

Country Report

EEPOW Posting of Workers in Eastern Europe
(Agreement No. VS/2017/0349)

Work Package 3: RESEARCH

COUNTRY Report for Albania

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LIST OF ABBREVIATIONS

DCM – Decision of Council of Ministers
EBCGA – European Border and Coast Guard Agency
EC – European Council
EU – European Union
FYROM – The Former Yugoslav Republic of Macedonia
GIZ –Gesellschaft für Internationale Zusammenarbeit
HR – Human Resources
ICT – Information and Communication Technologies
IPMG – Inter-Governmental Policy Management
LC – Labour Code
LF – Law on Foreigners
LI – Labour Inspectorate
NEET – Not in Education, Employment, or Training
NES – National Employment Services
NESS – National Employment and Skills Strategy
NPEI – National Plan on European Integration
PWD – Posting of Workers Directive
SAA – Stabilization Association Agreement
SDC – Studies and Development Center
SILSS – State Inspectorate of Labour and Social Services
UK – United Kingdom
UNDP – United Nations Development Programme
USA – United States of America

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Table 1: Institutions Related to Posting of Workers

EXECUTIVE SUMMARY

- The EU integration path that Albania is committed to, is acting as a push factor for legal and institutional changes in all spheres. Approximating national legislation and institutions responsible for labour and human capital to EU legislation and standards is one of the most sensitive areas of the integration process. Albania is cautiously adapting to the free movement of labour while trying to improve employability and labour market outcome, as a way to reduce the emigration of the most active and educated labour force. The “National Employment and Skills Strategy 2016-2020” represents the strategic document that lays down policy measures to improve employment and labour market functioning. In terms of labour mobility, the strategy aims for approximation of national labour legislation to the Acquis.
- In the latest changes of the Labour Code, in 2017, the Posting of Workers Directive (PWD) (96/71/EC) adopted by EU countries to regulate temporary labour employment across the Member States, has been introduced. The adoption of the Directive was not completed with by-laws, which transpose the Labour Code into an administrative guidance setting up institutional roles and responsibilities.
- This report aims to explore the institutions and stakeholders’ needs to build awareness and capacities that are specific and relevant for the implementation of the recently adopted PWD in Albania. This research is a timely intervention to inform policy action on addressing institutional needs.
- The national labour legislation, as amended in 2017, fully adopts the concept of posting workers, similar to that defined in the PWD, including its definition, exemptions from definition, fair employment, and equal treatment conditions of posted workers.
- However, by-laws detailing the institutional structure, monitoring mechanisms, protocols of intra-agency cooperation and exchange of information are not detailed in the Labour Code, in a similar fashion to article 4 of the PWD, in compliance with Directive 2014/67/EU. The labour code defines the Ministry responsible for labour as the responsible authority for monitoring, coordinating intra-agency cooperation and consultation with stakeholders on any issue regarding labour, including posting of workers and temporary employment.
- To complete the adoption of the PWD, Albania needs to develop and adopt sub-legal acts to detail the institutional structures responsible for posting of workers. There is no liaison office, as defined in article 4 of the PWD. This gap in legislation has created some confusion among institutions on their responsibility and role in governing this particular form of labour migration. The role of institutions as regards coordination among different implementation agencies, consultation with stakeholders, information gathering and exchange for issues and problems regarding posting, is not so clearly defined.
- Employers’ and employees’ organizations ask for informative materials such as legal commentaries, providing legal interpretation on posting of workers.
- There is certainly an economic interest in posting from the part of companies, as an alternative way to improve human capital. While this is an opportunity for companies,

there is no prognosis on how the national labour market will be affected by posting and temporary employment. Posted workers, especially through temporary employment offices, might increase the inflow of foreign workers, while having a labour market with low participation and employment rates.

- Sending employees under the PWD in EU countries, it is reported to be subject to very different procedures and regulations depending on EU countries' legislation. There are countries, such as Romania for example, with antidumping and protective measures as regards labour migration that impact posting employees within firms. In many other countries such as Poland, Hungary or Germany the double taxation and lack of possibilities to transfer social contributions constrain posting of employees. To avoid fiscal implications, the employees have to terminate the contract with an Albanian sending firm and register as employee in the receiving firm, which undermines the benefits in terms of labour mobility granted through posting. Albania has signed agreements with some countries (EU or Western Balkan countries) to avoid double taxation or transfer social contributions, however, the procedure for tax reimbursement requires a lot of supporting documents and bureaucracy, to the degree that no one ever performed this procedure at the Albanian tax authorities.
- Since legal changes make it easier to post workers to Albania (host them) rather than from Albania, posting causes asymmetry in labour market access. Wage differentials between Albania and most of the European countries do not favour any immediate inflow of labour from EU countries to Albania under posting arrangements.
- However, the wage differential and easier labour market access will expose the Albanian labour market to posting from/to regional economies or other countries such as Turkey, from the Middle East etc. In this respect, institutions responsible to monitor the posting of workers need to get prepared to monitor a new flow of labour migration, with high risk of exploiting informal or irregular employment. Institutions need to also monitor the impact of this asymmetry in labour market access and prepare anti-dumping or safeguard measures, in case a negative impact is observed.
- Strengthening institutions and preparing them to the new laws is another drawback that has shown a strong impact on the implementation of legal changes related to the posting Directive. Regarding preparation of institutions to implement the PWD, it was noted that different public institutions were not clear about what would be their specific role. Institutions were not provided with guidance and clarification on administrative procedures to implement the PWD, procedures to monitor legal compliance and the impact on labour market. The category of posted workers was not even identified as a separate category for labour inspectorate monitoring.
- The process of institutional capacity-building and preparedness, the consultation and information sharing with stakeholders including firms, employees and employee representatives have not yet started, as reported in interviews. Companies and institutions responsible for monitoring of posting ask for best practice at EU level to be delivered as information exchange and capacity-building.
- In the context of legislation approximation, Albanian institutions need to strengthen cooperation with EU institutions, especially in sensitive areas such as employment, migration and social protection. The trust in Albanian institutions is low and

strengthening exchange and partnership with EU institutions would improve mutual trust.

- With the latest changes in the legislation Albania has lowered barriers to labour mobility for EU and regional economies. There are companies in Albania that understood the benefit of exchanging staff through posting arrangements. They are prepared to engage in posting and have human resources management practices to support posting. However, it remains a responsibility of Albanian institutions to ensure that posting happens as a fair form of employment. The working environment of Albanian companies is perceived as encouraging for hosting foreign workers. Business representatives interviewed argue that foreign employees bring technical know-how and improve the working culture at company level.
- The process of legislation approximation has had a positive impact on improving the legal framework of labour in Albania, however, legal changes are not properly enforced as regards the implementation aspects. Legal changes are not followed up by adoption of proper by-laws transposing them into clear administrative procedures. Institutionally, in the course of implementation of the PWD, Albania needs to adopt a clear distribution of roles and responsibilities among institutions involved in posting of workers. Monitoring rigorously the impact of posting on the labour market and, in a longer-term perspective, the impact on the social protection system is crucial to ensure a positive effect of posting on fair employment.
- Information, awareness and technical guidelines for all related institutions, especially for Employment Offices, companies and employees' organizations are needed. This will prepare institutions, employees and companies to avoid negative impacts of posting on business, employees and the social protection system.
- The employers' and employees' associations declared that a revival of the dialogue with institutions through existing consultative platforms on the posting of workers is as well needed.
- Albanian institutions need to strengthen cooperation with EU institutions, especially in sensitive areas such as employment, migration and social protection. Trust in Albanian institutions is low and strengthening exchange and partnership would improve mutual trust.

1. INTRODUCTION

1.1 OVERVIEW OF THE COUNTRY CONTEXT

The EU integration path that Albania is committed to, is acting as a push factor for legal and institutional changes in all spheres. As integration is a process, not a destination, costs and benefits at destination will be very much influenced by how able countries are to adopt laws and build institutions that support integration of their societies and economies within the European Union area.

Approximating national legislation and institutions of labour and human capital to EU standards is one of the most sensitive areas of the integration process. Albania is cautiously adapting to the free movement of labour while trying to improve employability and labour market outcomes, as a way to reduce the emigration of the most active and educated labour force. Albania has been one of the countries most aggressively hit by migration waves during the latest years. It is estimated that in 2017, about 1.4 million Albania citizens, or 1/3 of the country's population, were living outside the country. The majority of migrant communities are located in neighbouring countries such as Italy (448,407) and Greece (356,848), however, there is an increase in the share of Albanian citizens living in other European Union countries, North America and Canada. The main reasons for emigration from Albania remain economic ones (unemployment and looking for better living conditions). This is mostly evidenced for two categories of people – youngsters and women, who have difficulties in getting employed. In 2017, 29.7% of the total Albanian youth (15-29 years old) belonged to the so-called NEET category (not employed, not attending education or vocational training). Only 50.3% of women (compared to 64.3% of men) were employed (Draft National Strategy on Migration Governance and Action Plan 2019-2022).

The “National Employment and Skills Strategy 2016-2020” remains the main strategic document which lays down policy measures to improve employment and labour market functioning. In terms of labour mobility, the strategy aims for approximation of national labour legislation to the Acquis. The Labour Code was amended in 2017 in alignment with Acquis legislation. Important legal changes to improve labour mobility were introduced in the Law for Foreigners, also amended in 2017. The Posting of Workers Directive (96/71/EC) (hereinafter PWD) and the Enforcement Directive of the Posting of Workers Directive (2014/67/EU) adopted by EU countries to regulate temporary labour employment across the Member States, were introduced in the labour legislation changes in 2017, as part of the country fulfilling the obligation of national legislation approximation to EU legislation.

Posting is triggered either by labour cost differentials or skills shortages. At the European level, the Directive has been criticized for allowing unfair competition between local and posted workers with the risk of social dumping in the labour market, especially in labour-intensive sectors (Cremers, 2011). European experiences with posting workers provide evidence that posting bears unfair competition for local markets leading to social dumping and that posted workers face inferior environment and working conditions compared to permanent employees, while language and cultural barriers expose them to high risks in terms of health and safety (Danaj, 2018; Alberti and Danaj, 2017). Albania has only recently adopted the PWD, while the role and responsibilities of labour institutions in monitoring and managing posting of workers

are not yet clear, since the by-laws transposing the Labour Code into administrative guidance are not yet in place. As a result, there is no information and statistics on posting of workers and neither studies nor an evaluation of the expected impact of posting on labour market and migration exist. Weak institutions and an unsettled legal framework, as well as uninformed stakeholders add to the risk of posting developing as irregular labour, causing social dumping or increasing the vulnerability of posted workers to face unsafe work environments.

Posting of workers is expected to impact the labour market due to the current situation of significant unemployment among young and highly-educated individuals. The progress of Albania in EU integration processes, with membership status in the future, will further empower this directive to stir labour mobility, as it happened in the Eastern European Countries in 2004, after becoming members of the EU. The increment of the labour costs for unskilled work as a result of the policy of increasing the minimum wage¹, raises the wage differential for unskilled workers from less developed countries (such as from Turkey, Syria, Egypt etc), thus becoming an attractive labour market for foreign workers from these countries.

1.2 AIMS OF THE STUDY AND METHOD

This report aims to explore the institutions' and stakeholders' needs to build awareness and capacities that are specific and relevant for the implementation of the PWD in Albania. The PWD has recently been introduced in the national legislation on labour. Implementation of the Directive and monitoring of its impact on the labour market outcomes have to be supported by prepared institutions and informed stakeholders. This makes the research a timely intervention to inform policy action on needs/gaps and ways to address them.

The labour legislation in Albania is examined in order to understand the degree to which the PWD is adopted in the national legislation. Labour legislation has been evolving dynamically under the process of legislation approximation to the Acquis, however, institutional capacities to facilitate and monitor implementation have not followed simultaneously. By-laws which convert the Labour Code into administrative procedures with a clear distribution of roles and responsibilities among the different institutions are not yet in place. Employment under posting arrangements represents an opportunity for firms to hire skilled and cheaper labour, or an opportunity for unemployed individuals to eventually access new labour markets. In this context, the posting of workers will emerge under conditions of an unclear regulatory environment and unprepared institutions.

1.3 MAIN FINDINGS

- Albania has transposed the PWD in its national legislation. Any foreign company can post workers to a partner company or to its branch operating in Albania. Temporary employment agencies also have the right to post workers. However, labour mobility barriers are removed asymmetrically, as Albanian companies are not eligible to post workers to EU countries because of Albania not being a Member State.

