draft Law') has been finalized and was awaiting adoption. In this regard, the present report will pay a particular attention to

those issues concerning employment and work of foreign nationals that need to be addressed or improved in relevant secondary legislation, to ensure its compliance with relevant EU *acquis*, paying particular attention to the existing capacities of Montenegrin migration authorities to enforce the forthcoming migration legislation. Occasionally, a reference will be made to other relevant laws, such as the general Employment Code and others addressing employment and labour issues in general terms.

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

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

It is noteworthy to state that to date the Government has adopted several key policy documents in the migration area. This process started with the first Integrated Migration Management Strategy (2008-2013) and an accompanying action plan³, followed by a new five year Integrated Migration Management Strategy (2011-2016) and an accompanying action plan developed by the Ministry of Interior.⁴ The new Action Plan for 2013 - 2014 for implementing the current Strategy, developed by the Government in April 2013, in section 4.1.5. "*Terms of Foreign Nationals Employment and Labour*" lists the authorities in charge of providing stay and work permits; types of work permits granted; the work permit application processing; employers' obligation to pay social contributions and the national work permit cap (quota) determination based on positive legislation, though contains no information on labour mobility.⁵

Some substantial data on foreign labour could be found in annual reports of the Employment Agency of Montenegro which is the main authority responsible for issuing work permits. In 2013 Annual Report of the Employment Agency of Montenegro, it was acknowledged that the available domestic workforce can meet only 30% of demand within predominant seasonal industries, such as construction, catering and agriculture, reinforcing the need for additional labour force from the region which can be deployed quickly into the field in the quantities varying depending on each year's situation.⁶ It is also evident from the Report that the Agency, through various programmes and incentives, pays particular attention to promoting seasonal employment of unemployed nationals registered with the Agency. This goal was accomplished quite successfully in 2013, when approximately 10,000 unemployed nationals were temporarily deployed in these industries. Concerning foreign workers, the report provides statistical data on the employment of foreign nationals in Montenegro disaggregated by various criteria such as nationality, business activity, type of industry, town of employment, ratio of employment of nationals vs. foreigners. However, it has not dealt with an issue of mobility of labour force in particular.

The Strategy for Promoting Foreign Investments in Montenegro (2012-2015) presents opportunities and constraints for foreign investors in Montenegro.⁷ The Strategy points out that among other barriers the investors who already started implementing their respective business projects in Montenegro expressed concerns regarding foreign nationals' residence and work permits. Concerning residence permits, the foreign investors reiterated their inability to hire and bring other foreign professionals into their business projects in the country, especially as professionals of specific profiles were not available within the local work force. Also the investors pointed out that a legally permitted period of foreigners' stay is short, and that its extension would allow for larger mobility of middle and high level management skilled

workforce. Concerning work permits, the investors further recommended in the Strategy an extension of work permit validity in particular for the intra-corporate transferee category such as managers and specialists.

The national Strategy of Employment and Human Resources Development (2012-2015) adopted by the Ministry of Labour and Social Welfare in its section “Characteristics of Labour Market in Montenegro” states that a considerable employment of foreigners particularly during holiday season represents one of main peculiarities of the Montenegrin labour market.⁸ Most of foreign labour employed seasonally originates from the Western Balkans including Serbia (42%), Bosnia and Herzegovina (27%) and former Yugoslav Republic of Macedonia (23%) and work in tourism, hotel and restaurant management and construction. The Strategy’s main focus, however, is employment of nationals with very little details provided about foreign labour force including their mobility. In the Strategy itself the term mobility is mentioned in the context of improving mobility of students, researchers and teachers, and the process of internalization of high education.

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

The following is a short description of the main institutions which exercise overall competencies, or are partially relevant, in regard to foreigners’ stay for the purpose of work and employment in Montenegro.

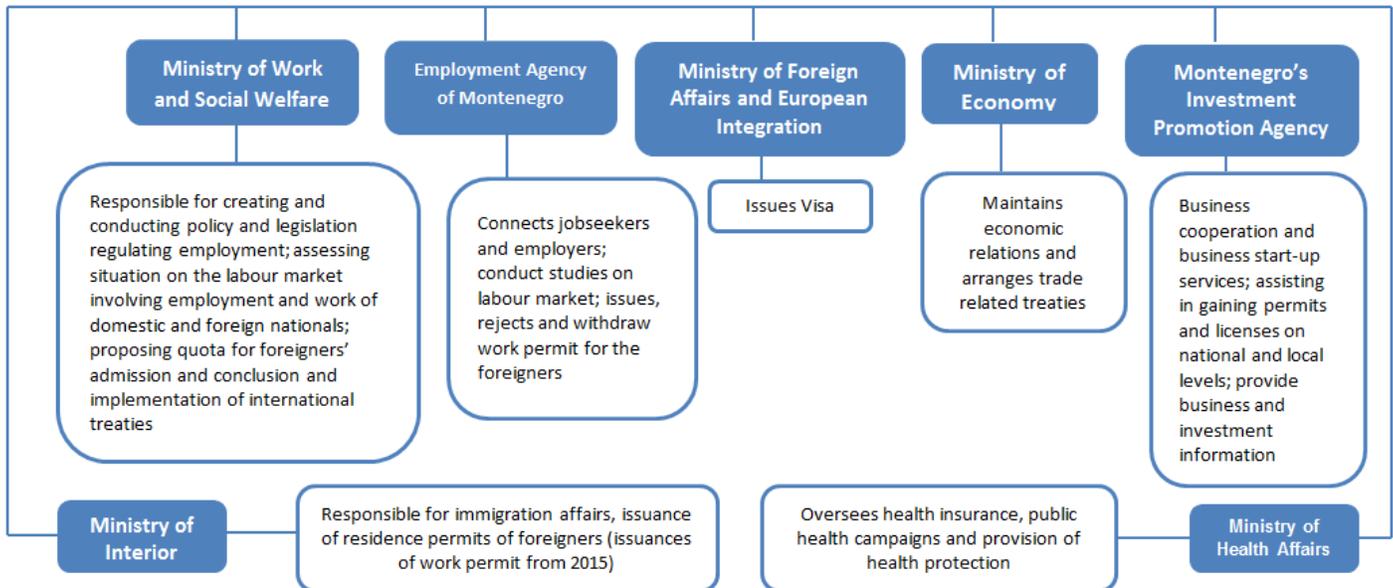


Figure 1. National Institutional Mechanisms for Labour Mobility and Migration Management, Montenegro

The Ministry of Interior (MOI) is responsible, among other things, for immigration, asylum, citizenship including naturalization, travel documents, ID cards, residence and registration of citizens, security of state borders, integrated border management, maintaining border crossing infrastructure, supervision of operations and procedures conducted by police (including legality, efficiency and competency). The Ministry’s branch offices are in charge of granting residence permits to foreigners and, anticipated from

2015, is to take over the mandate in issuing work permits from the Employment Agency following the current legislation reform.ⁱⁱ The Ministry also exercises oversight over operations and procedures undertaken by the Police Administration. The Police Administration is responsible for standard police tasks and duties including security and protection of its citizens and their freedoms, protection of property, prevention of crimes and others. With regard to foreign nationals, the Police Administration is in charge of surveillance and checks at state borders, security checks, and the overall control of movement and stay of foreign nationals in the country.

The Ministry of Labour and Social Welfare (MLSW) is responsible for creating and conducting policy and legislation regulating employment; assessing situation on the labour market involving employment and work of domestic and foreign nationals; proposing quota for foreigners' admission; conclusion and implementation of international treaties on social protection; regulating social pension and disability insurance system and other matters.

The Employment Agency of Montenegro is the public service that connects jobseekers and employers and to this end enforces to certain extent (in accordance with its authorities) policy and legislation in the area of labour (e.g. rights and obligations of workers and employer, benefits in case of unemployment) prescribed by the Ministry of Labour and Social Welfare. The agency performs the following functions: conducts studies on labour market, provides intermediary services to unemployed persons and employers, provides advisory services to employers and employees, keeps records as prescribed by law, provides social benefits for unemployed persons, implements active employment policy measures, including trainings. In respect to foreign nationals, the Employment Agency has been the institution solely in charge of issuing, rejecting, and withdrawing their work permits. The work permit, as an authorization for work, has been one of the preconditions for legal work and residence of foreign nationals in Montenegro in addition to others (e.g. a residence permit and a valid employment contract).ⁱⁱⁱ

The Ministry of Foreign Affairs and European Integration (MFAEI) is responsible for implementing the adopted foreign policy of Montenegro and maintaining relations between Montenegro and other states, with international organizations and institutions, operating national diplomatic-consular posts, conducting diplomatic, consular and other affairs including issuance of visas abroad, issuance of diplomatic and other official travel documents and keeping respective records of them.

