

Country Report

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

**Work Package 3: RESEARCH**

**COUNTRY Report for the Former Yugoslav Republic of Macedonia\***

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\*Since the report was written the name of the country has officially changed to Republic of North Macedonia

# CONTENTS

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List of abbreviations .....	3
List of tables and figures .....	3
Executive Summary .....	4
1 Introduction .....	6
1.1 A quick overview of the country context .....	6
1.1.1 EU Integration .....	6
1.1.2 National labour market .....	6
1.1.3 Labour migration trends (towards the EU).....	6
1.2 Aims of the study and method.....	7
1.3 Main Findings.....	7
1.4 Structure of the country report .....	8
2 Country Context .....	9
2.1 Socio-economic overview .....	9
2.1.1 Labour markets.....	9
2.1.2 Labour demand and supply .....	10
2.1.3 Working conditions .....	10
2.1.4 Labour migration.....	10
2.2 EU integration process .....	12
3 Methodology .....	13
3.1 Data collection.....	13
3.1.1 Desk research .....	13
3.1.2 Field research .....	13
3.1.3 National workshop on posting of workers.....	13
3.2 Analytic Framework.....	13
3.3 Challenges during the fieldwork and analysis.....	15
4 Results .....	16
4.1 Legal Framework .....	16
4.1.1 Employment laws and regulations.....	16
4.1.2 Labour mobility laws and regulations .....	17
4.1.3 Specific issues for migrant and/or posted workers and bilateral or multilateral agreements with the EU/EU Member States on labour mobility .....	20
4.2 Institutional Arrangement.....	21
4.3 Inter-Agency Cooperation.....	23
4.4 Human Resources.....	24
4.5 Stakeholder Engagement.....	25

4.6	Public Governance .....	27
5	Synthesis and Conclusions .....	30
6	Policy Implications and Recommendations .....	32
6.1	Legal Framework .....	32
6.2	Institutional Arrangement.....	32
6.3	Inter-Agency Cooperation.....	33
6.4	Human Resources.....	33
6.5	Stakeholder Engagement.....	33
7	References .....	34

## LIST OF ABBREVIATIONS

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EASI- EU Programme for Employment and Social Innovation

EU- European Unions

EURES- European network of employment services

FYROM- Former Yugoslav Republic of Macedonia

ILO- International Labour Organization

IOM- International Organization of Migration

MLSP- Ministry of Labour and Social Policies

NPAA- National Program for the Adoption of the Acquis

WGI- World Bank Governance Index

## LIST OF TABLES AND FIGURES

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Figure 1: Overview of the number of foreigners with temporary stay per year and the number of emigrated Macedonian citizens

Figure 2: National Program for Adoption of the Acquis (NPAA) for the period 2017-2019, reflection on Chapter freedom of movement of workers