¹ CDM no. 809, dt 26.12.2018 "On Minimum Wage in the Republic of Albania" increased the minimum wage by 18% compared to 2016. This increases the cost of labour, providing an incentive to firms to look for cheaper labour.

- There is certainly economic interest in posting workers on the part of businesses, as an alternative way to improve human capital. The work environment at local companies is very supportive to foreign workers. Business representatives interviewed argue that foreign employees bring technical know-how and improve the working culture at company level. While being perceived as an opportunity for companies, there is no forecast how the labour market will be affected by posting and temporary employment. Posted workers, especially through temporary employment agencies, might increase the inflow of foreign workers. The labour market outcome is characterized by low participation rates, unemployment and labour migration. The level of awareness among employees' organizations on specifics regarding posting arrangements and respecting workers' rights in such contexts, was reported as insignificant by representatives of Trade Unions. They claim not to have the capacities and mechanisms in place to extend their support to workers abroad.
- The institutional structures responsible for monitoring the implementation of the PWD are not yet stipulated in by-laws and the matter is subject to the involvement of many implementing agencies. Intra-agency cooperation and exchange of information at national level has not yet emerged due to unsettled institutional roles and administrative procedures. The intra-agency coordination and communication is even more difficult at the international level.

1.4 STRUCTURE OF THE COUNTRY REPORT

The report presents the general context of socio-economic development in Albania, focusing on labour market and migration. The national efforts cannot be detached from the EU integration processes that Albania and the whole region are undergoing, hence a summary of the integration process, with a focus on legislation approximation and the impact that EU integration has on social inclusion and employment policies, follows. A methodological note explaining the aim of this research and the methodological tools used, is presented. The report continues with the results of the fieldwork and analysis, followed by a synthetic note on the main findings and conclusions. The conclusions lead to a discussion of policy challenges and recommendations for Albania to fully transpose the PWD and ensure implementation as per best EU experience.

2. COUNTRY CONTEXT

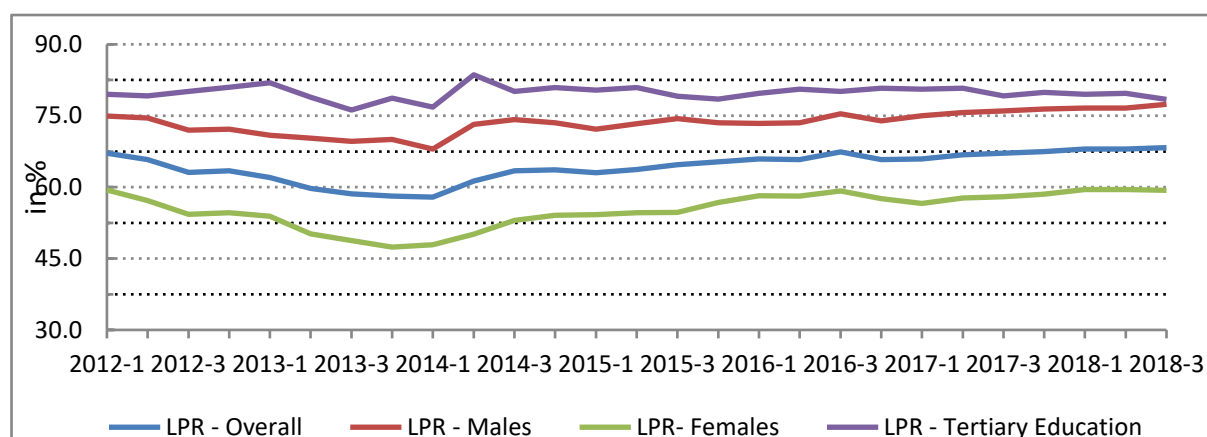
2.1 SOCIO-ECONOMIC OVERVIEW

After the economic slowdown caused by the public debt crisis and the impact of the economic situation in the neighbouring economies of Greece and Italy after 2010, the Albanian economy is recovering to a positive growth path. The annual economic growth rate was reported to be 4.35% (year on year) during the first half of 2018 (Macroeconomic and Fiscal Framework 2020-2022, p. 4). Energy and hydropower investments and export of tourism services have been the main sources of growth. Private investment on energy projects, government spending on infrastructure and improved domestic consumption as a result of higher employment and wages gave a positive impetus to growth.

Despite the positive development the economy still needs to undergo structural adjustment in order to recover productivity and explore new growth factors, improve competitiveness and become attractive for foreign capital. The structural adjustments are subject to development and progress in institutions as well as to good governance, rule of law and property rights. The European integration process of Albania is acting as a push factor for the fulfilment of pre-conditions of structural adjustment. The integration process has a strong influence on legislation approximation and institutional strengthening, with a significant impact on social inclusion and protection policies, particularly on the labour market and in employment.

According to official data, Albania's labour force consists of around 1.4 million individuals of working age. The drop in the working-age population as a result of aging and ongoing migration is expected to shrink the labour force and negatively impact the economic prospect of Albania, unless measures to boost productivity and increase labour participation are taken (European Commission, 2017; wiiw, 2018). The labour market participation rate, at 59.3% in the third quarter of 2018, remains low while the incidence of undeclared informal work is high and not addressed. The Labour Force Survey 2013 conducted by the International Labour Organization (ILO) suggested that 43% of non-agricultural jobs were in informal employment, while 88% of employment in the agricultural sector is informal or undocumented.

Figure 1: Labour Force Participation Rate 2012-2018 (in %)



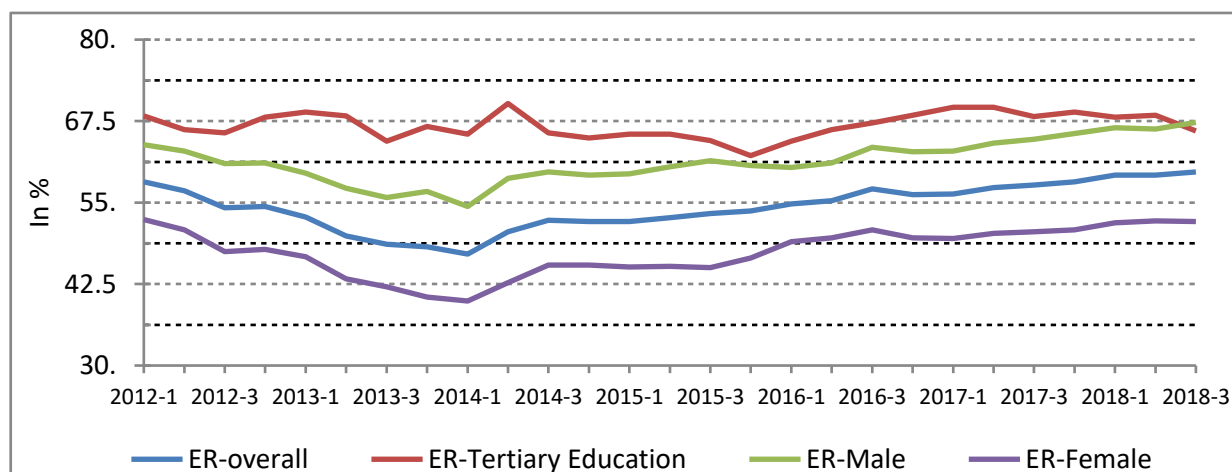
Source: National Institute of Statistics

New job creation has encouraged participation in the labour force which entered into a positive trend from 2016. In 2018 (third quarter), the overall labour participation rate was reported to be 68.3%, males and highly-educated people have higher participation in the labour market. However, a slight negative trend in the participation of highly-educated individuals is observed for 2018 (see Figure 1). The declining participation of highly-educated individuals relates to the latest wave of migration. The demographic composition of emigrants from Albania shows that they tend to be young males and highly-educated individuals (wiiw, 2018).

Gender disparities in labour participation are persistently observed with women scoring a low level of participation. The female labour participation rate was 18.1 percentage points lower than that of males in 2018 (third quarter). Women also have lower employment rates, in 2018 (third quarter), the gender gap in employment was reported to be 15.1 percentage points. Women have a high participation in unpaid family work. Remittances and the lower level of education of women have been indicated as the driving factors for women's low activity in the labour market (Atoyan and Rahman, 2017; UNDP, 2016a; wiiw, 2018). Concerns remain over the proportion of women in the informal labour market, especially in the processing textile and leather industries, without adequate labour and social protection (World Economic Forum, 2017; 2018).

The employment rate in 2018 (third quarter) was reported to be 59.7%; males and individuals with tertiary education have a higher employment rate, 67.3% and 66% respectively. However, the employment rates of highly-educated individuals manifest a declining trend since 2016.

Figure 2: Employment Rate 2012-2018



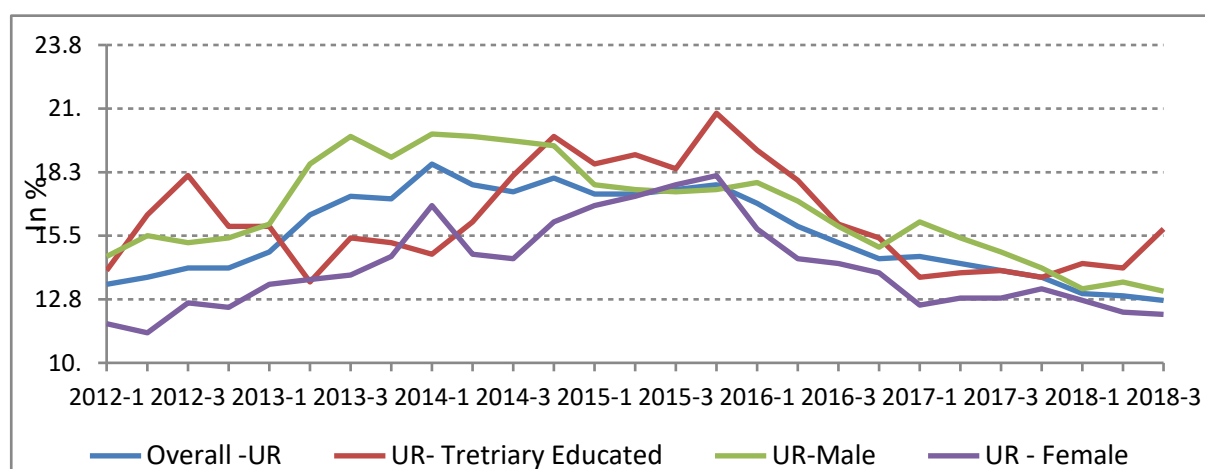
Source: National Institute of Statistics

Public sector employment represents 15% of total employment, the non-agricultural private sector employment share is 45%, while the rest of the people are employed in agricultural private activities. Employment in the private non-agriculture sector is mainly in the manufacturing sector, followed by wholesale and retail trade. The highest employment and most jobs are registered in the central region of the country.

The education level of the workforce is relatively low, limiting economic prospects and access to quality jobs. Businesses have continuously expressed their concern as regards the unsuitable qualification of the labour force and its work culture (Çabiri and Rama, 2017). The government has prepared programs and granted fiscal incentives for workforce training in some important industries, such as energy, inward processing, tourism and hospitality services with a positive impact in job match and employability (ETF, 2017).

The unemployment rate fell to 12.4% of the labour force in 2018, as a result of economic revival and successful public policies. Unemployment remains higher among youth and highly-educated persons (see Figure 2). Unemployment is also high in rural areas, despite the fact that it is not statistically reported.