The Ministry of Economy (MOE) elaborates and coordinates the implementation of an overall development strategy for the country by, inter alia, creating conditions for growth of the Montenegrin economy, conducting effective investment policy, maintaining economic relations with other countries within the scope of the economic policy implementation, linking domestic business associations with foreign ones, concluding trade and economic treaties.

ⁱⁱ The MOI has been leading the Government's efforts in undertaking necessary legislative and operational steps to reform migration legislation by introducing a new Draft Law on Foreigners, which will change the current system of issuing residence and work permits by merging both procedures into one, resulting in the introduction of a Single Work and Residence Permit, in line with the relevant EU Single Permit directive. At the time of this report preparation, the adoption of the new Law was expected to take place as at early 2015.

ⁱⁱⁱ In early 2015, the Employment Agency is to transfer this authority to the Ministry of Interior, in line with the amendments to the Law on Foreigners currently being finalized. Its future role concerning affairs involving foreign nationals has not been yet specifically stipulated.

The Montenegro's Investment Promotion Agency (MIPA)'s mission is to partner with foreign and domestic investors, public and private sector representatives, international organizations and private individuals in order to boost business opportunities and overseas investments in Montenegro. Its services include, among others: business cooperation and business start-up services; providing information on local investment opportunities and relevant institutional framework; consulting on local customs and laws; assisting in gaining permits and licenses on national and local levels; developing specific strategies for specific sectors and countries; maintaining an investment database; identifying potential challenges to business cooperation in Montenegro.

The Ministry of Health (MOH) carries out activities in accordance with the country's health protection policy, including such issues as health insurance, public health campaigns and provision of health protection services covered from the State budget.

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

International Conventions and Covenants

The treatment of migrant workers is subject to an increasing number of international conventions and charters. Like other countries in the region, Montenegro is signatory to several universal and European conventions and treaties. Some of core conventions ratified by Montenegro and addressing human rights standards applicable to foreign nationals, include: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture (CAT), the Convention on the Rights of the Child (CRC), the European Social Charter (1961; revised 1996) and the European Convention on Human Rights and its protocols.

Concerning migrant workers' rights specifically, the following relevant treaties/conventions were ratified by Montenegro in 2006: ILO C97- Migration for Employment Convention (1949), ILO C143 Migrant Workers Convention (1975). The UN Convention on the Protection of the Rights of All Migrants Workers and Members of their Families (CMW) was signed in October 2006 but has not yet been ratified.

Bi-lateral Agreements

Montenegro does not have **labour migration agreements** concluded with the South-East Europe (SEE) countries or any other countries. The pre-dominantly seasonal character of the labour market and, hence, the need to remain maximum flexibility, are perceived to be one of the main reasons for the absence of these agreements. Access of foreigners to Montenegro's labour market is therefore primarily regulated by a work permit cap (quota) system. For 2014, the Government established the total quota for issuing various categories of work permits to be at 19,500.

The second category of **bilateral agreements, on social insurance**, has been signed by Montenegro with the SEE countries. These agreements regulate rights stemming from the social insurance following work and stay on the territories of the signatory countries. The provisions of those bilateral agreements cover rights related to health insurance, pension and disability fund, remuneration in case of unemployment and occasionally child allowance. The bilateral agreements on social insurance are usually accompanied

by administrative implementing treaties/protocols that regulate in more detail the procedures for their implementation.

To date, Montenegro has concluded new, or acceded to the previous agreements on social insurance concluded by the Former Yugoslavia, with 24 countries, of whom 17 are EU Member States:

- Austria (in force as of June 1, 2011)
- Belgium (as of October 1956),
- Slovenia (as of January 2012)
- Hungary (as of April 2009)
- Luxemburg (as of May 2009)
- Bulgaria (as of September 1958)
- Slovakia (as of December 1957)
- Czech Republic (as of July 2002)
- Denmark (as of August 1983)
- France (as of April 1951)
- Italy (as of January 1961)
- Croatia (as of May 2003)
- Netherlands (as of April 1979)
- Poland (as of January 1959)
- Germany (as of September 1969)
- Sweden (as of January 1979)
- United Kingdom (as of September 1958)

The remaining non EU countries include Serbia (as of January 2008), Switzerland (as of March 1964), Bosnia-Herzegovina (as of January 2004), former Yugoslav Republic of Macedonia (as of August 2011), Libya (as of June 1990), Norway (as of 1976) and Egypt (as of February 1989). Presently, there are on-going negotiations on a new agreement with Bosnia-Herzegovina, Turkey and Slovakia, while the first round of negotiations with Bulgaria will start in mid-September 2014. In summary, regarding the SEE region only, the agreements have been concluded with BiH, Serbia, former Yugoslav Republic of Macedonia and Croatia.

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

2.4.1. General Access of Foreigner to Labour Market

The Constitution of Montenegro

The Constitution of Montenegro, being the most important legal act of the country, sets out several provisions that assure protection of fundamental human rights and freedoms. This includes an obligation of the State to protect rights and freedoms of everyone present on its territory (art 6. and art 19), whereas the guaranteed rights and freedoms can be limited only by legislation to the extent allowed by the Constitution, to meet a purpose in the society for which such a limitation is allowed (art. 24). Nevertheless, the right to life; the right to legal remedy and legal assistance, dignity and respect for

a person; the right to fair and equal trial and the principle of legality with the assumption of innocence; the right to legal defence and compensation of damage for illegal and unfounded deprivation of liberty and unfounded judgement; and freedoms of expression of thought, conscious and religious beliefs and the conclusion of marriage cannot be subject to limitations (art. 25). Furthermore, the Constitution bans the instigation and manifestation of hate and animosity (art.7), and prohibits discrimination on any ground (art. 8).⁹

All listed rights and freedoms are important in respect of the State's relations with its nationals and foreign nationals. In terms of foreign nationals, in particular, the Constitution guarantees a non-refoulement principle/right to asylum (art. 44), foreign nationals' right to own property in accordance with law (art. 61), and a restriction for establishing political organizations and political activities (art. 54).

In addition, the Constitution stipulates that international treaties and generally accepted rules of international law are an integral part of the legal order, have supremacy over domestic legislation and are directly applied in the cases of discrepancies with the national legislation (art. 9). The laws must be compliant with the Constitution and the ratified international treaties, while the secondary legislation must be compliant both with the Constitution and the law (art.145). A general hierarchy/structure of the Montenegrin legislative framework is organized as following: 1) the Constitution- the highest law of the State, 2) the law- written rules that regulate certain matters, 3) the by-law (books of rules) stems from the law and regulates certain issues in a more detailed manner, 4) the order - a legal act which orders or bans certain codes of conduct in a situation of general importance and 5) the instruction- sets out a certain modus of operations and conduct by administrative authorities while performing their tasks. Consequently, the above structure is valid for migration legislation as well, as it must be in compliance with the Montenegrin Constitution and comply with international treaties. At times, this task of ensuring coherence of various layers of legislation may be challenging for the authorities which must manage migration in compliance with its policies, domestic legislation and international law.

The Laws on Foreigners and Their Employment

Two main legal acts regulating general access of foreigners to the Montenegro's labour market are the Law on Foreigners and the Law on Employment on Foreigners:

The current **Law on Foreigners** (Official Gazette of Montenegro no. 82/08, 72/09, 32/11, and 53/11, 27/13 i 61/13) is an umbrella *lex specialis* migration law regulating entry, movement and stay of foreign nationals in Montenegro. The Law defines pre-entry requirements (valid travel documents, means of subsistence, etc.); types of stay (stay up to 90 days, short term stay and long term residency); illegal stay and forced removal; detention at the shelter; travel documents for foreign nationals; records on foreign nationals; and stipulates penalty provisions for legislation breaches.¹⁰ The majority of affairs and tasks provided by the Law fall under the competency of the Ministry of Interior and its organizational units, with some exceptions (e.g. visa matters are dealt with by the Ministry of Foreign Affairs).