Figure 3: Analytical framework

Figure 4: Institutional arrangement

Figure 5: Overview of World Bank Governance Index

## EXECUTIVE SUMMARY

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- Traditionally, the Former Yugoslav Republic of Macedonia has been recognized as an emigratory country which is highly related to the long transition process and the slow socio-economic development. Based on the World Bank's Bilateral Migration Matrix for 2018, there were in total 564,949 Macedonians living abroad.
- The country does not have a clear strategic orientation neither on how to benefit from the globalized labour market nor on how to further develop and manage labour mobility as a factor for socio-economic development. One of the primary issues in terms of labour management is the lack of proper data on labour market development and related demographical data, including a lack of a consistent and continuous overview of the sectors or occupations facing labour shortages and a regular monitoring of labour mobility.
- FYROM has a good regulatory framework that enables labour mobility from and to the country, but effective enforcement of labour law is still slow and cooperation between the relevant institutions is insufficient and should be further improved. One of the major challenges is the lack of political will to address the rising labour migration in the country. Although the country is facing serious issues related to labour market development, especially in terms of brain drain, labour migration has not been prioritized on the policy agenda yet. In terms of posting of workers, FYROM has a regulatory framework that enables posting. *The Law on posting of workers from the Republic of Macedonia to other countries for carrying out construction works through project contracts and other seasonal works* applies only to countries with which FYROM has concluded agreements on posting. At this moment, the country can only post workers to Germany. According to the register from the Ministry of Labour and Social Policies, during 2017 only 570 workers have been posted to Germany, mostly for works in the construction industry.
- So far, the institutional arrangement for labour mobility remains weak and should be further improved. On the national level, there is no separate agency responsible for monitoring and controlling labour migration between the country and the EU. Labour migration remains only partially monitored within the Ministry of Labour and Social Policies as an integral part of the entire spectrum of labour and employment issues. Other important institutions are the National Employment Agency, the Health Insurance fund and the Ministry of Interior Affairs and the channels of their cooperation are well defined in the existing regulatory framework.
- Inter-agency cooperation also remains weak and underdeveloped, as there are no clearly established structures and protocols for cooperation as regards questions that reflect different aspects of labour migration and there are no explicitly defined channels of cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions. Till today the cooperation with other countries is mostly done through electronic exchange of needed data on concrete cases and each country has its own database.
- In practice, very few of the stakeholders engaged in the chain of posting have been properly trained on the implementation of the Posting of Workers Directive. In cases when capacity building has been provided, the generated knowledge has not been properly institutionalized yet. The EASI program has provided financial support in addressing the Posting of Workers Directive in FYROM. So far, the program has

supported six projects that explicitly address the Directive, of which two are implemented by a national stakeholder. However, one of the major challenges is that there is neither a clear register of projects and activities implemented or under implementation that reflects on posted workers nor on all national and international stakeholders that have the capacity and knowledge that are topic-relevant.

# 1 INTRODUCTION

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## 1.1 A QUICK OVERVIEW OF THE COUNTRY CONTEXT

### 1.1.1 EU Integration

The Stabilization and Association Agreement between the Former Yugoslav Republic of Macedonia (hereinafter FYROM) and the EU entered into force in April 2004. Since 17th December 2005, FYROM is a candidate country for EU accession, while the opening of accession negotiations was recommended to start in 2009. However, the EU integration of the country was accompanied with numerous challenges and obstacles that slowed down the process and even resulted in a conditional recommendation for 2015 and 2016. After the parliamentary election in December 2017, a new government with a robust EU agenda was established and the EU integration process was revived. In April 2018 the European Commission recommended that the Council decides that accession negotiations be opened with FYROM in light of the progress achieved and in view of the sustained reform momentum.

### 1.1.2 National labour market

High unemployment remains one of the most difficult and persistent economic and social problems in FYROM. The labour market is characterized by a relatively low participation rate of 56.8 percent and an unemployment rate of 22.4 percent (State Statistical Office, 2018). One of the most arduous problems in the labour market is youth unemployment. According to ILO estimates, 46.95 percent of youth in the country was unemployed in 2017.

The major employers are: the manufacturing industry; agriculture, forestry and fishing; wholesale and retail trade; repair of motor vehicles and motorcycles. They provide employment for 143,253, 120,311 and 108,869 persons respectively, out of 740,648 registered employees during 2017 (State Statistical office, 2018). When looking at the labour market trends in FYROM, it is worth mentioning that the public sector is one of the major employers in the country. According to the data published by the Ministry of Information Society and Administrations, during 2017 a total of 128,722 persons were employed in 1,299 public institutions.

### 1.1.3 Labour migration trends (towards the EU)

In general, FYROM features a poor level of availability of statistical data, especially in terms of its demography<sup>1</sup>. The long transition process, along with the political instability and the weak economic performance have led to a high level of migration from the country. On the other hand, the challenge to capture the labour migration trends and their economic and demographic effects as a whole represents a rather difficult task, mainly due to the few data sources available that provide very obsolete and inconsistent data.