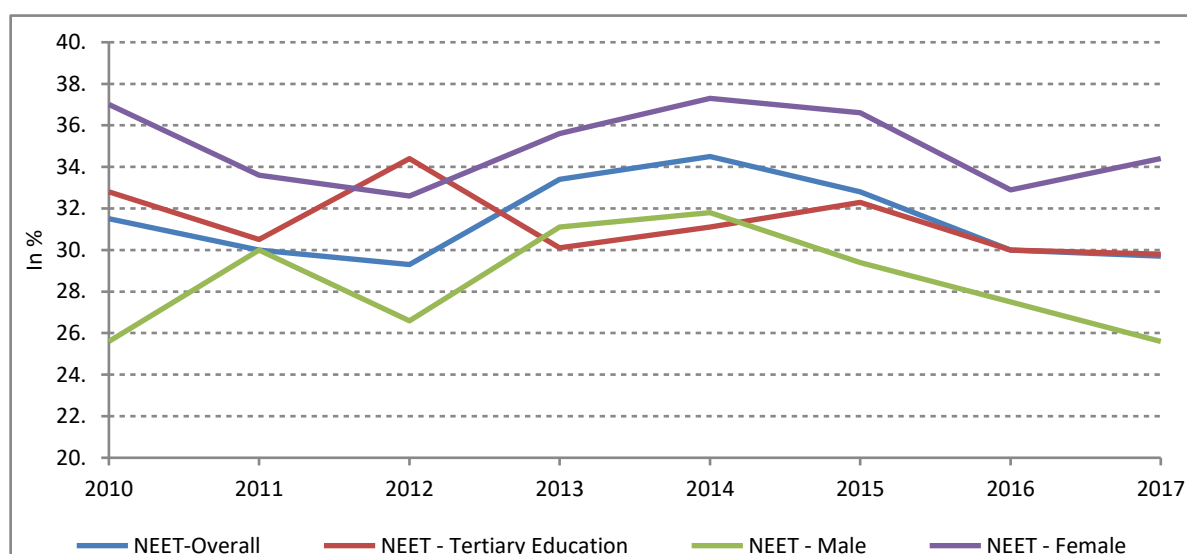
Figure 3: Quarterly Unemployment Rate 2012-2018



Source: National Institute of Statistics

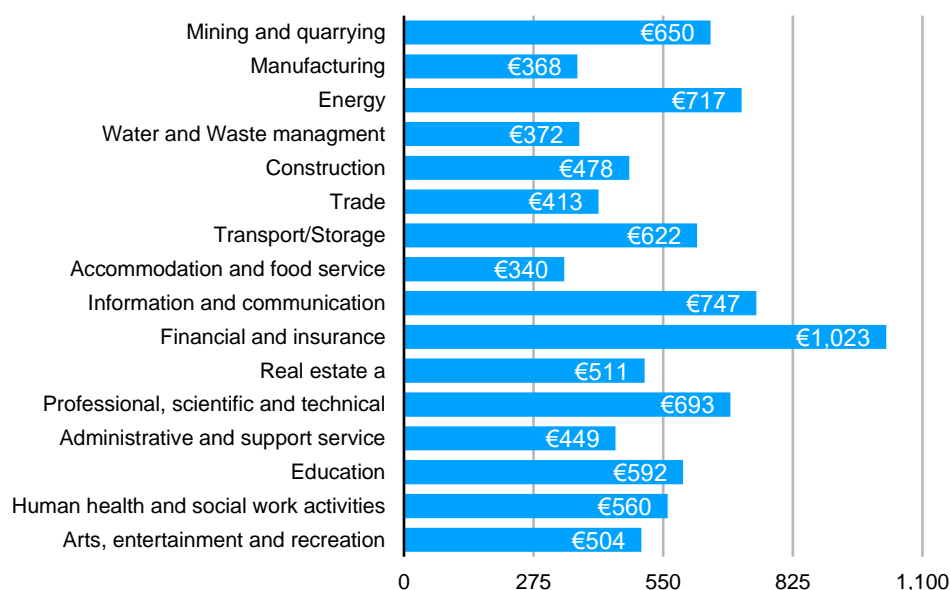
The unemployment patterns are linked to low education and lack of skills to match the labour demand, a gap that is being addressed by active labour market policies and vocational training. The job-match system between job seekers and vacancies has been weak and has been functioning through informal communication channels only. This is also being corrected by the integration of private and public employment agencies in a national system to improve the efficiency of the job-match system and to improve labour market functioning. Labour market information remains crucial for education and skills formation activities such as on-the-job training, vocational training etc. The sectorial distribution of employment and vacancies influence choices of education and skill formation programs by job-seekers, while career offices or intermediation programs are being established at universities and employment services.

For Albania, the share of young people not being in education or employment remains high: in 2017, 29.7% of the population aged 15-29 years-old is neither in education nor in employment. NEET is lower among male youngsters and highly-educated ones, while the incidence of young females not in education nor in employment is 8.8 percentage points higher than of young males.

Figure 4: Annual NEET for working age 15-29, 2010-2017

Source: National Institute of Statistics

Wages and wage differentials have as well played an important role in shaping the outcomes of the labour market and have been one of the main triggers of labour migration as well. The wage gap between the private and public sector remains high, especially in the health sector. The average monthly wage rate is reported to be 506 Euro (gross), while the minimum wage is 26,000 ALL (ca. 210 Euro), as amended by Decision No. 809 of 26 December 2018. The highest wage rates are reported for employees in the financial sector, energy, ICT and mining.

Figure 5: Average wage rates per sectors in Albania, 2017

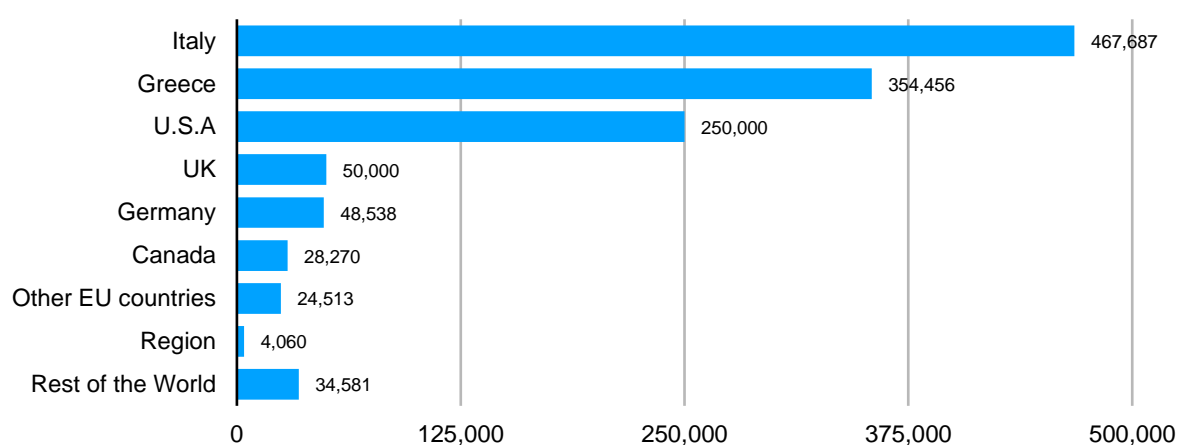
Source: National Institute of Statistics

Economic conditions mostly related to wage differentials, lack of employment opportunities, low trust in the legal and political systems, have induced different waves of migration of Albanian citizens. Migration has been driven by the search for employment opportunities, family reunion and asylum. Regarding the demographic composition of the latest migration wave, that of after 2014, statistics show that emigrants tend to be young males and highly-educated (wiiw, 2018). During the period 2013-2014, Albanian citizens have applied for asylum mainly in Germany, France, the United Kingdom, Sweden and Belgium. The applicants are mostly young male adults (less than 35 years old), implying that the number of families who have applied is significant (European Asylum Support Office, 2015).

Comparing the data from the National Civil Register with population statistics we estimate that around 1/3 of the population of Albania, around 1.4 million citizens, live abroad. This massive migration is threatening human capital formation, competitiveness and factors of economic growth. Migration in general, and particularly that of young and highly-educated individuals, caused shortage of highly-qualified personnel and increased unit labour costs in Albania (wiiw, 2018).

Based on the data reported by the Ministry for Europe and Foreign Affairs, in 2017, most of Albanian citizens living in the EU were reported in Italy, Greece, the UK, Germany, Austria and Belgium. A significant number of Albanian citizens has migrated to the USA, Canada and Australia. There is a growing number of citizens living in the region, in Kosovo and Montenegro, amounting to 4,066 individuals.

Figure 6: Number of Albanian Citizens Living Abroad, per Country, in 2017



Source: Ministry for Europe and Foreign Affairs, 2017

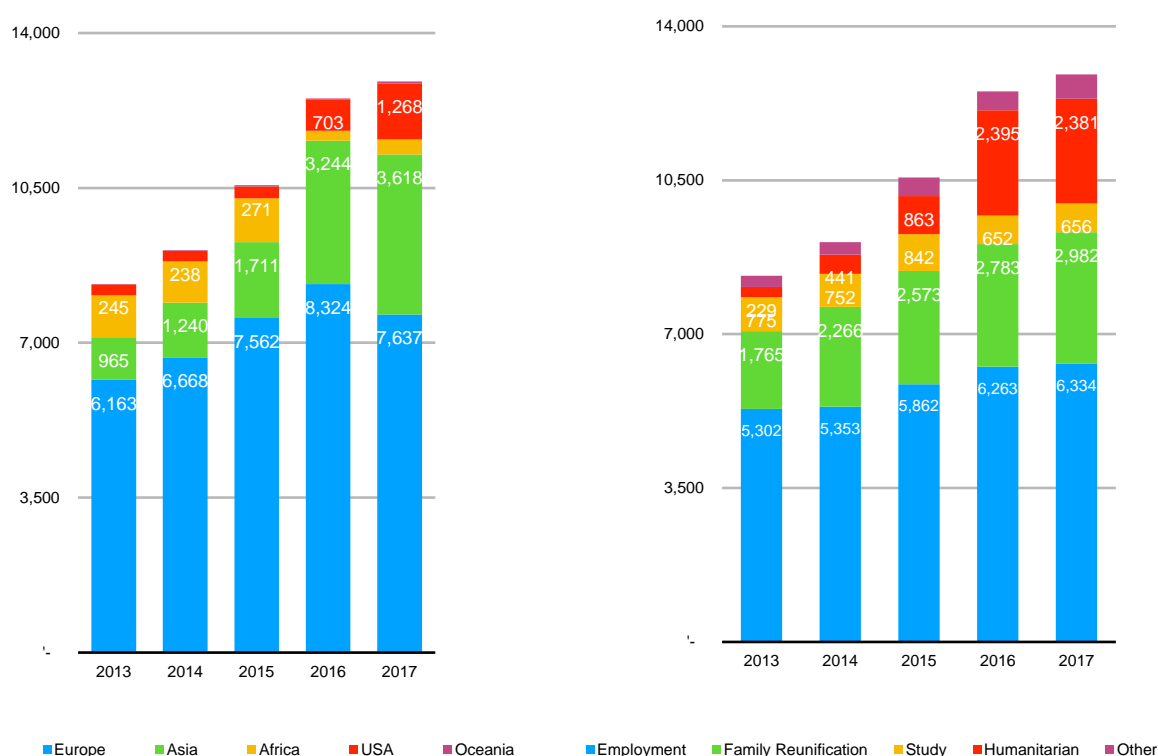
Migration has caused significant brain-drain and brain-waste for Albania, since migratory flows are dominated by young and highly-educated individuals, whose employment in migration did not match their skills (World Bank, 2016). Migration data show that only 10% of Albanians are employed in high-skill-level occupations, leading to a relatively high incidence of brain-waste (wiiw, 2018).

While being one of the countries with the highest incidence of migration compared to its population, Albania hosts a very low number of foreign citizens. They represent 0.3% of the local population and in 2017 were reported to number 12,906. Around 50% of the foreigners are in Albania for employment reasons, followed by family reunion, humanitarian reasons and

study. The majority of foreigners originate from countries of the European continent, including Italy, Turkey and Kosovo. They represent 59% of the foreigners living in Albania.

The institutional framework of migration management, including migration for employment, has changed following the amended Law on Foreigners in 2017. Albania has not yet endorsed a strategic document on migration since the last one for the period 2005-2010. Albania has recently drafted a Migration Strategy 2018-2022, after several years of not having such a strategy. So far, this gap was somewhat filled by the Strategy on Diaspora and Migration launched in October 2017 by the State Minister for Diaspora. Migration issues are also partially covered by the National Development and Integration Strategy for 2015- 2020 and the National Employment and Skills Strategy for 2014-2020.

Figure 7: Foreign Citizens Living in Albania, by Country of Origin and Reason of Stay, 2013



Source: National Institute of Statistics, 2017

2.2 EU INTEGRATION PROCESS

In 2014, Albania was granted European Union (EU) candidate status, while during the latest Council of the European Union in the conclusions on Enlargement and Stabilization and the Association Process published on 26 June 2018, a decision was taken to open accession negotiations with Albania by July 2019. This was based on the progress made with respect to fulfilling the five key priorities the Union has set for Albania, namely: i) fight against corruption; ii) fight against organised crime; iii) reform of the judiciary; iv) public administration reform; and v) protection of human rights, including rights of persons belonging to minorities and implementation of property rights (Council of EU Conclusions, 2018).

Negotiations with the EU and the membership process will depend greatly on Albania's determination to change and modernize itself, so that it ultimately has a true rule of law, social security and care for everyone, and an economy that generates employment opportunities for all those who wish to work. The last Berlin Process Summit, which took place in 2018 in London, introduced concrete further actions under the Berlin Process, in order to push forward the implementation and strengthening of the Regional Economic Area, which will create jobs, investment, trade, digital integration and increase mobility.