The current **Law on Labour and Employment of Foreigners** (Official Gazette of Montenegro.22/08 and 32/2011) sets out rules for the employment of foreign nationals in Montenegro. It stipulates specific types of work permits issued to foreign workers, exceptions, procedures of issuance, withdrawal and annulment, and other related matters. As per this Law, all tasks associated with the work permits fall under the authority of the Employment Agency.¹¹

At the time of the report preparation, the Government of Montenegro was finalizing a reform of migration regulation in the country in what concerns access of foreigners to labour market. Specifically, the current Law on Foreigners and the Law on Employment of Foreigners were undergoing considerable changes, being merged into one legal act and introducing a novel approach to regulating foreigners' status in the country through unifying residence and work permits into one single permit, in line with the EU Single Permit Directive.^{iv} With respect to the existing laws in force, a major change will include: a) unified procedures resulting with one single stay and work permit (in accordance with EU Directive 2011/98) and b) transferring the mandate for granting work permits from the Employment Agency to the Ministry of Interior.

Other Legislation Relevant to Foreign Nationals' Employment

The Labour Code (Official Gazette of Montenegro no. 49/08, 26/09, 59/11, 66/12), sets out a general framework for regulating employment relationship between employers and employees, stipulating their rights and obligations, as well as terms of employment to become part of the employment contract. The Code is also applied to foreigners and stateless persons employed by domestic or foreign employers operating their businesses on the territory of Montenegro.¹²

The Law on Registration of Physical Locations of Stay and Residence (Official Gazette of Montenegro no. 13/08 and 41/10 and 40/11) sets out obligations of Montenegrin citizens and foreign nationals to register their stay/ residence at a certain physical location (address). Depending on whether such a stay at a certain location is temporary or long term, the Law defines two types of stay: a temporary stay at a certain location/site with no intention of living at that location permanently (*cg. "Boravište"*) and a residence with the intention of permanent stay at a certain location/site due to professional, economical and other reasons (*cg. "prebivalište"*). Foreigners themselves or accommodation providers (hotels and other landlords), depending on the actual duration of stay, are obliged to report to the authorities on the incidents of any types of foreigners' stay/residence on the territory of Montenegro. In the cases of establishing residence in Montenegro for the prime purpose of work, the most relevant address for determining the geographic validity of the permit would be the business location of the migrant worker's employer (or of its headquarters).¹³

The Law on General Administrative Procedures (Official Gazette of Montenegro no. 60/03) sets out procedures of conduct for local and state authorities when deciding on certain rights, obligations or legal interests of a person, a legal entity or another party. If a certain situation affecting a foreign national is not specifically reflected in the *lex specialis* law, namely the Law on Foreigners, general provisions of the Law on General Administrative Procedures will apply.¹⁴

The Law on Administrative Review (Official Gazette of Montenegro no. 60/03 and no 32/11) stipulates procedures for requesting a judicial review of final and binding decisions made by the 2nd instance

^{iv} The Government of Montenegro in its session held on May 19, 2014 tasked the Ministry of Interior, Ministry of Labour and the Employment Agency to complete all legislative actions required for introducing and implementing a single permit as of January 1, 2015. In an interview conducted as a preparation of this report, the representative of the Ministry of Interior, which prepared the draft Law in coordination with other ministries, estimated that the Parliament would adopt the Law by/around September 2014, with the implementation starting as of January 1, 2015.

authority (which decided upon appeal) or when a certain matter was dealt with by the 1st instance authority with no provided right to appeal. The judicial review will be requested in a situation when a person considers that his/her legal right or interest was violated by the executive branch authorities (e.g. the ministry or another agency). In addition, the judicial administrative review can be launched in a case of „silence of administration“, when the competent authority makes no decision within the timeframe set by law.¹⁵

The Law on Misdemeanour (Official Gazette of Montenegro no. 1/11, 6/11, and 39/11) lays down misdemeanour, sanctions and procedures conducted by responsible authorities in general terms. The misdemeanour is a prescribed breach of public order, as provided by this law or other regulations that foresee sanctions, certainly a less severe breach than a criminal offence. The proposed Draft Law on Foreigners sets out a range of misdemeanours, as a result of infringement of regulations by a foreign national or another person associated with foreigners (e.g. his/her employer, accommodation provider, international carrier and others).¹⁶

The Law on Administrative Fees (Official Gazette of Montenegro no. 22/08, 77/08, and 20/11) stipulates various types of fees to be paid to the local authorities by a party who requests their service. Among others, the Law sets out fees for issuing visas, residence permits, IDs and work permits as well as citizenship procedures. The present fee for applying for a work permit amounts to 10 EUR.¹⁷

Operational Procedures for Granting Work Permits

Existing System of Granting Work Permits

The following figure describes the existing system of granting work permits to foreign nationals in Montenegro provided under the Law on Employment of Foreigners enacted in 2008 and slightly amended in 2011.

EXISTING SYSTEM OF GRANTING WORK PERMITS

TYPE OF PERMIT	CATEGORY OF FOREIGNER	VALIDITY	REQUESTED BY
PERSONAL WORK PERMIT	<ol style="list-style-type: none"> 1. Permanent resident 2. Refugee 3. Additional int. protection 	<ol style="list-style-type: none"> 1. Unlimited 2. Unlimited 3. Up to 1 year with possible extension 	FOREIGNER
EMPLOYMENT PERMIT	FOREIGNER (implies for operations of long term nature, but a seasonal work as well)	Up to 1 year, with possible extension up to 2 additional years (Seasonal work up to 8 months)	EMPLOYER
LABOUR PERMIT	<ol style="list-style-type: none"> 1. CROSS BORDER SERVICES (“ORDINARY WORKERS”) 2. SERVICE PROVIDERS (MANAGERS, SPECIALISTS) 	<ol style="list-style-type: none"> 1. Up to 1 year 2. Up to 2 year plus extension to 2 years 	Employer in Montenegro (within foreign business corporation, or established by foreign company)

Figure 2. Existing system of granting work permits

The chart illustrates three basic types of work permits; the category of foreign workers eligible to receive these permits and their linkage with the respective permit type; the permit validity and a party who files an application. All foreign nationals are treated in the same manner regardless of their nationality (EU Member States (MS), SEE country nationals and/or other nationals).

As illustrated in figure 2, an application for a work permit is filed by an employer to the Employment Agency's office in the municipality where the employer has its registered headquarter (with an exception of a personal work permit whereas a foreigner files his/her own application). The Agency has its organizational units/departments in each municipality throughout the country. Nevertheless, the actual procedure involving decision making and subsequent issuance of work permits is done in seven Agency's branch offices located in the major municipalities. The duration of application processing is seven days since the day of submitting to the Agency a full application complemented with documentary evidences required by the Law on Employment of Foreigners (step 1).

The existence of a valid work permit is a condition that must be met and that allows a foreigner to file an application for a residence permit (step 2). If the foreigner's application for a residence permit was rejected by the competent authority (the Ministry of Interior), the work permit, already issued, will be annulled. If both permits are obtained within the prescribed period of time, the employer is then obliged to conclude an employment contract (step 3) with the foreigner. In addition, not later than 8 days since the employment contract enters into force, the employer is to notify the Employment Agency about the date when the foreigner commences and ends his/her actual work. Once the employment contract is in force, the employer is obliged to notify the tax department on the employment details and to pay relevant social contributions. This would be a source for health, pension and other benefits for the foreign national employed.^v

It is noteworthy to mention that the Agency is not directly involved in further monitoring of the situation involving the respective foreigner and his/her employer, once the work permit is issued. While, as stated earlier, the employer is obliged to notify the Agency on the date when the foreign national starts to perform his/her work duties, there are frequent cases when employers fail to comply with this specific legal obligation on reporting. The Agency can withdraw the permit if it establishes that the original conditions for permit issuance have changed (either on the basis of the information obtained from the employer or on an *ex-officio* basis following the information received from other authorities, such as the Ministry of Interior). To this end, the Ministry is obliged to notify the Employment Agency that a stay/residence permit for a respective foreign worker was granted, or later annulled or withdrawn, within 8 days of such action. Another institution, the Labour Inspectorate is in charge of verifying if the employer and the foreign national comply with the terms of the issued work permit and the signed employment contract. If established that there is a breach of regulations, the Labour inspectorate is authorized to impose penalties or take other appropriate measures.