Migration figures remain unreported as only those persons are counted as migrants who have officially registered their migration activities (Dietz, 2010). According to the

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<sup>1</sup> The last census on the population was conducted in 2002, while the next one is expected in 2020.

estimations, at the beginning of the new millennium around 20% of the Macedonian citizens with university education were abroad (Janeska, 2003). Markiewicz (2006) estimates the stock of Macedonians abroad at around 300,000, while the Macedonian Government during 2009 put the number as high as 400,000, or 20 percent of the population in 2007. Based on the World Bank's Bilateral Migration Matrix for 2018, there were in total 564,949 Macedonians living abroad.

## 1.2 AIMS OF THE STUDY AND METHOD

The study aims to proactively address the issue of posting of workers from and to the Former Yugoslav Republic of Macedonia at its pre-accession stage. It will assess the existing institutional capacities in the country in terms of implementation of the Posting of Workers Directive.

The methodology of the assessment was prepared by the European Centre for Social Welfare Policy and Research based on existing models of institutional assessment and capacity development. The research design followed the incremental approach of identifying existing capacities and using them as the foundation for moving forward in achieving the developmental goal. The capacities are assessed in the context of the policy process cycle applied to six interdependent institutional capacity domains: legal framework, institutional arrangement, inter-agency cooperation, human resources, stakeholder engagement, and public governance (see for example UNDP, 2008; EuropeAid 2010).

The country case study is conducted in order to gather the information necessary for the assessment. Thus, the Macedonian country report focuses on examining the existing national legal and regulatory framework, human capacities as well as the institutional arrangement and stakeholder coordination and cooperation and identifies what needs to be changed or done in order to develop the proper capacities for the implementation of the Posting of Workers Directive in FYROM.

The research questions formulated in line with this approach are:

- *What are the current national institutional capacities for implementing the Posting of Workers Directive?*
- *What institutional needs should be addressed in order to support the implementation of the Directive?*
- *How should these needs be addressed?*

As a result, seven interviews were conducted with representatives from national policy-makers (3), trade unions (2), and labour market intermediaries (2). Interviews lasted between 45 and 60 minutes.

## 1.3 MAIN FINDINGS

FYROM has established a solid regulatory framework in terms of labour mobility. However, in practice, the main stakeholders believe that there is a lack of political will and determination to improve the management of labour migration and mobility. Currently, labour migration is only partially monitored within the Ministry of Labour and Social Policies as an integral part

of the entire spectrum of labour and employment issues. One of the major challenges identified is the absence of a separate agency responsible for monitoring and controlling labour migration between the country and the EU. In the long run, such a body will ensure evidence-based policies and strategic orientation when addressing labour market challenges. A common vision and a joint strategic approach in the development of labour market policies are missing.

#### **1.4 STRUCTURE OF THE COUNTRY REPORT**

The report is organized in the following chapters: Chapter 2 provides an overview of the national socio-economic context in terms of labour market development, labour demand and supply, working conditions, labour migration and the EU integration process; Chapter 3 provides information on the methodology applied in the research; Chapter 4 provides the summarized research findings in terms of assessment of the legal framework, institutional arrangements, human resources, stakeholder engagement and public governance. Finally, the report provides a synthesis and the main conclusions from the research as well as policy implications and recommendations.

## 2 COUNTRY CONTEXT

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### 2.1 SOCIO-ECONOMIC OVERVIEW

#### 2.1.1 Labour markets

According to the World Bank, FYROM is categorized as an upper-middle-income-country. The main drivers of growth since 2009 have been construction (supported by sizable public investments), industry (particularly manufacturing), and wholesale and retail trade (World Bank, 2016). The report of the *International Monetary Fund for 2017* highlights that addressing the persistent labour market weaknesses will require a mix of taxation, wage, social assistance, and family leave policies that incentivize participation and employment, particularly for the low-skilled and women. Addressing the structural high unemployment rate is essential for a successful long-term development of FYROM. The report confirms that a regressive labour tax system discourages low-skilled workers from entering the labour force and taking up formal employment, particularly if non-wage family income in the form of social assistance and remittances is available. Additionally, the World Economic Forum's Global Competitiveness Report 2016-17 shows that the country's performance is weakest with respect to an adequately educated workforce, supply of infrastructure, restrictive labour regulations, insufficient capacity to innovate and the efficacy of the legal framework (World Economic Forum, 2017).