Currently, the Stabilization Association Agreement (SAA) signed between Albania and the EU on 12 June 2006, remains the main legal document regulating labour mobility and defining the areas of labour legislation that have to be approximated to EU legislation. Articles 46, 47, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 70 of the SAA stipulate the pillars of collaboration in the field of labour market access of EU citizens. On the other hand, Articles 46 and 47 of the SAA define how Albanian workers shall be treated in EU countries. Articles 48 and 49 of the SAA stipulate the obligation of Albania to coordinate social security schemes for sending workers or receiving foreign workers.

The Government of Albania is committed to develop a social and employment policy that is in line with EU requirements and best practices, investing in human capital and social cohesion as key pillars for becoming a member of the European Union (MFE – National Employment and Skills Strategy 2014-2020). The 2018 Country Report of the European Commission concludes that Albania

“has *some level of preparation* on social policy and employment. Progress has been made on increasing labour market participation and the quality and effectiveness of labour market institutions and services, by implementing the National Employment and Skills Strategy (NESS) for 2014-2020” (p. 77; italics added).

In the context of the EU integration process, labour legislation is being revised and aligned with EU legislation. The latest amendment of the Labour Code, amended by Law No. 136/2015, dated 5 December 2015, has transposed 16 EU directives on employment law, even though not completely (National Plan on European Integration 2018-2020, p. 128).

3. METHODOLOGY

The methodology of the report reflects its objective of assessing the readiness of institutions and stakeholders at national level to implement posting of workers, in compliance with PWD. The research tools were qualitative. A desk research focused on labour market developments was conducted to explore the economic and legal context.

Existing research and reports on migration, labour and posting of workers in Albania were reviewed, followed by inspecting legislation and institutional roles and responsibilities. In this regard, the main laws on labour such as the Labour Code of Albania, the Law on Foreigners, followed by by-laws, served as a primary source of information in understanding the legal and regulatory framework of labour that relates and impacts the adoption of the PWD. The legal framework was analysed in comparison to EU Directive 96/71 (as amended).

Official reports and strategic documents published by different public institutions as well as research and publications from experts in the field of employment and labour migration were used. Important strategic documents such as the National Employment and Skills Strategy 2014-2020, the Draft National Strategy on Migration Governance and Action Plan 2019-2022, the National Plan on European Integration 2018-2020 and the 2018 Progress Report of the European Commission on Albania were referred to in the context and analyses. Statistical information and data stem from the National Institute of Statistics and Eurostat.

The results and findings of the report were enriched by the information provided through in-depth interviews. Interviews were performed with representatives from state institutions such as the Ministry of Finance and Economy/ Directory on Migration and Employment, the State Inspectorate of Albania, the National Employment Service, and the Ministry of the Interior/ Border Control and Management Directory. Several interviews were conducted with social partners and private firms in Albania with experience in posting of workers such as Deloitte in Albania & Kosovo, Vodafone Albania and Trans Adriatic Pipeline (TAP Albania). Experts and scholars with a research interest in the labour market and migration field have been interviewed regarding specific issues related to posting of workers. Overall, input from 12 interviews and meetings were analysed to find answers to the question of how prepared and ready are institutions and groups of interest to cope with the phenomenon of posting workers. The analysis focused on six policy domains, i.e. legal framework, institutional arrangements, inter-agency cooperation, human resources, stakeholders' engagement and public governance.

The legal framework analysis focused on identifying the status of the Directive transposition and assessing the legal mechanisms in monitoring employers that might want to post their workers to EU Member States. In the area of institutional arrangement, agencies responsible for monitoring labour mobility in general and posting of workers in particular, were mapped. Mapping the institutional arrangement supported assessing the institutional capacities, human capacities as well as inter-agency cooperation for the purpose of implementing the PWD. Stakeholder engagement was examined in terms of the involvement of the national worker organizations and employer organizations in the process of EU integration focusing on the chapters that cover employment and labour mobility in the European labour market. The collective bargaining system and the social dialogue was also be examined in order to understand the role they could play in the implementation of the Directive (country-specific). Lastly, an analysis of the World Bank Governance Index (WGI) on public governance is presented as a context for institutional strengths and capacities.

4. RESULTS

4.1 LEGAL FRAMEWORK

The major aspects of labour and employment relations in Albania are legally regulated through the Labour Code. Other important laws affecting labour and employment relations include the Law on Civil Servants, the Law on Security and Health at Work, the Law on Work Inspection, the Law on Social Insurance, the Law on Obligatory Health Care Insurance, the Law on Protection Against Discrimination, the Law on Gender Equity, the Law on Foreigners as amended in 2016, as well as a set of by-laws such as Decisions of the Council of Ministers, Ministerial Orders and Administrative Procedures related to inspections and working conditions. In the process of legislation implementation, Supreme Court Decisions are an important legal reference.

Under legislation approximation some of the new provisions of the amended Labour Code are: Article 3/1 – on Posted workers in Albania; Article 15 – Work from Home or Tele-working; Articles 18/1, 18/2, 18/3, 18/4 and 18/5 – Establishment of Temporary Employment Agency, which was further detailed for implementation purposes by the DCM on “Establishing, organization and functioning of Agencies for Temporary Employment”; Article 33/1 – Information and Consultation etc. The Labour Code changes tackled the issue of non-discrimination in employment and social policy by amending the definition and reversing the burden of proof in cases of sexual harassment.

Albania has also amended the Law on Foreigners of Albania No. 108/2013 in 2016, which provides citizens of the EU the right to work in Albania without the need for a Work Permit. This law is fully aligned with some of the EU Directives including: *The Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.*

As concluded in the National Plan on European Integration (NPEI) of Albania for 2018-2020, “*In general, policies and legal framework in employment and social policy are mostly (but not completely) aligned with EU acquis. There is a full alignment regarding: social dialogue, employment policies on non-discrimination and social policy.*” Law no. 9634 of 30 October 2006 on “Labour Inspection”, has been amended in 2017 to strengthen the capacity of the Labour Inspectorate of Albania. As mentioned in the NPEI 2018-2020: “*Article 35 of Law no. 9634 was amended to allow the suspension of work from the inspectors, in cases of informal work or when serious life threatening of health and safety of workers is inspected.*”

As regards health safety at work, Albania has adopted a series of DCMs in protecting workers in their work environment, defining minimal requirements for occupational health and safety of workers, defining procedures and regulations on medical examination for specific categories of workers. Albania has transposed the Directive of the Council 94/33/EC, 22 June 1994 through the CDM No. 108 of 15 February 2017 on “Adopting the regulation on protection of minors at work”.

Other laws that have been amended and indirectly influence labour legislation are the Law on Unemployed Job Seekers, the Law no. 146/2015 adopted December 2015 to support

employment policies and active labour market measures; the “Law on Regulated Professions” adopted June 2016, the amended VET Law of February 2017 as well as the Albanian Qualification Framework Law approved in February 2018.

Under the chapter of free movement of labour, Albania needs to coordinate the regulation of social insurance schemes, with bilateral agreements as foreseen by Regulation 883/2004 of the European Parliament and the Council. Currently Albania has agreements on social insurance with Belgium, Czechia, Germany, Luxembourg, Hungary, Austria, Romania and with other Western Balkans countries such as the Former Yugoslav Republic of Macedonia, and with Turkey. One of the priorities of the Albanian government is to reach agreements with Italy and Greece, two countries that have a considerable number of Albanian workers (National Plan on European Integration 2018-2020). Negotiations with Kosovo and Switzerland are ongoing while initial meetings with other countries such as Bulgaria, Spain, France and Croatia have been conducted.

4.1.1 Employment laws and regulations

Posting of Workers, similar to the definition of Directive 96/71/EC “On Posted Workers”, is fully endorsed within the new Labour Code. The Posting of Workers Directive interacts with Law no. 108/2013 of 14 July 2016, i.e. “On Foreigners”, which regulates employment of foreigners in Albania.

The Posting of Workers Directive 96/71/EC was adopted in 1996 in order to regulate temporary labour mobility across the Member States in the single market of the European Union. Posting means that employees are sent from their country of residence and employment to another EU country to perform a task for a definite period of time of up to two years. Upon completion of the assignment while posted, employees return to their employment in their country of residence.

The Albanian Labour Code fully transposes the concept of posted workers. Article 3/1/1 of the Labour Code states that foreign companies can post workers in Albania for temporary assignments, in a similar wording to article 3/1 of the Directive. In the Albanian legislation, posting is interpreted as service provision for a company or temporary employment agency in Albania to any country, or from any country to Albania. The Labour Code does not restrict the posting to EU member countries only. Posting of workers to/from any non-EU country will depend on how posting is defined or acknowledged by national legislation in non-EU receiving countries.

Article 3/7 of the Labour Code defines a list of employment conditions and activities that exclude an employment arrangement for being considered as posting, thus fully transposing the Directive to the national legislation.

PWD’s aim is to protect the rights of employees temporarily sent from one Member State to another, by guaranteeing them the same conditions and rights in the employment relationship as the nationals of the country where they are sent. The Directive’s aim is also to guarantee workers’ rights and working conditions in order to avoid “social dumping” where foreign service providers can undercut local service providers because their labour standards are lower. Specifically, the Directive offers guarantees for:

- Maximum working periods and minimum rest periods;

- Minimum paid annual holidays;
- The minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- The conditions of the hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- Health, safety and hygiene at work;
- Protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; and
- Equality of treatment between men and women and other provisions on non-discrimination.

Article 3/1 (paragraph 2) of The Labour Code of Albania stipulates the same conditions:

2. The employment relation, established according to the cases provided in paragraph 1 of this Article, shall be governed by the provisions of the Albanian legislation relating to:

- a) the maximum working time and minimum rest time;
- b) the minimum duration of the paid annual leave;
- c) the minimum wage level;
- ç) the stipulations for the temporary employment agency;
- d) safety, health and hygiene at work;
- dh) employment or employment conditions for pregnant women or women who have just had babies, for young people, children and persons with disabilities;
- e) the principle of equal treatment, including the provisions of collective bargaining.

Allowances specific to posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

The most recent changes in the Labour Code have also guaranteed the requirement set out in the Directive on the possibility of applying the most appropriate legislation for the posted worker. These provisions apply equally to posting incurred from a business or a temporary employment agency.

Another important element guaranteed to foreign workers is the basic minimum wage, which is the same as the one applied to citizens of the Republic of Albania, thus placing both categories at the same level of financial treatment.

Attention has also been paid to the respect for gender equality, protection of women and children, as well as ensuring equal treatment, which have been transposed into the Labour Code, clearly defining discrimination “based on race, colour, ethnicity, language, gender identity, sexual orientation, pregnancy, residence, disability [...] or in any other cause, with the intent or effect of preventing or rendering impossible the exercise of the right to work”.

The priorities of the Government of Albania for non-discrimination and equal opportunities include the improvement of legislation on the employment of foreigners (further approximation

to EU legislation and its full implementation), and the design and implementation of the National Social Integration Program for Foreigners by the Ministries, as foreseen by the Law on Foreigners. This is an important element given the variety of religious, national, ethnic, and linguistic elements that membership in the European Union implies.

Although the majority (the main part of the legislation) has already been adopted, there is a need for other sub-legal acts and commentaries interpreting the legal changes so that support is provided during implementation.

While the labour code endorses the EU Directive on Posted Workers, there are still issues that need further clarification through by-laws. *For example:* Posted Workers are posted from a mother company to its branches. The employment services will register the case and will issue permission of stay/permission of work. However, it is not clear in the law which is the legal document to certify the relation between mother company and its branch. What happens when both companies are from two different countries? Who should provide this document? Is it the employee? Should they have access to the statutes and legal documentation of the company? This is daily routine and paper work that an administrative clerk will require but which can lead to burdens in business. What happens when posting takes place within companies that do not relate to each other? These details are not in the law and further exchange and cooperation between national institutions and EU institutions is needed to build institutional capacities to manage labour mobility such as posting.

There is certainly economic interest in applying the changes in national legislation to improve human capital, as confirmed by the interviews conducted with representatives of firms. Companies strive to properly interpret these legal changes, given that an implementation guidance is not available. Companies usually refer to European legislation and cases in a European context when applying posting of workers.

Decisions of the Supreme Courts in Albania are also often used as a reference in legal practices. Labour Code changes that refer to the EU Directive on Posted Workers have no precedent in Albania and in legal reference yet. Albanian companies are also ready to share experience and present their cases if that is used to raise awareness and improve public understanding of the phenomenon of posted workers.