^v Issues related to social insurance are neither subject of the Law on Foreigners nor of the Law on the Employment of Foreigners, but of other legislation regulating employment in general terms.

In summary, the three main institutions in this institutional accountability chain related to foreigners' employment include the Ministry of Interior, the Employment Agency and the Labour Inspectorate of whom none is sub-ordinate to another, but all have mutual legal obligations to cooperate. Therefore, it is fundamental to assure effectiveness and continued inter-agency cooperation and information sharing also when the new procedures on permit issuance enter into force.

Concerning **mobility**, each work permit is tied to one specific employer and one specific job. It cannot be transferred to another employer, nor is it possible to transfer a worker to another branch or unit of the same employer. Concerning a new employment, in principle it would be possible that a migrant worker accepted a job offer from another employer in Montenegro. But in this situation his/her new employer would have to re-initiate the work permit obtainment procedure from the start. Furthermore, a challenging issue would be the legality of the foreigner's stay in Montenegro during this interim period when a new work permit issuance procedure is launched, as the residence permit is strictly linked to the previously issued work permit.

Highlights on New Work Permit System under Finalized Draft Law on Foreigners

Some of the major changes in the draft legal framework addressing work and employment of foreigners in general terms are presented below:

Institutional Changes

As mentioned earlier, the currently applied procedure involves two institutions: while the Employment Agency issues a work permit (first), the Ministry of Interior grants a temporary residence permit (second) on all legal grounds, including work and employment. As stated, the new draft Law will unite both administrative procedures into one and foresee only the Ministry of Interior as a sole authority in charge of the work-related registration process. The draft Law mentions the Employment Agency only with the context of its mandate in determining work permit quotas.

The draft Law provides that the foreigner is to be granted a single residence and work permit in the MOI's branch office located in the municipality where the employer's business headquarter (main office) is situated, while the Ministry of Interior's central office acts as an appealing authority in the case of rejection.

Format of a Permit

A single work and residence permit would be issued in accordance with Council Regulation no. 1030/2002 on ID 1 cards with all prescribed biometric elements and safeguards.¹⁸ This would replace a current practice of affixing a stamp in foreigners' passports that serves as a short-stay permit, as well as issuing a separate stand-alone paper form work permit. It is recommended to ensure that the still valid residence permits issued in a "stamp form", subject to extension, reissuance and amendments, should be transferred into the same new format once the law comes into effect, e.g. single permit cards in ID 1 format.

Quota

The number of work permits is subject to a work permit cap (quota) established by a Government decision by November each year. There may be certain alterations, after the quota is set, including an

increase or decrease of the adopted quota based on the changes occurring in the labour market. It should be noted that there are certain professionals who are exempt from the requirement of obtaining a work permit and who, in other words, enjoy free access to labour market regardless of their citizenship (marked below as *exceptional categories*). In addition, there are certain categories of foreign workers who are required to obtain work permits but are not subject to quota (marked below: *foreigners not subject to work permit cap (quota)*). And lastly, there are foreign nationals who are not required to have a residence/work permit, but can legalize their stay and work by obtaining a so-called “acknowledgment work certificate” (marked below as *Categories that work based on Acknowledgment Work Certificate*).

Exceptional Categories

According to the draft Law, certain categories of foreign nationals could work and reside without a work permit or a work acknowledgment certificate. These are individuals who have obtained a temporary stay permit for purpose of family reunification with the Montenegrin citizen or with foreign long term resident; individuals with a recognized refugee status or subsidiary protection in accordance with the legislation governing asylum; and individuals with a granted humanitarian stay.

Foreigners not subject to work permit cap (quota)

A stay and work permit is to be granted regardless of the work permit cap (quota) to the categories of foreigners who:

- Performs affairs based on the international treaties concluded by Montenegro with another state under reciprocal terms;
- Teaches in educational facilities, by using a language and letters of minorities or other minority national communities;
- Acts as a professional sportsmen or sport worker in Montenegro in accordance with the legislation governing sport;
- Has been referred in the article 64, para 2 of the Law on Foreigners and Employment of Foreigners;
- Has been temporarily transferred as a manager or specialist in accordance with the art.71 of the Law on Foreigners and Employment of Foreigners;
- Has been involved in implementing development projects set out by the Government;
- Has been employed or performing labour operations in Montenegro, but his residence has been at the neighbouring state whereas he returns at least once per week in his place or residence (referred as a daily migrant).

Categories that work based on Acknowledgment Work Certificate

The draft Law has stipulated certain professionals who can reside and work in Montenegro for a shorter period of time, maximum during 90 days, within a year. There are 17 such categories that could be summarized in several cluster such as: international/research projects (e.g. persons engaged in the implementation of international assistance agreements, research projects, academics, lecturers/trainers, persons possessing specialized skills, trainees visiting within pupil exchange programmes and others); art (engaged in theatre, film, music, ballet and other art and entertainment),

business (company founders, legal representatives, managers of companies, trainers, equipment montages workers).

The Draft Law on Foreigners received an overall positive feedback by the EC Delegation in May 2014. The below section presents a short analysis of the Draft Law's provisions related to foreigners' employment in terms of its compliance with relevant EU *acquis*. In this regard, attention will be made to some particular issues, inter alia, the format of permits, biometric data, foreign workers' rights and others.

Directive 2011/98 on a single application procedure for a single permit for third country nationals to reside and work in the territory of MS and on common set of rights for third country workers legally residing in a MS:

The Directive establishes: a) a single application procedure for **issuing a single permit** for third-country nationals (in a form of **biometric document**) to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status; and b) a common **set of rights of third-country workers** legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State. It shall not apply to following categories: posted workers, seasonal workers, au pairs, beneficiaries of international and national protection, long term residents, foreigners whose removal is pending, self-employed workers, and seafarers, persons authorized to work up to 6 months and students.

Decrease of types of work permits and Purpose of Work Permit

The 2014 draft Law foresees a smaller number of types of work permits with respect to the current system in place (please see figure 1). While the current system includes three types of work permits: 1) personal work permit, 2) labour permit and 3) work permit, the new draft 2014 Law on Foreigners specifies only one single permit for residence and work, which is mostly aligned with Directive 2011/98/EU. The draft Law breaks down the specific purpose for granting permits into: 1) employment of a foreign national (in general sense); 2) seasonal employment; and 3) work of a referred worker (including posted workers and intra-corporate transferees, such as managers and specialists). To this end, in order to distinguish various purposes/categories, it would be recommendable that an issuing authority inserts appropriate information such as: "seasonal worker", or "intra-corporate transferee" under the heading type of permit on the permit itself. If the initial residence permit was issued for another ground, for example family reunification, it would be still required to include the information if such a person is entitled to work. To ensure compliance with Directive 2011/98, it will be important, when issuing residence permits in accordance with EC No 1030/2002, not to issue additional permits as a proof of authorization to access labour markets.¹⁹

Biometric Data and Party who Files Application

The 2014 Draft Law provides that a foreign national present on the territory of Montenegro will submit the application in person and that he/she would be required to provide his/her biometric data at the moment of filing the application. The Law also provides that exceptionally an employer may file a residence and work permit application on behalf of the foreign worker. In this case such an application

would be subject to a permit quota check, following which an appropriate certificate on quota reservation is to be issued. In this situation a foreign national is obliged to arrive to Montenegro and provide his/her biometric data within 5 days of application submission (as presently diplomatic consular posts are not equipped to perform this task abroad), otherwise the application will be considered withdrawn. The biometric data are required for a single residence and work permit in ID 1 form, in line with the Directive's provisions.

Up to date, the submission of a permit application by the employer has been the most frequently applied legal practice, with the exception of personal work permits, with no biometric data gathering required. This appears to be a more practical solution under the proposed system as well, as it will simplify the collection of locally required supporting documentation. In addition, it decreases risks of illegal migration in situations when a foreigner arrives to Montenegro for the exclusive reason of filing his/her application and staying illegally, if the application is rejected. However, a five day period for personal appearance for the purpose of providing biometrics may be too short and expensive for a foreigner, as there are no guarantees that the residence and work permit will be issued in the end. Considering a relatively recent enforcement of Directive 2011/98 in the EU, the Member states' experiences concerning its application would be particularly relevant to the Government of Montenegro as it continues aligning its own legislation with the provisions and standards envisaged in this Directive (e.g. specific timing of taking foreigner's bio-metric data).