The existing socio-economic context in the country is associated with a high and persistent unemployment rate of 22.4 percent in 2017. The structure of unemployment for the same year shows that more than 50 percent of the unemployed have less than secondary education. Long-term unemployment<sup>2</sup> is high as well. In 2017, this category amounted to 77.9 percent of total unemployment and decreased only by one percentage point compared to 2016. The labour force participation rate in FYROM remains constant and no significant reforms have been implemented in this area. The relatively low participation rate in the country (54.5 percent in 2003 and 56.8 percent in 2017) reflects the long transition process, the absence of adequate and well-targeted activation measures, the increasing social exclusion and inequality. In short, the overall participation rate in the period 2003-2017 increased by only 2.3 percentage points. The gender dimension is one of the most prominent dimensions of inequality in the labour market in FYROM. In 2017, the employment rate of males was 53.6 percent whereas of females it was 34.6 percent.

In addition, there are significant regional disparities in terms of unemployment. In 2017, the southeastern and eastern regions had the lowest unemployment rates of 12 percent and 12.9 percent respectively, while the northeastern, southwestern and Polog regions showed the highest unemployment rates of 35.7 percent, 30.5 percent and 29 percent, respectively (State Statistical Office, 2018: 35-38).

And finally, one of the most arduous problems in the labour market in the Former Yugoslav Republic of Macedonia is youth unemployment. According to ILO estimates, 47 percent of youth<sup>3</sup> in Macedonia was unemployed in 2017.

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<sup>2</sup> Duration over 12 months.

<sup>3</sup> Unemployment, youth total (% of total labour force aged 15-24) (modelled ILO estimate).

### **2.1.2 Labour demand and supply**

In order to identify the short-term needs of the labour force in the country, since 2007 the national Employment Agency conducts an annual skills' needs assessment. The latest analysis refers to the period 2016-2017. The majority of employment (or 39.8 percent) is expected in small companies, while 33.9 percent of employment is expected in medium enterprises and only 26.2 percent in big companies. From the industry perspective, 33.9 percent and 18.9 percent of employment are expected in the manufacturing and wholesale and retail industry, respectively.

The data from the skills' needs analysis in terms of educational level of the labour force show that from the expected employment, 51.9 percent of employment would be for persons with secondary education, 28.9 percent for persons with primary education, while the least employment or only 12.6 percent is expected for persons with high education. Despite the features of the labour demand, during the last decade the government of FYROM implemented reforms that significantly increased the number of highly-educated persons while at the same time failing to address the real needs in the labour market.

In addition, there is a lack of consistent and continuous monitoring of the sectors or occupations facing labour shortages. According to the existing overviews, the following occupations face labour shortages: construction engineers, pharmacists, doctors for ophthalmology, surveyors and computer programmers.

### **2.1.3 Working conditions**

The available literature on the working conditions in FYROM remains very limited. In 2015, the government adopted the first National Strategy for Decent Work for the period 2015-2018, whose strategic priorities are: 1) Inclusive growth followed by the creation of new jobs and sustainable enterprises; 2) Effective social dialogue; and 3) Formalization of the informal economy. The strategy only partially addresses the working conditions in the country in terms of minimum wage, equal pay for women and men and health and safety at the workplace.

A minimum wage has been set at the national level with a separate Act that established a single minimum wage at the national level of 39.6 percent of the average gross salary in the previous year. Health and safety at the workplace represent an arduous problem. According to the Macedonian Association for Occupational Health and Safety, during 2017 a total of 158 accidents at the workplace have been registered of which 24 were mortal. In other words, of 100,000 employees, 3-4 are facing fatal accidents at the workplace.