4.1.2 Labour mobility laws and regulations

Labour mobility remains crucial to firms optimizing human capital, as confirmed by different interviews with business representatives. Companies interviewed have confirmed that employing foreign citizens or sending their employees in assignments abroad is a desirable practice to improve their human capital, especially for multinational companies or companies with foreign capital. However, it is easier, in term of administrative burden, to post employees from any EU country to Albania, than to post Albanian employees to any EU Member State.

As regards access to the labour market, EU citizens are eligible to work in Albania without a work permit. This is pursuant to provisions of the Law on Foreigners and subsequent amendments, which provide that foreigners will not need a work permit or business registration certificate if they are nationals of an EU Member State or Schengen country and legally residing in Albania. For non-EU citizens working in Albania, there are 13 types of work permits issued, depending on their employment terms. The work permit for posted employees is a specific type, known as A/P type, granted based on the CMD no. 84 dt.2014. The posted workers can apply

either themselves or the company hiring them can file the application for the work permit. The application for the work permit is submitted at the Regional Employment Offices or at the National Employment Offices if the person will be working in more than one region. The documents needed include the application form, ID, original employment contract, a confirmation from the employer, recent photos and a 50 EUR application fee. The documents need to be deposited in the Consular Office of the country the person originates from. The work permit is issued within 10 days after completion of the application procedures. The authorities have the right to refuse granting the work permit if it is not in compliance with legal requirements. Employment Offices need to perform analyses of the labour market when issuing work permits. If the work permit is deemed not in compliance with labour market demands, the work permit might not be granted. However, real-time and accurate labour market analyses are not easily performed as institutions still lack data. The issuing of work permits is monitored by the Ministry of Finance and Economy/ Directorate of Migration and Labour.

The portability of social security contributions and forfeit of occupational pensions between Albania and any other country are regulated through bilateral agreements.

The current status of Albania, being a candidate country, exempts Albanian companies to send employees through posting arrangements to any EU country. The Human Resource Manager of Deloitte in Albania confirmed that in cases when employees are sent through intra-firm posting to any of the Deloitte offices at EU countries, the employment will still be treated as a normal labour migration procedure, without any simplification in the procedures for getting a work or residence permit. Albanian workers, whenever posted for short- or long-term assignments to any EU country, need to have a work permit and a permit of stay.

The legal changes introduced by transposing the PWD into the Labour Code and the Law on Foreigners in Albania have increased labour mobility in hosting posted workers from EU countries. The labour mobility is asymmetrically affected by the PWD transposition as legal changes make it easier to post workers in Albania (host them) rather than sending them abroad. Albania reports that currently there are only 70 cases of foreign workers being employed under posting arrangements. They were identified only after initiation of a national workshop and discussions with relevant institutions and stakeholders. Wage differentials between Albania and most European countries do not favour posting in Albania. However, posting from regional economies or other non-EU countries in Albania could develop.

4.1.3 Specific issues for migrant and/or posted workers and bilateral or multilateral agreements with the EU or EU Member States on labour mobility

Sending employees to EU countries under the PWD is reported to be subject to very different procedures and regulations depending on country-specific legislation. Interviewed representatives of companies explained that, in some cases, for example in Romania, sending employees is subject to a skills gap and quotas for foreign employees which, although constituting an antidumping measure for the national labour market, constrains labour mobility to that country.

Poland is a country where procedures for sending employees are quite fast, but strict in terms of employment duration due to fiscal implications of posting arrangements. Albania has not yet signed any bilateral agreement with Poland, for example, on social contributions and income tax and, as a result, employees have to pay double tax, while not being able to transfer the social contributions paid. The same applies to Hungary and to Germany, where even though there are

flexible procedures, yet fiscal implications increase the costs for firms and discourage labour mobility from Albania towards these countries.

In case of a posted worker, the employee remains on the payroll of the sending firm, meaning a firm in Albania, while financial compensation happens as well in the hosting country. As a result, a fiscal implication (double taxation) emerges, increasing the cost of labour. To avoid fiscal implications, employees have to terminate their contract with the sending firm and register as employee in the receiving firm, which totally ruins the benefits in terms of labour mobility granted through posting.

Albania has signed agreements with some of the EU countries, however, the procedure for tax reimbursement in case of double taxation requires a lot of documents and time, to the degree that no one ever performed this procedure at tax authorities in Albania. Fiscal implications are an issue even among EU countries, since fiscal legislation remains a national domain. At EU level, posted workers need to identify themselves to the fiscal authorities and payments (wages) have to be matched between sending and receiving parties, so that no social dumping emerges. For Albanian companies sending employees through a posting arrangement, matching wages to the level of wages in an EU receiving county is a high cost that cannot be beared by sending companies. If the hosting company agrees to compensate for the wage difference between sending country (Albania) and receiving country (an EU county), there is a need for supporting documentation and registration for tax authorities and labour offices, adding unnecessary barriers to labour mobility through posting. Sometimes, the wage match part is treated as per diems, covering the differences in cost of living. However, such regular payments to employees are not allowed under Albanian legislation, and per diems are allowed only for a short time period. For companies, finding a legal solution to fiscal implications that create unnecessary costs to labour mobility is needed. Fiscal implications do raise costs for local companies in sending posted workers abroad.

Procedures for posting employees are also time-consuming, i.e. for a three-month assignment, companies declare they need 6 months' time to prepare the papers and necessary documents. Barriers to hiring foreign citizens are also faced in Albania. Recruiting foreign citizens for a certain vacancy requires that the vacancies are firstly announced locally through the employment office or other communication channels, for at least 15 working days, and then made available to foreign citizens. This is perceived as an administrative barrier for Albanian companies in hiring foreign citizens. These fiscal implications and the time consumed by paper work when hiring foreigners, force employees to choose employment in a hosting company rather than applying posting. This leads toward losing qualified staff for a sending company, since staff get new employment arrangements instead of posting.

Posting workers is common among companies with foreign capital. According to national statistics, only 6-8% of companies are established with the contribution of foreign capital. Sending employees as posted workers becomes a way to transfer know-how and good practices. Interviews with companies' representatives confirm that hosting foreign workers in large companies fits very well with the organisational culture.

Construction companies in Albania have earned international contracts for civil works and have applied posting of employees. Foreign companies that have been engaged in constructing of important civil works or energy projects such as Trans Adriatic Pipeline, have incurred posting

in Albania. Unfortunately, there are no official statistics since the legal changes are recent and institutions are not yet prepared to trace these phenomena.

The first reporting on posting was done upon the request of this project to provide information. The Ministry of Economy and Finance reports 70 employees with foreign citizenship posted in Albania. There are no data on the number of Albanian citizens being posted abroad.

For employees, being placed intra-company in any EU country is preferred compared to being posted in less developed countries. This preference is driven by the wage differential and wage match. While some companies face problems with double taxation of posted workers, other companies are using their internal rules to avoid double taxation.

While covering the wage differences, there are mechanisms to be used, i.e. choosing the conditions of the contract based on the hosting or sending country. However, they depend on information and awareness of employers and employees. Employees need to be fully aware of the repercussions of choosing “best conditions” when being posted.

A posted worker of Albanian nationality facing a problem or disagreement with a hosting firm in the EU area, cannot sue the company and follow the case from Albania. Companies confirm that daily problems and misunderstandings between employees and employers are treated by the Human Resources department of the hosting company, while cases of accidents at the workplace or health issues related to work, are treated based on the contractual agreement.

The legal changes currently support the creation of temporary employment agencies, which will be posting workers in different jobs and prepare all contractual arrangements including payroll and fiscal obligations. The temporary employment agencies could facilitate employment arrangements under posting, from Albania to regional or European markets, lowering the administrative barriers of the process and encouraging labour mobility.

The institutional framework on migration management changed in September 2017 but the development and implementation of migration-related policies and measures need to be further clarified. The legal framework is broadly in line with the Acquis. However, the government lacks a comprehensive cross-sectoral national migration strategy. The national strategies on migration and on reintegration of returned Albanian citizens ended in 2010 and 2015, respectively. The Ministry of the Interior started working on a new cross-sectoral strategy which was planned to be adopted by the end of 2018. The new State Minister for Diaspora launched a new Strategy on Diaspora and Migration in October 2017. As part of the broader migration and development nexus, efforts to address diaspora engagement objectives should continue.

Migration issues are covered by the National Development and Integration Strategy for 2015-2020 and the National Employment and Skills Strategy for 2014-2020. The latter also covers labour migration policies and concrete measures such as cooperation agreements with non-profit organizations providing guidance for returnees. In September 2015, Albania prepared a contingency plan for a possible mass influx of migrants and asylum-seekers which is updated every 6 months. The agreement signed on 12 February 2018 with the European Border and Coast Guard Agency (EBCGA) will allow the Agency to assist the Albanian authorities in external border management and to swiftly deploy teams on Albanian territory in case of a sudden shift in migration flows. However, Albania needs to strengthen its border controls and the fight against migrant smuggling.

4.2 INSTITUTIONAL ARRANGEMENTS

Posting is yet a labour migration arrangement, involving institutions from sending countries as well as receiving countries, but institutions dealing with out-posting (sending) are different from those concerned with in-posting (hosting). The legal changes in the labour code introducing the PWD are recent. They are done under the EU legislation approximation agenda, and do not reflect a need in the labour market. Due to the fact that posting is a recent legal concept and only few cases of posting have been recorded so far, the process of transferring the labour code changes into institutional routine through by-laws and administrative procedures has not yet taken place fully. The mapping of the institutions and the distribution of their role and responsibilities are mainly based on the legal framework rather than on examination of the case management and administrative work. Valuable information on institutional involvement was gathered through interviews and consultations with stakeholders.

Within the Ministry of Finance and Economy, the Directorate of Labour and Migration represents the institutions with the responsibility to develop a strategic and legal framework regarding labour. The directorate is key to inter-institutional coordination, monitoring of development of the labour market and exchange of information.

The Ministry of Interior Affairs/ State Police/ Directorate of Border Control and Migration are the responsible institutions to implement the Law on Foreigners through issuing permits of stay for foreign citizens working in Albania, even those under posting arrangements.

The Ministry of Foreign Affairs/ Consular Services is involved in registering Albanian citizens working abroad, including those under posting arrangements. Consular Services of other states in Albania are responsible for keeping records/documentation of their citizens living and working in Albania, including those under posting arrangements.

Employment Offices (at regional and national level) are responsible for monitoring labour market developments, including employment and unemployment, skills demand and human capital needs of the economy. The employment services support skill match and employment through mediation between firms and job-seekers. They are the national authority issuing the work permits for foreigners, including work permits for posting assignments. The National Employment Offices (NES) have the responsibility to maintain and update the national register of employees, for all types of employment arrangements, including posting. The NES reports to the Ministry of Finance and Economy/ Directorate of Labour and Migration. National Employment Offices provide migration services, mainly information, to registered job-seekers. Persons that get a job abroad and succeed to migrate for employment purposes are not registered and followed by the employment services. Migration services register only returnees and follow up on their re-integration. Donor support has enabled migration services as a way to reduce illegal migration and turn it into formalized employment migration.

The State Inspectorate of Labour and Social Services (Labour Inspectorate) is the national authority responsible for inspecting and monitoring the compliance of work with labour legislation and labour standards regarding health and safety at work.

The inflows of posted workers are fully monitored, through the permits of stay and work permits issued to foreign citizens and the registration/declaration in the employment office. This identification ensures that foreign citizens employed in Albania even through posting can

be monitored on the aspects of social inclusion, health and safety at work. An employment arrangement through posting in any business in Albania has to be documented in a written official document between the company that has contracted the employee, the company that temporarily hosts the employee and the employee him-/herself. The Labour Inspectorate will check and verify these documents in routine controls of companies regarding labour conditions and legal compliance with respect to the labour code.

The contractual terms have to specify the type of job of the posted worker, the location of the assignment, time duration of the assignment as well as the legal framework that regulates the contract (sending or receiving country). In case when placement of workers is done through a temporary employment agency, it is easier to control whether the agency fulfils the contractual terms and satisfies the social rights of employees. The agency is assigned responsible to follow up on the progress of employment placement, meaning working conditions, payments of the employee etc. In the case of private companies, whenever they post their employees intra-firm or in other firms, they only must have a contractual agreement. The Labour Inspectorate can strengthen the monitoring of posting arrangements through temporary employment agencies via the instrument of licensing.

Companies are obliged to report any new hires within a month of employment to both the Employment Offices and the Labour Inspectorate. This also applies to posted workers. Reporting posted workers is necessary to ensure work permits and all necessary documentation to formalize employment.