Foreign Workers' Rights

Under the chapter "Right to Equal Treatment" within Directive 2011/98, the following rights have to be provided to a foreign worker including: a) pay and dismissal as well as safety and health at the workplace, b) freedom of association and affiliation, c) education and vocational training, d) recognition of diplomas and professional qualifications, e) access to social security, f) tax benefits, g) access to goods and services made available to the public including procedures for obtaining housing, and counselling services offered by employment offices.²⁰ Some of these enlisted rights are included within the general Montenegrin Labour Code, and should therefore apply to foreign nationals. However, given a considerable risk of migrant workers' rights abuses due to their particular vulnerability, it is recommended to either specifically list the rights of legally residing foreign nationals in the *lex specialis* law or to include a reference in the Law on Foreigners to the Labour Code with a remark that foreign nationals enjoy the same scope of rights as national workers. Presently, the list of rights has been specifically stipulated only for foreign nationals with a long-term residency status in accordance with an appropriate EU Directive.

Montenegrin situation in the area of general access of foreigners to labour market: mainly aligned with the caveat on foreign workers' right to be included. Operational procedures have to be clearly specified in the accompanying book of rules.

2.4.2. Regulation of employment of special categories of migrant workers

Highly-qualified and recognition of qualifications

Council Directive 2009/50/EC of 25 May 2009 on the condition of entry and residence of third country nationals for the purpose of highly qualified employment (Blue Card)

The purpose of this Directive is to determine the conditions of entry and residence in the territory of the Member State (MS) of third country nationals and of their family members, for the purpose of highly qualified employment, for more than three months. In the context of Directive, highly qualified employment means paid employment of a third country national with higher professional/education qualification. More favourable conditions may apply. There must be a job offer for highly qualified employment of at least one year; proof of qualifications; valid travel document, sickness insurance, salary of at least 1.5 average in the MS concerned. A Blue card can be issued for a period between one and four years (7.2); entitles holder to enter, re-enter and stay (art7.4), to access labour market (art 12), enjoy continued stay during temporary unemployment (art13), equal treatment (art14), including right to move to another MS after 18 month (art.18), in principle together with family (19.1). Restrictions include: public authority jobs and jobs of general interest of the MS, reserved to nationals (12.3).

Montenegrin situation: Not aligned. There are no specific provisions in the proposed draft Law on Foreigners addressing the employment of highly qualified employees. Most likely this is associated with the Government's Action Plan that was created as a response to the EC Screening Report of March- May 2013, which states the second half of 2017 as a targeted timeframe for the transposition of this Directive into the local legislation. In the meantime, it is recommended that in the interim period concrete measures be undertaken to examine Montenegro's market needs for highly educated foreign workforce.

Directive 2005/36/EC of the European Parliament and of the European Council of 7 September 2005 on the recognition of professional qualifications

The Directive sets out three systems for the recognition of qualifications: 1) automatic recognition for professions for which the minimum training conditions have been harmonised (health professionals, architects, veterinary surgeons), 2) the general system for other regulated professions, 3) recognition on the basis of professional experience for certain professional activities. The Directive also applies to professionals wishing to establish themselves, as an employed or self-employed person on a permanent basis, in an EU country other than that in which they obtained their professional qualifications.

Montenegrin position: partly aligned. The current legislation on procedures involving issuance of work permits and educational qualifications regulates issues concerning recognition of foreign diplomas. This procedure is run by the Ministry of Education and is completed within a 20 day period. In order to facilitate and expedite procedures concerning issuance of a work permit whereas the recognition of diploma is one of the requirements, the Employment Agency would accept a proof that this procedure has been launched, which is certainly commendable in operational terms. However, further alignment in regard with Directive 2005/36 (e.g. automatic recognition) has to still be made.

Seasonal workers

Directive 2014/36/EU on Conditions of Entry and Residence of Third Country Nationals for the Purpose of Seasonal Employment

The Directive establishes a fast track procedure for the admission of third country seasonal workers, based on a common definition and common criteria, e.g. existence of work contract/binding job offer that specifies a salary, maximum duration of stay during a calendar year (to prevent overstaying), provision of accommodation and explicit obligation to return after that period considering temporary nature of these jobs, implying that there is no possibility of status change for seasonal workers.

There may be clear and simple procedures for issuing multi-seasonal work permit or re-issuance of permit for the same workers. Also, rights and obligations of employers of seasonal workers are clearly stipulated.

Montenegrin situation: In the 2014 draft Law, more attention has been paid to seasonal workers particularly concerning a provision on their length of stay and a requirement to have a binding job offer. Article 2, paragraph 3 of the Labour Law (Official Gazette of Montenegro, no. 49/08, 26/09, 88/09 and 26/10) set out the following: “The law has been applicable to foreign nationals and stateless persons who work for an employer based in Montenegro, unless otherwise has been provided by the law”.²¹ This means that the Labour Law has been applicable to foreigners who are allowed to work in accordance with their respective stay and work permit (with an exception of transferred workers whose working conditions have been regulated by a provision under art.64) and in accordance with this Law they acquire their rights in Montenegro, meaning that seasonal labour of workers has been subjected to the Labour law provisions and by-laws arising from this Law, as well as to the collective agreements.

Also the Montenegrin legislation requires the same level of qualification and skill documentation, e.g. a school diploma or other proofs, for seasonal workers as for longer-term employed workers, even in the cases where no particular specialized skills are required (e.g. fruit picking in agriculture). This presents an often unnecessary legal hurdle for seasonal workers, hence simpler qualification documentation procedures might be beneficial in the context of short-term and lower-skilled jobs.

Another procedural requirement complicating employment for short-term contracts is the need to conduct a labour market test, i.e. to obtain a confirmation from the labour bureau that there are no locally unemployed nationals meeting the job requirements and interested in taking this specific job offer, before allowing the foreigner to take up this post. The compliance with this requirement could be cumbersome for a seasonal worker and realistically could be only performed by the employer. Another major operational concern remains the requirement to enter into regular employment contracts with seasonal workers (involving registration procedure and payment of all social benefits), similarly to regular full-time foreign and domestic employees. This may be a discouraging factor for employers who engage seasonal workers for short periods of time, whereby these expensive and time-consuming procedures act as serious deterrents to regular employment and induce employers to infringe legislation by recruiting irregular workers. Regulation of seasonal workers deserves significant attention and further elaboration, backed up with substantive data from the field, as foreign seasonal workers represent the majority of foreign labour in Montenegro.

Researchers

Council Directive 2005/71/EC on Specific Procedure for Admitting the Third Country National for the Purpose of Scientific Research

The purpose of the Directive is to introduce a special procedure governing entry and residence of third-country nationals coming to carry out a research project in the European Community for a period of more than three months. The aim is to facilitate the admission and mobility of researchers by relieving the immigration authorities in the Member States of the task of checking whether the research project is credible and whether the researcher has the necessary skills to see it through.

Montenegrin situation: Aligned with caveat. The stay permit for the purpose of scientific work can be granted to a foreign national, if he/she provides a contract with a research institution in Montenegro and fulfils general entry conditions (means of subsistence, accommodation, etc.) Detailed rules regulating stay of this category should be further regulated in the upcoming book of rules in line with the finalized Draft Law.

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

The Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on a common definition and harmonized criteria: the transferee must occupy a post as a manager, a specialist or a graduate trainee; the prior employment within the same group of undertakings must have lasted at least 12 months, if required by the Member State; an assignment letter must be produced confirming that the third-country national is transferred to the host entity, specifying the remuneration. Unless this condition conflicts with the principle of Union preference as expressed in the relevant provisions of the Acts of Accession, no labour market test would be performed. A specific scheme for graduate trainees is envisaged. Intra-corporate transferees admitted would be issued with a specific residence permit (marked 'intra-corporate transferee') allowing them to carry out their assignment in diverse entities belonging to the same transnational corporation, including, under certain conditions, entities located in other Member States. This permit would also give them favourable conditions for family reunification in the first Member State.