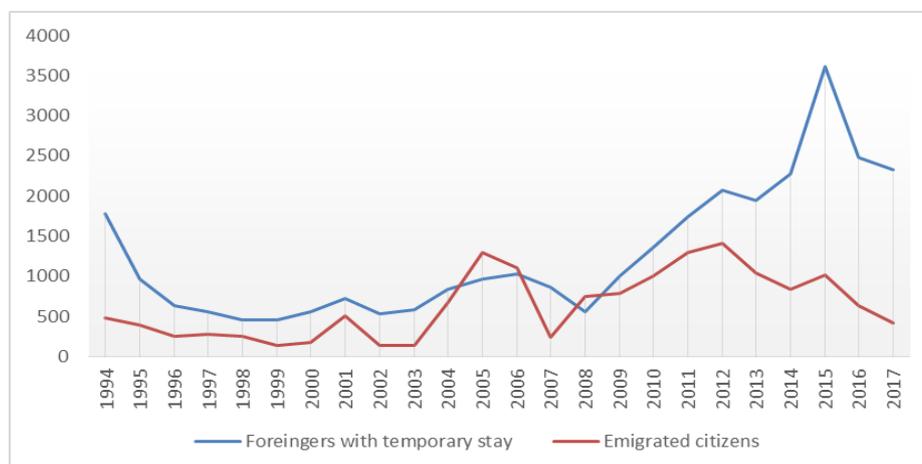
### **2.1.4 Labour migration**

Migration is a phenomenon that has reached a worrying dimension in FYROM over the last decade, as the number of young people, high-school students and students as well as highly educated staff, especially from technical and natural sciences that have left the country or are planning to leave, has been constantly increasing.

With regard to legal migration, the trends of emigration are significantly higher than immigration trends as the number of foreigners with temporary stay in FYROM is relatively low (the trend is represented in Figure 1). According to the official estimates of the State Statistical office, during 2017 there were in total 2,322 foreigners with temporary stay and in

total 1,760 foreigners with extended stay, while 283 foreigners with temporary stay have left the country during the same year. From a regional perspective, during 2015, 2016 and 2017 the majority of foreigners reported their stay in the Skopje region, respectively 1,043, 1,769 and 1,286 persons. In terms of demography, the majority of foreigners are men aged 20-34 years.

Figure 1: Overview of the number of foreigners with temporary stay and the number of emigrated Macedonian citizens, per year



Source: State Statistical Office, Makstat database.

Figure 1 provides clear evidence that a relatively low number of Macedonians report their stay abroad. As a result, the exact data on Macedonians living abroad is not available. The only data on emigration captured by public institutions covering the period 1994-2013 indicate that 11,380 Macedonian citizens had left, of whom 2,637 persons (23.2 percent) left in the period 2009-2013.

The *Resolution for the migration policy of the Republic of Macedonia (2015-2020)* identifies an increasing trend among Macedonian citizens who temporarily emigrate for employment, family reasons or education. On the other hand, available statistical data confirm that most of these citizens do not return and reintegrate in FYROM but continue their stay abroad. The resolution also confirms the increasing intensity of brain drain. The country has been constantly listed among the top ten countries with the highest brain drain in the Global Competitiveness Report (World Economic Forum, 2017).

At the beginning of the new millennium, two new factors influenced labour migration, both linked to the intensified EU integration processes in the Balkan region. Following the visa liberalization in December 2009, the citizens of FYROM were allowed to travel without visa into the countries of the Schengen area for a period up to 90 days but they have no right to live or work in the Schengen countries. However, there is an unknown number of citizens that use the visa-free regime to actually migrate and find better-paid long-term jobs or temporary/seasonal jobs, mostly in the informal labour market of EU countries. The second trending factor is the EU membership of Bulgaria. Some of the available estimates show over 100,000 Macedonians or about 7.5 percent of the population holding Bulgarian passports (Neofotistos, 2016) which allows them access to the European labour market.