However, companies in Albania have no obligation to report sending employees as posted workers abroad. As a result, the monitoring of the posting workers takes place only in one direction, in hosting, while no information is available in case of sending. Sending posted workers and not reporting them, creates a gap in observing whether employees have benefited the same treatment in the hosting country. Not officially reporting sending workers under posting arrangements will pose difficulties to manage the fiscal implications such as double taxation or accounting for the pension and social contribution. Albania has to strengthen the monitoring mechanism for posted workers in both directions, in sending and receiving, by making use of its consular services.

It remains a challenge for the Directorate of Labour and Migration Policies at the Ministry of Finance and Economy to strengthen coordination among institutions, raise awareness and build administrative procedures that ensure proper management of posting, similar to the standards of implementing the PWD in EU countries. The Labour Code implies that the responsibility to follow up issues with regard to the posting of workers for Albania falls within the directorate. However, in order to empower the directorate to perform inter-institutional coordination and monitoring in line with the liaison office described in the Directive, the role and responsibility has to be stated explicitly in by-laws, which are still missing.

Regarding institutional arrangements and capacities related to private companies, the situation in large foreign companies is different from that in small domestic firms. Large foreign companies (multinationals) are very prepared to support labour mobility that fits their business purpose, despite difficulties or implications. Internally, these companies have structures such as HR officers or Mobility Officers responsible to support procedures and staff settlement, whenever sent under intra-firm posting. Mobility and exchange of qualified staff are considered as crucial to the organizational culture and standardization in the quality of products or services

offered by the company. Medium- and small-sized local companies are not prepared to support staff mobility, due to administrative burdens and specialized legal services needed.

Table 1: Institutions Related to Posting of Workers

Ministry responsible for labour market (Ministry of Economy and Finance)	<ul style="list-style-type: none"> - Responsible Institutions for Labour Issues (Labour market, legal aspects, policy and strategic documents on labour) - Licensing Temporary Employment Agencies (posting could be arranged through temporary employment agencies)
National Employment Services (NES)/Regional Employment Offices	<ul style="list-style-type: none"> - Employment - Labour Migration Information - Granting work permits, even A/TN-based (transferred within the company) work permit types
Ministry of Interior	<ul style="list-style-type: none"> - Responsible for Migration Issues (policy, legal aspect) and Border Control
Directorate of Migration/Ministry of Interior/State Police	<ul style="list-style-type: none"> - Permit of Stay - Monitor and register in/out migration including labour migration and posted workers
Labour Inspectorate	<ul style="list-style-type: none"> - Monitor compliance with labour legislation and standards including health and safety standards, including posted workers. Take measures if non-compliance is found
National Institute Social Insurance/ National Institute of Health Insurance	<ul style="list-style-type: none"> - Have registration of social and health contributions - Manage the social and health contribution funds to ensure social protection - Implement bilateral agreements with countries on social contributions and health care.
Employment Private Agencies (Temporary Employment Agency)	<ul style="list-style-type: none"> - Distribute information on employment opportunities - Have employment arrangements and send employees on temporary assignments in companies through the mediation service - Report every 6 months on employment arranged
Consular Services (in destination of posted workers)	<ul style="list-style-type: none"> - Guarantee the labour and social rights of posted employees, including health and social protection; - Facilitate and support employees to return safely to Albania, when contractual agreements are fulfilled;
Employee Associations	<ul style="list-style-type: none"> - Responsible for ensuring social protection and social rights of employees - Playing a role in collective contracts
Company (HR management)	<ul style="list-style-type: none"> - Responsible for preparation of procedures for posted workers (contract, etc.) - Monitor performance and work conditions in sending/receiving countries

4.3 INTER-AGENCY COOPERATION

The range of institutions involved in implementing posting of workers is wide, involving national and international actors. The national institutional set-up involves central government institutions, implementing agencies at national and regional level, employers' and employees' organizations, international donor organizations, etc.

Legal changes regarding posting are recent, while lack of by-laws and other guidelines has created a bit of confusion among institutions on their respective roles and responsibilities. In order to monitor and follow up on how labour rights of an employee being sent abroad on a posting arrangement are respected, Albanian institutions will need cooperation agreements with parallel institutions. The cases when employees experience health damages or accidents at work and the process of identifying who bears the responsibility between sending and receiving firms, are usually decided through an investigative process. If the Albanian government bears the responsibility of providing health assistance in case of work accidents, that cannot happen without the Albanian institutions being part of the accident investigation.

Thus, proper monitoring of posting is more complicated than just statistical information. A strong cooperation and communication among institutions at national and international level is needed.

Cooperation agreements among institutions are difficult to initiate, it is usually the line Ministry that supports implementing agencies to enter into cooperation with other institutions/organizations nationally or internationally. It is imperative that the Ministry of Economy and Finance, the Ministry of the Interior and the Ministry for Europe and Foreign Affairs understand the posting of workers as a special case of labour migration and support implementing agencies such as the State Inspectorate, the National Employment Services etc. in establishing cooperation and channels of communication with relevant agencies/institutions in order to monitor labour mobility that happens as posting, in both directions, in and out.

Companies are obliged to report any new hires, within a month of employment, to Tax Authorities, Employment Offices and the Labour Inspectorate. This also applies when companies host a new employee under posting arrangements. Reporting posted workers is necessary to ensure work permits and all necessary documentation to formalize employment. Intra-agency cooperation and exchange of information remain crucial in solving the fiscal implications of posting or the administrative burden when receiving a permit of stay and a work permit. One barrier that employers face whenever preparing paper work for a posted worker with foreign citizenship relates to the number of original copies of documents that need to be submitted to different institutions for similar procedures. Moreover, some of these documents are found electronically in the online portal of the government services, while still being asked to be provided as paper documents. A one-stop procedure in receiving work permit / permit of stay as well as information-sharing among institutions would reduce the administrative burden of paper work.

Employees, even those that are under temporary arrangements, are to be declared by the employer at the Employment Offices and Tax Authorities. The State Labour Inspectorate would then use the information from the Employment Offices or Tax Authorities to inspect the work conditions and compliance with the labour code. However, posted workers are not registered as a separate category in the course of the registration procedure. It requires coordination among the above three institutions to get posted workers identified.

The interviews with a representative of the Ministry of Economy and Finance / Directory of Labour and Migration as well as the contacts and information exchange with donor-supported project coordinators in labour and employment, i.e. GIZ and UNDP, confirm the fact that posting of workers is more a legal term. Information on and awareness of the expected impact of posting are lacking. Stakeholders, including employers, employees' organizations, and institutions with implementing responsibility, are not aware of the risks of employment by posting in non-EU countries as well as of future effect on social protection if posting happens without proper coordination and monitoring among countries.

At European level, the PWD requires that each country assigns a managing authority, responsible to monitor posting and coordinate and exchange information among national agencies and countries. The managing authority, or liaison office as defined in the PWD, is held responsible for the inter-agency coordination.

The Labour Code in Albania, in adopting posting of workers, has not assigned the responsibility to monitor posting, i.e. to coordinate, share and exchange information within a dedicated structure. The law assigns this responsibility to the Ministry of Finance and Economy/ Directorate of Labour and Migration, as part of its responsibility to oversee all matters and issues regarding labour and employment. It is then an obligation of the MFE to prepare by-laws, administrative procedures and protocols as well as guidelines supporting implementation of posting of workers.

4.4 HUMAN RESOURCES

There are actually ten main institutions involved in implementing and monitoring PWD, as defined in the current labour legislation of Albania. In the interviews with representatives of the Ministry of Finance and Economy, the Labour Inspectorate or the Employment Services, no issue was raised with respect to lack of human resources at different levels of institutional involvement.

However, there is a low level of preparedness and elucidation of staff as regards the issue of posted workers, since this has been newly introduced in legislation. Posted workers are not yet part of the daily routine of institutions such as the Labour Inspectorate or employment offices since only few cases of posted workers are reported. The complications that emerge due to fiscal implications and social protection have not yet been reported to these institutions. Firms report that no one ever tried to file for reimbursement of double taxation with the tax authorities.

Implementing agencies lack knowledge and experience and protocols of cooperation/coordination with partner institutions in other countries with regard to posting of workers' case management. It is reported that staff from implementing agencies have never been trained or exposed to a difficult case management of posted workers, with implications such as fiscal ones, fraud, unfair employment conditions or work accidents and health issues related to working conditions. The interviewed representatives from different institutions were not even aware or prepared to treat the problem of language and communication barriers with posted employees. Thus, the adequacy of human resources to support proper implementation of the PWD may be questioned given the fact that the system has not been exposed, no case management practice is reported. The judicial system, is also not exposed and not prepared, as no court case on posting is reported.

4.5 STAKEHOLDER ENGAGEMENT

Labour legal changes have introduced new forms of employment such as home-based work, distance- and tele-work as well as posting arrangements. These legal changes need to be transmitted into by-laws and also be clarified for employees and companies through commentaries or other types of legal reference materials which support proper implementation.

The process of transmitting legal changes into implementable labour relations requires engagement of stakeholders and participatory processes.

The institutional and legal arrangement of labour involves the setting-up of tripartite consultative bodies that help engage stakeholders in labour issues. The National Council of Labour is a tripartite consultative body that engages employers, employees' organizations and government institutions in consultation regarding work relations. However, the dialogue is perceived as formal with no substantial impact to settle issues and problems regarding labour relations. Trade unions are perceived as weak and being under the influence of political parties. Decisions taken to protect employees, such as food subsidy to workers that work under difficult conditions (e.g. miners), are neither fully met by employers nor strictly monitored/enforced by the Labour Inspectorate.

Labour and employment policies are crucial to the government program. The national strategy (NESS 2014-2020), which leads policies and intervention in labour and employment, has triggered functional cooperation and stakeholders' engagement in employment and skills strategy. This cooperation is supported by international agencies and is formalized through the establishment of permanent policy committees that have regular meetings and involvement in policy-making. Such committees are the Inter-Governmental Policy Management Group (IPMG), the Sectorial Committees on Labour and Skills, the Donor Coordination Group, the tripartite consultative councils at the regional level, etc.

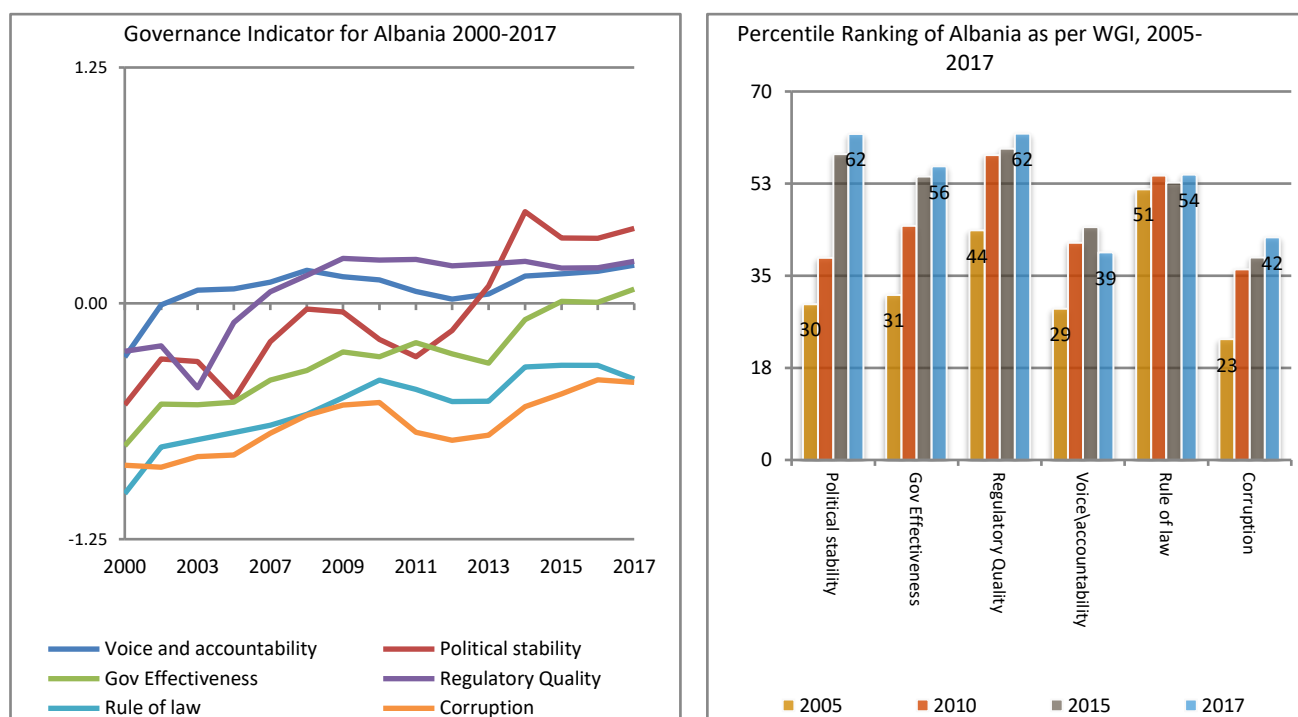
The interviews with a representative of the Ministry of Economy and Finance, Directory of Labour and Migration, as well as contacts and information exchange with donor-supported projects such as ADP, GIZ, SDC and UNDP, have shown that posting of workers is more a legal term. Information to and awareness of all stakeholders remain crucial especially for the expected impact of posting on potential formal and regulated employment, potential risky employment through posting in non-EU countries, and impact on social inclusion and protection.