Montenegrin situation: Mostly aligned with caveat. The draft Law is generally adjusted with the concept of an intra-corporate transfer as spelled out in Directive 2014/66. The posts of managers and specialists are defined in accordance with the subject Directive (some language discrepancies are noted, but fit under the overall meaning of the subject Directive). The provisions in the draft Law addressing the work of managers and specialists correspond to art. 5, "criteria for admission" of the Directive. As per the Directive, the period of validity of the intra-corporate transferee permit shall be at least one year, and may be extended to a maximum of 3 years for managers and specialists and one year for graduate trainees. The draft Law/ by-laws are not in line with this provision. The Directive provides that the application shall be rejected if the employer or his/her host entity has been sanctioned for undeclared work and/or illegal employment. This ground of refusal is not envisaged currently under the Montenegrin Draft Law.

2.4.3. Regulation of return of migrant workers following the cessation of the contract/legal status of stay in the destination country

The draft Law specifically provides that a foreign national's work and residence permit will be annulled if it was issued on the basis of fraudulent data concerning a foreigner or his/her employer and if a

foreigner fails to start working within the legally provided timeframe (specifically eight days from permit obtainment). Prior conditions required for work and stay permit include general conditions of stay (accommodation, means of subsistence, health insurance, etc.) and employment or other contract with employer. If one or several of aforesaid conditions later cease to exist, it/they would impact the validity of stay and work permit, which would be subsequently annulled (unless there is another reason for legal stay in the country). In these situations, a foreigner is considered to reside illegally in Montenegro and thus is obliged to leave the country voluntarily within the timeframe provided by authorities. In the event of non-compliance with this voluntary deadline, a foreign national can be detained and forcibly removed from the country.

2.4.4. Family unification

According to the finalized Draft Law on Foreigners, the unification of foreigners with their close family members can be allowed if a respective foreigner (sponsor) obtained a long-term or short-term residence status. The category of a close family member includes a spouse, minor children and eventually other relatives, provided that there are special personal or humanitarian reasons. In addition, such family members can work without applying additionally for a single residence and work permit provided that their spouse is a Montenegrin citizen or a foreign national with a long-term resident status. Accordingly, the finalized Draft Law on Foreigners is in compliance with provisions of Family Reunification Directive (2003/86/EC).

2.4.5. Social and labour rights

The Montenegrin Labour Code also applies to foreign nationals and stateless persons employed by employers in Montenegro. This Code contains a clause (art. 5, and 6) defining and banning direct and indirect discrimination against any employees or persons seeking employment based on their sex, birth, race, language, religion, skin colour, age, pregnancy, health conditions, physical disability, nationality, marital status, family commitments, sexual affiliations, political affiliation, social background, membership in political parties or unions or any other personal characteristics. Concerning rights, the Labour Code provides that any employee has a right to appropriate remuneration, safety at work, vocational training and other rights stemming from law and collective treaties (art. 11).²² In the context of transposing the provisions of Directive EC 2011/98, it is recommended that an appropriate reference is made in the finalized Draft Law on Foreigners, *the lex specialis*, to the Labour Code. Further, concerning employees' rights, the employer must pay adequate contributions covering the employees' social benefits to the state budget (the public health and pension fund) based on the employment contract and regardless of the worker's nationality. This should allow foreigners to exercise their right to medical care and insurance while being employed. In terms of pension rights, migrant workers' contributions accrued in Montenegro should be acknowledged in the country of their origin, provided that Montenegro has agreement on social insurance with this country. Presently, migrant workers with a short-stay permit would not be able to utilize their unemployment rights (financial support and health insurance during unemployment), as only nationals and persons with a personal work permit (long term residents and persons with granted international protection) could be registered with the Employment Agency's records and accomplish these rights. It is important to elaborate this issue further and

appropriately address it in subsequent relevant legislation, as presently there is a legal loophole in this regard.

2.4.6. Recruitment, facilitation and regulation of private recruitment agencies (PRAs) and other stakeholders, involved in recruitment of foreigners in the local market

The Montenegrin Labour Code lays down terms and conditions for establishing a private recruitment agency as a private establishment that recruits, hires, contracts workers and then “transfers” them temporarily to an employer with business needs for a certain period of time. In legal and practical terms, the Agency is an actual employer of transferred workers and is obliged to pay them a salary and other benefits based on the employment contract. Irrespective of this relation, the Agency and the real employer/business party have a separate agreement regulating their mutual responsibilities. While EU member states use private recruitment agencies primarily for short-term labour engagements, sharing such MS practices would be valuable for Montenegro’s authorities to ensure their full and satisfactory impact in the country.

2.4.7. Roles and responsibilities of employers of migrant workers as compared to employing nationals

Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

This directive requires Member States to prohibit the employment of illegally staying non-EU nationals. It lays down common minimum standards on sanctions against employers who infringe the prohibition. Member States may decide not to apply the directive to illegally staying non-EU nationals whose removal has been suspended and who have been granted permission to work under national law. The employers’ obligations include: requiring non-EU nationals to produce a residence permit or another authorization to stay before taking up employment; keeping copies of the permit or authorization for the duration of the employment, in case of inspection by the national authorities; notifying the authorities within the period established by the Member State when they employ a non-EU national. In cases where the employer is an individual who engages a non-EU national for private purposes, Member States may provide for a simplified procedure of notification. Member States may decide not to require notification when the non-EU national has been granted long-term residence status.

Sanctions: Member States must ensure that infringements are subject to effective, proportionate and dissuasive sanctions, including: financial sanctions in relation to each illegally employed non-EU national; payment of the costs for returning the illegally employed non-EU nationals. Member States must ensure that employers are also, if appropriate, subject to other measures, such as: exclusion from entitlement to some or all public benefits, including EU funding for up to five years; exclusion from participation in a public contract for up to five years; recovery of benefits granted up to 12 months prior to the detection of the illegal employment; temporary or permanent closure of the establishment.

An intentional infringement constitutes a criminal offence when the employer: persists in his/her non-compliance; employs a significant number of illegally staying non-EU nationals; employs such persons in particularly exploitative working conditions; employs victims of trafficking in human beings; illegally employs minors.

Montenegrin situation: Partly aligned. The Draft 2014 Law stipulates a range of fines amounting from EUR 1,000 up to EUR 10,000 for an employer in a situation involving the employment of a foreigner with no residence permit, work permit and concluded employment contract; if failing to keep a work permit at the job premises; if failing to provide an extension of the work permit within the set timeframe; if placing a foreigner to a job post which does not correspond to the job post listed under the work permit; if failing to report start and end dates of employment to the responsible authority and other associated reasons. The principles set out in the EU Directive demonstrate a more stringent policy (involving more than monetary fines) to the employers who employ foreign workers illegally and/or abuse their situation. Therefore, the Draft Law on Foreigners should encompass other penalty provisions, in addition to fines, against employers in accordance with the principles set out in the Directive.

2.4.8. Overall migration data and statistics

Regulation EC/ 862/2007 of July 2007 Community Statistics on Migration and International Protection

Various Montenegrin agencies and ministries keep a range of migration statistics (data) based on their respective mandate. In this regard, the Ministry of Interior and its Police Administration keeps most of migration statistics pertaining to granted residence permits, long-term residents, return (removal from the country), refused entries, irregular migrants, international protection, and others. The Ministry of Foreign Affairs keeps statistics on visas (issued visa, annulled visa etc.). However, each authority keeps statistics for its own purpose primarily and likely uses its own collection methods and disaggregation criteria. There is no joint migration data report published annually with the exception of annual individual institutions' reports.

Relevant migration statistics overview is presented in the Montenegrin Migration Strategy, which is developed for a 3 to 5 year period.

Concerning the statistics on migrant workers' employment, all data on work permits are kept by the Employment Agency main office. The data provided in the Employment Agency Annual Report 2013 are disaggregated by several criteria, such as types of permits, nationalities, sectors/industries, comparison between different geographical areas, comparison between local and international labour force, etc.²³ However, it is not known how many other institutions, apart from the Agency, use and rely on these data that could be a reliable resource for building policies and developing practical mechanisms for regulating employment of foreign workers in Montenegro. As an example, 22,948 work permits were granted to foreign workers in 2013, which represents an increase of 8.62 per cent as compared to 2012. Figure 3 and 4 present data breakdowns by top nationalities and types of industries.