## 2.2 EU INTEGRATION PROCESS

In general, FYROM is going through a slow process of EU integration that has started in 2009. The process was accompanied by numerous challenges and obstacles and in some periods by a lack of political will and serious reforms. After the latest parliamentary election in December 2016, a new government with a robust EU agenda was established and the EU integration process was revived. In April 2018 the European Commission recommended that the Council open accession negotiations with FYROM in light of the progress achieved and in view of the sustained reform momentum, maintaining and deepening the current reform momentum.

According to the latest EU progress report for 2018, preparations in the area of freedom of movement for workers was evaluated to be in the early stages of development. In terms of labour mobility, by the time of its accession to the EU, the country must have implemented the *acquis* on freedom of movement of workers. In other words, the national law will have to ensure that EU nationals are able to look for and take up work in FYROM without any restriction, including the right to reside in the country and secure the right of family members to reside in the country and the right of family members to take up employment or self-employment. The latest EU report provides the following recommendations for this area: 1) continue to adapt the legal framework in line with the EU *acquis* on access to the labour market, in particular regarding non-discrimination on grounds of nationality against EU workers; 2) start to take steps in coordinating social security systems to identify which administrative measures (strengthening the administrative capacity) would have to be introduced in preparation for future accession.

*Figure 2: National Program for Adoption of the Acquis (NPAA) for the period 2017-2019*

**The National Program for Adoption of the Acquis (NPAA) for the period 2017-2019 envisages short term and medium-term priorities in terms of freedom of movement of workers:**

### **Coordination on social security:**

- 1) Establishment of an electronic system through which the requests will be forwarded with the accompanying documentation from the Ministry of Interior to the Employment Agency;
- 2) Full harmonization with Directive 2011/98/EU of the European Parliament and of the Council as of 13 December.

### **Health insurance:**

Establishment of new agreements on the use of the European Health Insurance Card between the country and the Member States.

### **Harmonization with EURES standards:**

Monitoring the relevant legislation related to the areas of importance for EURES in order to implement and harmonize with the EURES standards in the national legislation.

## 3 METHODOLOGY

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### 3.1 DATA COLLECTION

#### 3.1.1 Desk research

The desk research included the following main data sources:

- 1) Yearly progress report of the European Commission for the period 2005-2018;
- 2) Migration profile for Macedonia prepared by the IOM;
- 3) Statistics on migration from the State Statistical Office and the yearly labour force survey;
- 4) Literature review of existing publications on migration and labour mobility from the country of study towards the EU and the integration process;
- 5) Review and analysis of labour and mobility legislation in FYROM;
- 6) A careful review of grey literature on the topics related to the study.

#### 3.1.2 Field research

The field research was conducted in the period from May to September 2018. Semi-structured interviews were conducted with the following stakeholders: representatives from national policy-makers (3); trade unions (2); labour market intermediaries (2). Interviews lasted between 45 and 60 minutes.

#### 3.1.3 National workshop on posting of workers

A one-day national workshop was used to validate the data collected through research and gather new data through moderated debate. The workshop brought together 29 stakeholders:

- Six representatives from civil society organizations that cover different aspect of labour issues, such as health and safety, labour research etc.
- Thirteen representatives from national policy: Ministry of Labour and Social Policies, Health and Pension Insurance Fund, Health Insurance Fund, Ministry of Health, Ministry of Internal Affairs.
- Four representatives from trade unions and employers' organizations.
- Six representatives from employment agencies, including the national employment agency.

Moreover, during the workshop, capacity building on the Posted Workers Directive, including introduction of its revised version, was provided.

### 3.2 ANALYTIC FRAMEWORK

The analytic framework adopted for the country case-study focuses on six domains: legal framework, institutional arrangement, inter-agency cooperation, human resources, stakeholder engagement and public governance.

Figure 3: Analytical framework



Source: European Centre for Social Welfare Policy and Research, 2018.

The **legal framework** analysis comprises the examination of the current legislative status and identifies if the Directive has already been discussed in the national context and whether any steps have been taken for its transposition. Additionally, the judicial case work on posting is examined in order to see how the Directive is interpreted in national court (country-specific).