4.6 PUBLIC GOVERNANCE

The World Governance Indicator from the World Bank was used to draw a general picture of the quality of governance in Albania. The overall governance quality and effectiveness will affect institutional capacities in handling the posting of workers. The WGI measures quality of governance in six dimensions, voice and accountability of citizens in selecting their government, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption. Albania has made considerable progress in all areas of governance during the last decade, improving its ranking on the governance index in comparison to other countries.

The political stability as well as voice- and accountability indicators of the governance have improved considerably during 2005-2017, as the country's political environment has been stable. Political stability improved by 0.94 point in 2017, compared to 2005, ranking Albania from the 30th percentile in 2005 to the 62nd percentile in 2017. The voice and accountability of citizens indicators have improved; however, the improvement is not strong enough to improve the ranking of Albania vis-à-vis other countries: it dropped from the 44th percentile in 2015 to the 39th percentile in 2017 (see Figure 8).

Figure 8: WGI indicators for Albania, 2000-2017



Source: World Bank World Governance Indicators

Albania has made significant improvements with respect to government effectiveness and the quality of regulatory framework, while a negative perception on enforcing rule of law and fighting corruption has been persistent over years, ranking these two domains of governance as the weakest. The governance effectiveness index shows a favourable trend, with a strong positive improvement after 2013. The GE index increased by 0.71 points in 2017, ranking Albania in the 56th percentile as compared to the 21st percentile in 2005. Regulatory quality, i.e. the ability of the government to formulate and implement sound policies and regulations (Kaufman, 2010), improved by 0.59 points in 2017, ranking Albania in the 62nd percentile in 2017 as compared to the 44th percentile in 2005. The governance indicators measuring the confidence of citizens in the rule of law and their perception of corruption have deteriorated in 2017, however, the ranking compared to other countries in 2017 continued to improve.

The process of EU integration mirrored in legislation approximation and institutions' capacity building has influenced the improvement in governance indicators, especially in the domain of regulatory quality, rule of law enforcement and governance effectiveness. Albanian institutions

need to strengthen cooperation with EU institutions, especially in sensitive policy areas such as employment, migration and social protection.

The lack of trust in institutions and the system of justice could be the main reason why companies in Albania try to solve cases of disagreement between employee and employer through their internal mechanisms rather than going into court cases. Companies confirm that daily problems and misunderstandings between employees and employers are treated by the Human Resources department of the hosting company while cases of accidents at the workplace or health issues related to work, are treated outside the contractual agreement.

5. SYNTHESIS AND CONCLUSIONS

The process of legislation approximation has had a positive impact on improving the legal framework of labour in Albania, however, legal changes are not properly enforced as regards their implementation. Legal changes are not followed up by adoption of proper by-laws transposing legal changes into a distribution of roles and responsibilities among institutions. By-laws need also to align with standards and good practice at European level, if not, this will ruin the purpose of PWD, which is that of inducing labour mobility for mutual economic benefits.

For example, in case of posted workers from a mother company to its branches – if the employment office will register the case and issue permits of stay and work – what is the legal document to certify the relation between a mother company and a branch especially when companies are from two different countries? Who should provide this document? Is it the employee? Should they have access to the statutes and legal documentation of the company?

Should the company follow up when a work permit is an individual application? These are daily routine and paper work tasks that an administrative clerk will require to issue work permits but they mean a burden for companies. What about temporary employment agencies – what are the set of documents to support employment of workers? That information cannot be found in the law and further exchange and cooperation between national institutions and EU institutions is needed to facilitate the preparedness of institutions to monitor and facilitate labour mobility as posting.

Strengthening institutions and preparing them for posting of workers is another drawback that impacts proper implementation of the PWD. Regarding preparation of the institutions related to implementation of the Posting of Workers Directive, it was noted that different public institutions concerned with implementation of the directive were not clear about their specific role. Institutions were not provided with guidance and clarification on administrative procedures to implement the Posting of Workers Directive, monitor legal compliance, and monitor the effect on the labour market. The category of posted workers was not identified separately by the employment offices and Labour Inspectorate, making it tracking and monitoring difficult.

Exchange of experience among EU- and national institutions responsible to follow up and monitor the implementation of the legal changes in the labour code that reflect adoption of the posted workers directive would help in clarifying the legal framework and legal practices in sending and receiving posted workers. Albania reports currently only 70 cases of foreign workers being employed under posting arrangements. They were identified only after the initiation of a national workshop and discussions with the relevant institutions and stakeholders.

Companies also strive to properly interpret the legal changes in the labour code, including the case of posted workers, with regard to implementation. These changes were made without consultation of the business community, and neither were they transmitted to the business community with the help of legal commentaries or guidance to support their implementation. Companies usually refer to European legislation and cases in a European context in order to interpret different aspects of the posted workers directive. Decisions of the Supreme Courts in Albania are also often used as precedents and reference in legal practices, however, there are

no cases with respect to posting of workers. Albanian companies are also ready to share experience and present their cases if that is used to raise awareness and improve public understanding of the phenomenon of posted workers. There were also no awareness or training activities provided to concerned institutions, employee organizations or businesses reported with respect to legal changes transposing the PWD.

Labour mobility among regional economies could also benefit from posting, especially in some strategic sectors where temporary seasonal employment is beneficial to regional economies in tourism, energy sector, construction or information technology. The labour market conditions with high unemployment, narrow wage differentials and lack of tradition in exchange of labour at regional level do not induce labour mobility, despite the reduction in barriers. The fiscal implications are also not yet settled among regional economies. Coordination and exchange of information among institutions of regional countries remain crucial to support labour mobility beneficial to regional economies. However, coordination and cooperation between labour market institutions at regional level are weak and need strengthening.

The new Law on Foreigners, which was also changed in the process of legislation approximation to the EU Acquis, has removed some barriers for employing foreigners versus nationals. The law removed the restriction that for one foreign employee, a company has to employ two employees of Albanian citizenship. The law has introduced quotas for foreign employees. Work permits are granted to foreign citizens after analysis of the labour market by the employment offices. If the labour market analysis shows that employing foreigners is in compliance with the labour market demand, the work permit is granted. The employment office has the authority to not grant the work permit if employment of foreigners would be negatively affecting the labour market.

Real-time and accurate labour market analyses are not so easy to perform, as this would require real data and information exchange among different institutions, such as the Labour Inspectorate, the statistical institute, the regional employment offices, the social insurance and tax authorities. Intra-institutional cooperation and exchange of information is currently hindered by complex laws and administrative procedures. Efforts to strengthen exchange of information were made by adopting information technology (e-Albania, E-government), however, this is not yet fully efficient and operational.

Sending employees abroad for temporary employment or posting arrangements are difficult to monitor. Employees sent abroad are not reported or registered in any of the labour monitoring institutions (neither by the employment services nor by the Labour Inspectorate). For example, since the agreements with Germany and Italy to employ Albanian nurses or doctors in these countries entered into force, institutions have not been able to monitor how many Albanian citizens were employed under these agreements. Persons that get a job abroad and succeed to migrate formally (not informally) for employment purposes are not registered so there exist no data statistics. Migration of Albanian citizens has been massive, but statistics are reported mainly on the basis of data on asylum-seekers. Support by donors has improved migration services in order to reduce illegal migration and transform it into formalized employment migration. However, donor efforts have to be endorsed and adopted by government institutions in order to ensure their sustainability.

The inflow of posted workers is fully monitored, through the work permits issued for foreign citizens and the registration/declaration at the employment office. There are 13 types of work

permits in Albania for foreigners and they are administered and registered specifically. This identification ensures that foreign citizens employed in Albania even through the posted workers mechanism, can be tracked and monitored regarding employment conditions, social inclusion, health and safety at work. It is fully possible that the Labour Inspectorate identifies posted workers through its information system of employment offices, social insurance and tax authorities. However, yet there is no special identification code in the information system for posted workers, except the identification of the type of work permit or permit of stay, which are linked to the temporary employment status. Identification of posted workers has to become part of all information systems on labour in order to support the monitoring mechanism for posted workers in both directions, in and out. This would ensure that posted workers' rights and working conditions are respected and monitored, including social protection, safety and health at work.

Institutionally, in the course of implementation of the new labour code Albania has to assign the responsibility to monitor and coordinate posting of workers to only one specialized authority in labour market governance, at central governance level, similar to the liaison office at EU country level. The institutions responsible to monitor and coordinate information gathering, information exchange and intra-agency coordination should develop procedures and protocols to coordinate the migration/border control authorities, employment services and Labour Inspectorate. The institutions will also have the obligation to coordinate the communication with counterparts in other countries, with support from the Ministry for Europe and Foreign Affairs.

The liaison office would be held responsible to monitor the impact of posting on the labour market and, in a longer-term perspective, the impact on the social protection system, especially on pensions and health insurance in case of work-related accidents.

In the framework of legislation approximation, Albanian institutions need to strengthen cooperation with EU institutions, especially in sensitive areas such as employment, migration and social protection. The trust in Albanian institutions is low and strengthening exchange and partnership would improve mutual trust.

With the latest changes in legislation, Albania has lowered barriers to labour mobility for EU and regional economies. There are companies in Albania that understood the benefit of exchanging staff through posting arrangements. They are prepared to engage in posting and have human resources management practices to support it. However, it remains a responsibility of Albanian institutions to ensure that posting happens as a fair employment. The working environment in Albanian companies is very supportive and encouraging in hosting foreign workers. Business representatives argue that foreign employees bring technical know-how and improve the working culture at company level.

6. POLICY IMPLICATIONS AND RECOMMENDATIONS

6.1 LEGAL FRAMEWORK

The process of legislation approximation has had a positive impact on improving the legal framework of labour in Albania, however, legal changes are not properly enforced as regards the implementation aspects. Legal changes are not followed up by adoption of proper by-laws transposing them into clear administrative procedures and a clear distribution of roles and responsibilities among institutions.

Companies also strive to properly interpret the legal changes in the labour code, including the case of posted workers, with regard to implementation. These changes were made without consultation of the business community, and neither were they transmitted to the business community with the help of legal commentaries or guidance to support their implementation. Companies usually refer to European legislation and cases in a European context in order to interpret different aspects of the Posting of Workers Directive. Decisions of the Supreme Courts in Albania are also often used as precedents and reference in legal practices, however, there are no cases with respect to posting of workers. Albanian companies are also ready to share experience and present their cases if that is used to raise awareness and improve public understanding of the phenomenon of posted workers. There were also no awareness or training activities provided to concerned institutions, employee organizations or businesses reported with respect to legal changes transposing the PWD.

6.2 INSTITUTIONAL ARRANGEMENT

Institutionally, in the course of implementation of the PWD, Albania needs to adopt a clear distribution of roles and responsibilities among institutions involved in posting of workers. It is also relevant to confirm the leading institution similar to the liaison office at EU country level. The law assigns this responsibility to the Ministry of Economy and Finance being the national authority responsible for labour legislation in general.

There is no specific document, legal or administrative, that assigns a liaison officer for posting of workers. It would be beneficial for the proper implementation of the PWD in Albania if a liaison office is specifically assigned, with a clear role and responsibilities. The liaison office would then lead the process of clarification of roles and responsibilities among the different institutions, coordinate inter-agency cooperation and exchange of information as well as consultation and stakeholders' engagement.

It is important that Albania monitors the impact of posting on the labour market and, in a longer-term perspective, the impact on the social protection system, especially on pensions and health insurance in case of work-related accidents.

6.3 INTER-AGENCY COOPERATION

The liaison office (or the leading institutions) needs to develop protocols of cooperation and exchange of information with related institutions. The institutions will also have the obligation

to coordinate communication with their counterparts in other countries, with support from the Ministry of Foreign Affairs.