Nationality	Number of Work Permits	Percentage
Serbia	9885	43.99%
Bosnia-Herzegovina	4743	21.08%
Russian Federation	3085	13.71%
former Yugoslav Republic of Macedonia	1498	6.66%

Figure 3. Number of work permits by nationality

Type of Industry	Number of Work Permits	Percentage
Tourism and Catering	5217	24.5%
Construction	4624	21.71%
Whole and Retail Trade/Car Workshops	3458	16.24%

Figure 4. Number of work permits by type of industry

3.0. Main findings, recommendations and conclusions

3.1. Overall compliance with EU *acquis*

By preparing the **finalized draft Law on Foreigners**, the migration authorities in Montenegro undertook considerable efforts to align national legislation with relevant provisions from the EU migration *acquis*, in particular Directive 2011/98 on a single application procedure for a single permit. The finalized draft Law on Foreigners has become a response to the EC 2013 Montenegro's Progress report, which under Chapter 24 states that: “[f]urther efforts are required to ensure full alignment with the *acquis* in the field of legal migration, and to raise the authorities' awareness of the issues of mixed migration, integration of migrants and the protection of vulnerable groups in this area”.²⁴ The EC report further recommended that the Government needed to adopt an action plan which would “[o]utline measures to align the remaining legislation in the area of migration with the *acquis*, including an impact assessment on administrative capacity, training needs and the budget”.²⁵

As a response to the EC 2013 report, the Montenegrin Government prepared an Action Plan and a document called “Techno-Economic Elaborate” to address effectively each of the enlisted recommendations specifying the title of activity, the responsible authority, the deadline, funds required, impact indicator. The major measures/activities proposed in the document fell under the competency of the Ministry of Interior, primarily as they required adjustments of the Law on Foreigners and an accompanying book of rules with the EU *acquis*. The amendment preparation process was finalized in spring 2014, with the draft Law awaiting parliamentary adoption. Other measures necessary for making the new system operational, such as designated premises renovation and recruitment of 24 new officers, have been initiated but not yet completed at the time of this report preparation, due to financial constraints and on-going approval procedures. All these reasons caused a delay in launching a new system and applying the “one-stop-shop” concept in practice. Although the launch of the new system was provisionally scheduled for June 1, 2014, it had to be postponed to early 2015.

Despite the delays, the EU delegation in Podgorica issued a more positive opinion on Montenegro's compliance with the EU migration *acquis* in May 2014, as recognition of the efforts made and results achieved to date. The finalized draft Law on Foreigners 2014, however, only provides general principles and an overall course of action, while more detailed rules will have to be developed and stipulated in the appropriate book of rules.

3.2. Key gaps in compliance with EU *acquis* and legislative provisions acting as barriers to labour mobility towards the country and within the SEE region

Section 2.4 with its subsequent subsections provides a detailed gap analysis with regards to the EU *acquis* as well as an overview of the main issues hindering labour mobility towards the country and within the SEE region.

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

As mentioned in earlier sections, the next major direction of work in ensuring EU compliance will relate to alignment of legislation with Council Directive 2009/50/EC of 25 May 2009 on the condition of entry and residence of third country nationals for the purpose of highly qualified employment (Blue Card) and with other listed EU regulations, specifically by providing more details in respective books of rules/further law amendments.

The following are general recommendations concerning the upcoming application of a new single work and residence permit that will also affect labour mobility:

- Define clearly an immigration and labour policy of Montenegro for the purpose of employment of migrant workers and transpose it to legislation (consider flexible vs. rigid approach/dependence on foreign labour force vs. protection of national labour force, and structure of foreign labour required). Though issues of labour and employment of foreigners are subject to several strategies and dealt with by several institutions, it will be important to have one institution (likely the Ministry of Interior in coordination with the Ministry of Labour and Social Welfare) designated specifically in taking a lead and ownership in this matter.
- Prepare and produce an annual migration data statistic report (e.g. Migration Profile) that would include all relevant statistics in one place, disaggregated by sex, age, nationality and other requirements of Regulation EC/ 862/2007 of July 2007 on Community Statistics on Migration and International Protection. This would be a useful tool for immigration policy development and update, also what concerns regulation of status and rights protection of migrant workers.
- Ensure a smooth transition to a new single work and residence permit system in early 2015 by taking preparatory actions ensuring that: a) the law and accompanying by-laws are in place regulating procedural matters; b) skilled and trained human resources are recruited/transferred to perform respective duties related to permit application processing and issuance; c) physical offices and IT Infrastructure have been in place. In this regard, relevant experience of other EU Member States may be reviewed to learn of good practices in transposing Directive 2011/98 on a single permit to address certain procedural dilemmas (e.g. timeframe for taking biometric data in a situation where no specialized equipment exists in consular offices abroad).
- Disseminate appropriate information concerning obligations and rights of migrant workers and their employers through public channels prior to switching to the new system (web page, hard copy leaflets and booklets in domestic and foreign languages) at least two months preceding its introduction.
- In accordance with EC Directive 2011/98 on a single permit, define a set of rights and safeguards assigned to foreign workers (payment, work conditions, etc.) *in lex specialis* legislation or make a clear reference to the General Labour Code.

- In accordance with single permit issuance, it is recommended that an issuing authority inserts appropriate information such as: “seasonal worker”, or “intra-corporate transferee” under the heading type of permit on the permit itself, in order to distinguish various purposes/categories of foreign workers.
- Consider decreasing the amount of required supporting documents and facilitate their obtainment from other institutions as much as possible via electronic means. The focus should be only on those supporting documents which appear absolutely vital for making a decision on permit issuance. A migrant worker should be allowed to submit an entire application from his/her home country, ideally via an electronic system (this concerns seasonal workers and intra-corporate transferees in particular). To this end, a request for presenting original documents should be relaxed to allow for provision of certified, notarized copies of the documents sent from the migrant’s own country of residence.
- Facilitate maximum cooperation among the relevant authorities including the Ministry of Interior, the Employment Agency, the Labour Inspectorate, the Tax Administration and others, to make sure that the new system is fully functional. This includes collection, exchange and analysis of data gathered in the field involving foreign nationals and employers (for example employment trends, educational background, professions, age, citizenship, duration of requested permit, recurring applications, type and nature of breaches, etc.). Also, efforts should be intensified to ensure effective electronic data exchange which would enable the MOI’s easier access to relevant public documents required as a basis for taking a decision on a permit application but in possession of other public authorities of the country, in line with EU Directive 2003/98/EC on the re-use of public sector information.
- Define better the authorities in charge of the first and second instance single permit procedure involved with issuance and appeal as well as the judicial oversight (the Court), e.g. Ministry, the competent body, the branch office. If certain legislative drafting rules allow using only the terms like the ones listed as examples, specify their meaning under definitions in law and/or provide explanations in informational materials.
- Define in more detail requirements regarding residence and work for self-employed foreigners (entrepreneurs). Directive 2011/98 is not applicable to this category.

Furthermore, the following are specific issues that directly affect labour mobility and accompanying recommendations where applicable:

- **Access to Labour Market/ Legal change of employment status while in Montenegro:** This issue has not been addressed in the local legislation, including a transfer to another city where the employer also conducts its business activity (‘geographic mobility’); taking up/promotion to another post with the same employer (‘occupational mobility’); and/or accepting a job offer of another employer while in Montenegro. All three situations create constraints for labour mobility of foreign workers within Montenegro.