Exchange of experience among EU and national institutions responsible for following-up and monitoring the implementation of the legal changes in the Labour Code that reflect the PWD is needed. The level of awareness and information exchange among institutions was not functional.

Intra-institution cooperation and exchange of information is currently hindered by complex laws and administrative procedures. Efforts to strengthen exchange of information were made by adopting information technology (e-Albania, E-government), however, this is not yet fully efficient and operational for the exchange of information.

Identification of posted workers should be part of all information systems on labour in order to support the monitoring mechanism for posted workers in both directions, in and out. This would ensure that posted workers' rights and working conditions are respected and monitored, including their social protection, safety and health at work.

The inflows of posted workers are fully monitored, through the work permits issued for foreign citizens and their registration/declaration at the employment office. There are 13 types of work permits in Albania for foreigners and they are administered and registered specifically. This identification ensures that foreign citizens employed in Albania even through posted workers mechanisms, can be tracked and monitored regarding employment conditions, social inclusion, health and safety at work. It is fully possible that the Labour Inspectorate identifies posted workers through the information system of employment offices, social insurance and tax authorities.

However, yet there is no identification code given to this category of employees in the information system of employment and tax authorities, except identification of the type of work permit or permit of stay, which are linked to the temporary employment status. Identification of posted workers has to be part of all information systems on labour. Intra-agency coordination and exchange of information would help the monitoring mechanism for posted workers. This is crucial to ensure posted workers' rights and working conditions, including social protection, safety and health at work. Identification and monitoring are also beneficial to a future settlement of fiscal implications and the social protection system.

Coordination and exchange of information among institutions of countries in the region remain crucial to support labour mobility beneficial to regional economies. The coordination and cooperation between labour market institutions at the regional level is weak and needs strengthening.

6.4 HUMAN RESOURCES

There were no awareness or training activities delivered to related institutions, employees' organization or companies with respect to legal changes transposing the PWD. This low level of awareness relates to the legal changes being recent and to the fact that labour mobility in the form of posting is yet not massive and still with no externalities on the social protection system.

Information, awareness and technical guidelines for all related institutions, especially for Employment Offices, companies and employees' organizations are needed. This will prepare

institutions, employees and companies to avoid negative impacts of posting on business, employees and the social protection system.

6.5 STAKEHOLDER ENGAGEMENT

Labour Code changes were consulted with related stakeholders, including employers' and employees' associations. However, the consultation process through tripartite consulting platforms did not continue in the implementation stage of the legal changes. The employers'- and employees' associations declared that they need consultation and engagement to continue, as a way to support legal compliance with labour legislation and unnecessary burdens to firms or employees. A revival of the dialogue with institutions through existing consultative platforms and an exchange of information and awareness on posting of workers are needed, given the interest of businesses, emerging temporary employment agencies and labour migration.

6.6 PUBLIC GOVERNANCE

In the framework of legislation approximation, Albanian institutions need to strengthen cooperation with EU institutions, especially in sensitive areas such as employment, migration and social protection. Trust in Albanian institutions is low and strengthening exchange and partnership would improve mutual trust.

7. APPENDIX: LIST OF INTERVIEWS

Methodology: Semi-Structured Interview

LEGAL FRAMEWORK

1. Has the Posting of Workers Directive been discussed in your country?
2. At what stage of policy-making is the Directive?
Probes:
 - a. The transposition of the Directive
 - b. National regulations on posting
 - c. Administrative provisions
 - d. First discussions among policy-makers
3. (If already discussed) What are the arguments that have been advanced in relation to the Directive?
4. What legal mechanisms for monitoring and controlling companies that might be sending workers to work in another country for a period of time are there in your country?
5. What legal mechanisms for monitoring and controlling companies that bring their workers to work in the country for a period of time are in place?
Probes to be used:
 - a. Labour market regulation
 - b. Social security
 - c. Health insurance
 - d. Tax system
6. Can you explain the subcontracting liability regulation in the country and how that would apply to companies that would post workers to the EU? What about regulations for companies that might post workers to the country?
7. Have there been any court cases involving posted workers to the EU in your country? Can you explain the cases and the decisions delivered?
8. How can the legal framework for labour migration in general and posting in particular be improved?

INSTITUTIONAL ARRANGEMENT QUESTIONS

1. Which are the agencies responsible for monitoring and controlling labour migration between your country and the EU?
2. Are there any offices responsible for posting? If yes, can you explain their structure and responsibilities?
3. If not, what agencies could be responsible for posting?
4. Are the Labour Inspectorates involved in monitoring labour migration both from and into the country? If yes, how?
5. What are the grievance procedures for a worker who has worked abroad in your country? Can they address a problem they have faced while working in an EU country in their home country (for example unpaid salaries, insurance claims for work-related accidents etc)? What institutions/agencies would be involved? And how?

6. How can the institutional arrangement for labour migration in general and posting in particular be improved?

INTER-AGENCY COOPERATION QUESTIONS

1. What structures and protocols of national inter-agency cooperation are in place in your country in terms of labour migration?
2. Are there any particular structures and protocols on posting already? If yes, which ones and how do they work? If not, why not?
3. What experience do you have as an institution in terms of inter-agency cooperation on the topic of labour migration? What about posting?
4. Have any liaison offices been established as stipulated in the Posting of Workers Directive and the Enforcement Directive to facilitate information sharing on posting?
5. What structures and protocols of international inter-agency cooperation are in place in your country in the area of labour migration?
6. What channels of cooperation, information sharing and exchange between national institutions and EU member states and EU-level institutions are in place in your country?
7. What measures have been taken in your country to ensure the protection of data during the information exchange as stipulated by EU regulations as well as by the Enforcement Directive?
8. How can the inter-agency cooperation for labour migration in general and posting in particular be improved at the national level?
9. How can the inter-agency cooperation between your country and the EU member states and EU-level institutions on labour migration in general and posting in particular be improved?

HUMAN RESOURCES QUESTIONS

1. Have the personnel (administrative staff, specialists, policy-makers) in your institution received any training or information on the Posting of Workers Directive and its implementation? If yes, what has been the content of these trainings?
2. Have the personnel (administrative staff, specialists, policy-makers) in your institution received any training or information on cross-border labour mobility in the EU and the common European labour market? If yes, what has been the content of these trainings?
3. Do you think your institution has the human resource capacities to implement the Posting of Workers Directive in the future?
4. Has the issue of language barriers with the different EU countries been addressed in your institution? If yes, how?
5. What language skills and intercultural communication skills, if any, have your staff and you received at the institution or in your lives in general in order to manage cross-border labour mobility in the EU?
6. What is missing in your opinion in the area of e.g. language barriers, language skills, intercultural communication, issue of cross-border labour mobility, etc?
7. How can human resources working on labour migration in general and posting in particular be improved?

STAKEHOLDER ENGAGEMENT QUESTIONS

1. Are national stakeholders such as trade unions and employer organizations involved in the process of EU integration in your country, particularly in the chapters that cover employment and labour migration in the European labour market? If yes, how are they involved? If not, why not?
2. Are they involved in the process of adopting the Posting of Workers Directive? If yes, how? If not, why not?
3. What is the position of the trade unions on cross-border labour mobility? Are you able to defend the rights of your members across the border? If yes, how? If not, why not?
4. Can trade unions in your country defend the labour rights of posted workers in and out of the country? If yes, how? If not, why not?
5. What is the position of the employer organizations in your country on cross-border labour mobility? Are they able to represent the interests of their members across the border? If yes, how?
6. Can employer organizations in your country represent the interests of companies that post/would like to post workers in other EU countries or from other EU countries to your country?
7. Are there any NGOs or other institutions present in your country that deal with and steer discussions regarding the Posting of Workers Directive? Which ones? What is their role in these discussions?
8. How can stakeholders' engagement on issues related to labour migration in general and posting in particular be improved?

8. REFERENCES

- Alberti, G., & Danaj, S. (2017). Posting and agency work in British construction and hospitality: the role of regulation in differentiating the experiences of migrants. *The International Journal of Human Resource Management*, 28(21), 3065-3088.
- Atoyan, R., and Rahman, J. (2017). “Western Balkans: Increasing Women's Role in the Economy.” IMF Working Paper No. 17/194: <https://www.imf.org/en/Publications/WP/Issues/2017/09/01/Western-Balkans-Increasing-Women-s-Role-in-the-Economy-45179>
- Boshnjaku, M. (2018). *Employment of foreign citizens in Albania and re-integration of returnees – A policy perspective*. University of Tirana. Available at: <http://www.doktoratura.unitir.edu.al/wp-content/uploads/2018/05/Doktoratura-Miranda-Boshnjaku-Politikat-e-puneismit-te-shtetasve-te-huaj.pdf>
- Çabiri, Y., & Rama, L. (2017). *Skills need analyses*. A research report commissioned by the Swiss Agency of Development Cooperation and UNDP Albania. Available at: <http://www.al.undp.org/content/dam/albania/NewPublications/skills.pdf>
- Council of European Union (2018), *Council Conclusions on Enlargement and Stabilisation and Association Process*. Available at: <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf>
- Cremers, J. (2011). *In search of cheap labour in Europe. Working and living conditions of posted workers*. Brussels: CLR.
- Danaj, S. (2018). *Occupational health and safety of posted workers in the EU: preliminary findings*. Presentation at the Occupational Safety and Health of Posted Workers: Depicting the Existing and Future Challenges in Assuring Decent Working Conditions and Wellbeing of Workers in Hazardous Sectors (POOSH) Project Joint Study Visit, 28 March 2018, Brussels, Belgium.
- Draft National Strategy on Migration Governance and Action Plan 2019-2022 (2018). *European Commission Country Report for Albania*.
- ETF – European Training Foundation (2017). *National Employment and Skills Strategy 2014-2020: Annual Progress Report 2016*. Commissioned on behalf of the Ministry for Social Welfare and Youth by the European Training Foundation. Available at: <https://financa.gov.al/wp-content/uploads/2018/09/NESS-Annual-Progress-Report-2016-final-converted.pdf>
- European Asylum Support Office (2015). *Asylum applicants from the Western Balkans: comparative analysis of the trends, push-pull factors and response – update*. Available at: https://www.easo.europa.eu/sites/default/files/public/Asylum-Applicants-from-the-Western-Balkans_Update_r.pdf
- European Commission (2017). “*Albania 2016 Report*”. EU Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.
- Kaufmann, Daniel and Kraay, Aart and Mastruzzi, Massimo (2010). “*The Worldwide Governance Indicators: Methodology and Analytical Issues*” World Bank Policy Research Working Paper No. 5430. Available at SSRN: <https://ssrn.com/abstract=1682130>
- Law No. 15/2017, “For Vocational Education and Training in the Republic of Albania”.
- Law No. 20237, 18.02.2010, “On Security and Health at Work”, as amended.
- Law No. 23/2018, “For some Amendments of the Law No. 10247, 4.03.2015, “On National Qualification Framework”
- Law No. 7961, 12.7.1995, “Labor Code of the Republic of Albania”, as amended by Law No. 136/2015, 5.12.2015.
- Law No. 9634, 30.10.2006, “On Work Inspection”, as amended.
- MFE – National Employment and Skills Strategy 2014-2020. Available at: https://financa.gov.al/wp-content/uploads/2018/06/Strategjia_Kombetare_per_Punesim_dhe_Aftesi_Plani_Veprimet.pdf

- Ministry of Finance and Economy (2019). “*Macroeconomic and Fiscal Framework 2020-2022*”. Approved by Council of Minister Decision No. 4, dt. 2019: https://financa.gov.al/wp-content/uploads/2019/01/Kuadri_Makroekonomik_Fiskal_2020-2022.pdf
- Ministry of Internal Affairs and Albanian State Police (2017). *Migration Profile in Albania. National Plan on European Integration 2018-2020*.
- UNDP (2016a), “Making the Labor Market Work for Women and Youth”, Kosovo Human Development Report 2016, Prishtina.
- wiiw – The Vienna Institute for International Economic Studies (2018). *Western Balkans Labor Market Trends 2018*. With support from the World Bank Group.
- World Bank (2016), “Ten messages about youth employment in South East Europe,” South East Europe Regular Economic Report No. 9S, Special Topic, World Bank, Washington, DC.
- World Economic Forum Gender Gap Index report (2017). Available at: http://www3.weforum.org/docs/WEF_GGGR_2017.pdf
- World Economic Forum Gender Gap Index report (2018). Available at: http://www3.weforum.org/docs/WEF_GGGR_2018.pdf