- **Alternatives to Employment contracts:** Consider to introduce other more flexible work agreements (e.g. a contract for temporary assignments) for very short-term occasional work arrangements, such as seasonal work for the period of up to one month, as a more practical solution to both the employer and the employee and an effective alternative to illegal employment. Examine which employers have a constant need for the same seasonal work and consider issuing multi-seasonal work permits to these employers.
- **Safeguards against migrant workers abuse:** Indicate clearly which institution migrant workers can approach in the case of infringement of their employment and other rights by an employer (e.g. absence or reduced remuneration, safety at work, illegal dismissal, etc.). Educate migrant workers on their responsibilities and rights while in Montenegro.
- **Private Recruitment Agencies and temporary employment undertakings:** In theory, under an appropriate supervision and monitoring, the agencies can be engaged more actively in completing a whole recruitment and employment procedure on behalf of the employer, starting from advertising job posts, selection of suitable work force up to completing of the permit issuance. This could be appropriate for workers interested in taking up short-term assignments, such as seasonal workers. It is recommendable to define a role of private agencies for intermediary services with respect to foreign nationals on the migration policy level at first
- **Bilateral Agreements on Employment with SEE Countries:** it appears important to reconsider the usage of such agreements as a method of safeguarding rights and obligations of migrant workers. Concluding agreements with other countries of the SEE region, and Serbia, former Yugoslav Republic of Macedonia and Bosnia and Herzegovina in particular, could be particularly beneficial, as nationals from these countries represent the majority of foreign work force employed in Montenegro. Also, the migration and labour authorities from the SEE countries individually may consider applying more favourable rules and facilitated procedures to nationals of SEE countries.

In summary, while the Government admits that its domicile workforce can meet only 30% of demand for seasonal work in certain industries and is accordingly dependent on foreign labour, this issue has not been addressed in the immigration and labour policy sufficiently. The nature of such engagements has been largely influenced by season and weather conditions, where labour force, mostly from SEE countries, has to be quickly deployed. This calls for larger flexibility in regulating labour mobility and elimination of all cumbersome and redundant procedures that affect legal stay and work in Montenegro. In the absence of bilateral agreements on employment, it is fundamental to determine an institution (department) authorized to receive and deal with foreign workers' complaints. As a conclusion, over 70% of foreign labour force in Montenegro is coming from the neighbouring SEE countries and this is certainly a sufficient reason to alleviate their mobility and status in Montenegro.

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- ¹ Government of Montenegro. *First National Report on the Implementation of the European Social Charter*. (Council of Europe, 2012). P. 13. Available from: http://www.coe.int/t/dghl/monitoring/socialcharter/reporting/statereports/Montenegro1_en.pdf.
- ² Montenegro, Employment Agency. *Annual Report of the Employment Agency of Montenegro*. Available from: http://www.zzzcg.org/shared/izviestaji/IZVJESTAJ%20O%20RADU%202013-novi_.pdf
- ³ Montenegro, Ministry of Interior. *Integrated Migration Management Strategy (2008-2013)*. 2008. Available from: <http://www.mup.gov.me/ResourceManager/FileDownload.aspx?rid=48921&rType=2&file=1233741208.doc>
- ⁴ new five year *Integrated Migration Management Strategy (2011-2016)*
- ⁵ The new Action Plan for 2013 - 2014 for implementing the current Strategy, developed by the Government in April 2013
- ⁶ Montenegro, Employment Agency. *Annual Report of the Employment Agency of Montenegro*. Available from: www.zzzcg.org
- ⁷ Montenegro, Ministry of Economy. *Strategy for Promoting Foreign Investments in Montenegro (2012-2015)*. Strategy for Obstacles for Larger Influx of Foreign Investments.(2012) p. 36. Available from: www.gov.me
- ⁸ Montenegro, *Ministry of Labour and Social Welfare*. *National strategy for Employment and Human Resources Development (2012-2015)*. Available from: <http://www.zzzcg.org/shared/dokumenti/Publikacije/Strategija%202012-2015.pdf>
- ⁹ The Constitution of Montenegro (Official Gazette of Montenegro, No. 1/07)
- ¹⁰ Law on Foreigners (Official Gazette of Montenegro no. 82/08, 72/09, 32/11, and 53/11, 27/13 i 61/13)
- ¹¹ Law on Labour and Employment of Foreigners (Official Gazette of Montenegro no. 22/08 and 32/2011)
- ¹² Labour Code (Official Gazette of Montenegro no. 49/08, 26/09, 59/11, 66/12),
- ¹³ Law on Registration of Physical Locations of Stay and Residence (Official Gazette of Montenegro no. 13/08 and 41/10 and 40/11)
- ¹⁴ Law on General Administrative Procedures (Official Gazette of Montenegro no. 60/03)
- ¹⁵ Law on Administrative Review (Official Gazette of Montenegro no. 60/03 and no 32/11)
- ¹⁶ Law on Misdemeanour (Official Gazette of Montenegro no. 1/11, 6/11, and 39/11)
- ¹⁷ Law on Administrative Fees (Official Gazette of Montenegro no. 22/08, 77/08, and 20/11)
- ¹⁸ 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
- ¹⁹ 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
- ²⁰ 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
- ²¹ Labour Law (Official Gazette of Montenegro 49/08, 26/09, 88/09, 26/10, 59/11, 66/12)
- ²² Labour Code (Official Gazette of Montenegro no. 49/08, 26/09, 59/11, 66/12)
- ²³ Montenegro, Employment Agency. *Annual Report of the Employment Agency of Montenegro*. Available from: http://www.zzzcg.org/shared/izviestaji/IZVJESTAJ%20O%20RADU%202013-novi_.pdf
- ²⁴ European Commission. *Montenegro 2013 Progress Report*. (Brussels, 2013). Available from: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf
- ²⁵ Idem

4.0. Annex

4.1. List of key national legal documents

Laws

1. Law on Foreigners (Official Gazette of Montenegro no 82/08, 72/09 i 32/11, 53/11, 27/13 i 61/13).
2. Law on Employment of Foreigners (Official Gazette of Montenegro no.22/08 and 32/2011)
3. Labour Code (Official Gazette of Montenegro no. 49/08, 26/09, 59/11, 66/12)
4. Law on Registration of Physical Locations of Stay and Residence (Official Gazette of Montenegro no. 13/08, 41/10 i 40/11)
5. Law on General Administrative Procedures (Official Gazette of Montenegro no. 60/03 and 32/11)
6. Law on Administrative Review (Official Gazette of Montenegro no. 60/03)
7. Law on Misdemeanor (Official Gazette of Montenegro no. 1/11, 6/11, and 39/11)
8. Law on Administrative Fees (Official Gazette of Montenegro no. 22/08, 77/08, and 20/11)

Policies

1. Montenegro, Ministry of Interior.
2008 *Integrated Migration Management Strategy (2008-2013) and Action Plan*. Available from:
<http://www.mup.gov.me/ResourceManager/FileDownload.aspx?rid=48921&rType=2&file=1233741208.doc> and
<http://www.gov.me/ResourceManager/FileDownload.aspx?rid=127555&rType=2> (Action plan for 2011-2012)
2. Montenegro, Ministry of Interior
2011 *Integrated Migration Management Strategy (2011-2016) and Action Plan*. Forthcoming. Available from: <http://www.mup.gov.me/> and
<http://www.gov.me/ResourceManager/FileDownload.aspx?rid=161074&rType=2> (Action plan for 2013 and 2014)
3. Montenegro, Ministry of Labour and Social Welfare
2012 *National strategy for Employment and Human Resources Development (2012-2015)*. Available from:
<http://www.mrs.gov.me/ResourceManager/FileDownload.aspx?rid=93319&rType=2&file=Strategija%20Final%20ENG.%20january.pdf>
4. Montenegro, Ministry of Economy
2012 *Strategy for Promoting Foreign Investments in Montenegro (2012-2015)*. Available from:
<http://www.gov.me/biblioteka/strategije?pagerIndex=2>

Other documents

1. Montenegro, Employment Agency
2013 Annual Report of the Employment Agency of Montenegro. Available from:
http://www.zzzcg.org/shared/izvjestaji/IZVJESTAJ%20O%20RADU%202013-novi_.pdf

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

4.2. Officials within following institutions consulted

Name	Institution/Dept.	Position	Date of interview
Ms. Ana Leković	Employment Agency of Montenegro		27 June
Mr. Goran Bošković	Ministry of Interior, Border Police Sector	Chief superintendent for Prevention of Illegal Migration	16 June, 2014
Mr. Dragan Dašić	Ministry of Interior Directorate for Administrative Internal Affairs, Directorate for Foreigners, Migration and Readmission	Advisor	5 June, 2014
Mr. Boban Gledović	Ministry of Labour and Social Welfare of Montenegro, Directorate for Labour Market		30 June, 2014
Mr. Bojan Bugarin	Ministry of Interior	Advisor to Minister	2 July 2014

Figure 5. Montenegro national counterparts



International Organization for Migration (IOM)

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