For the **institutional arrangement**, the existing agencies responsible for monitoring and controlling labour mobility between their country and the EU are identified and involved in the research.

Once the institutional arrangement was mapped, the research looked into **inter-agency cooperation**, specifically the structures and the protocols of cooperation which might have been established for the purpose of implementing the Posting of Workers Directive (issue-specific) or more broadly to monitor and control labour practices and cross-border mobility (issue-relevant).

The study of the **human resources** entails finding out whether any personnel in the state agencies has received any specific training on the posting of workers (issue-specific) or cross-border labour mobility in the EU and the common European labour market (issue-relevant).

**Stakeholder engagement** is 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 (issue-relevant) and in case they have been involved in the process of adopting the Posting of Workers Directive (issue-specific).

The sixth domain, i.e. **public governance**, is analyzed in terms of the World Bank Governance Index (WGI) which provides indicators and data that are comparable across the countries. According to this method, governance is defined as ‘the traditions and institutions by which

authority in a country is exercised. This includes (a) the process by which governments are selected, monitored and replaced; (b) the capacity of the government to effectively formulate and implement sound policies; and (c) the respect of citizens and the state for the institutions that govern economic and social interactions among them.’ (Kaufmann et al., 2010: 4).

### **3.3 CHALLENGES DURING THE FIELDWORK AND ANALYSIS**

The absence of reliable data on migration and migrants’ profiles do not provide an opportunity for effective management of labour migration, including posting of workers.

In summary, the research has the following limitations:

- a. Although the number of conducted interviews was significant to understand the posting of workers as a phenomenon and to evaluate the existing institutional capacities for implementation of the Directive, still it was insignificant to capture the relationships and level of cooperation between the different stakeholders involved in labour migration and posting of workers in particular.
- b. Lack of general understanding of the Posting of Workers Directive among stakeholders such as public institutions, employment agencies and trade unions.
- c. Reserved stakeholders, including public institutions, reluctant to disclose information and opinions about the obstacles faced by migrant/posted workers.

## 4 RESULTS

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### 4.1 LEGAL FRAMEWORK

#### 4.1.1 Employment laws and regulations

The process toward EU membership requires that FYROM fulfils alignment of its legislation with the *acquis communautaire*. The *acquis* in the social field includes in the medium term the achievement of minimum standards in the areas of labour law, equality, health and safety at work and anti-discrimination.

The most important piece of legislation that regulates the labour market is the *Law on Working Relations* of 2005 as a general act that regulates all forms of employment, relations between employees and employers, retirement, lay-offs, and union operations. The Law covers a number of basic principles laid down by the EU labour law *acquis*, in particular as regards working time and the information of workers on individual employment conditions. However, there are no provisions ensuring appropriate protection of workers in the case of insolvency of their employer. Other issues that remain to be addressed are: fixed-term work, health and safety related to fixed-term work and temporary unemployment, posting of workers, and workers' involvement, in particular their information and consultation.

The latest EU progress report for FYROM for 2018 concludes that the country is moderately prepared in the field of social and employment policy and that alignment with the *acquis* in this area remains at an early stage. Effective enforcement of labour law is evaluated as slow and cooperation between the relevant institutions as insufficient. During the approximation process, the following significant reforms have been implemented: 1) during 2012, the Law on European Works Councils was enacted; 2) During 2013 three ILO technical conventions were ratified in the areas of collective bargaining, labour relations and labour administration; 3) Amendments in the labour law in terms of regulating publication of job vacancies and compulsory social insurance, parental leave and fines for employers not complying with the law on minimal wages; and 4) The Law on Working Relations was amended to give employees additional rights to unpaid leave for childcare.

In terms of occupational health and safety, the *Law on safety and health at the workplace* was enacted in 2007. The law aims at transposing in particular the Framework Directive on Health and Safety (Directive 89/391/EEC). It establishes the measures for safety and health at work, the obligations of the employer and the rights and obligations of the employees in the field of health and safety at work, as well as preventive measures against occupational risks. Harmonized criteria and methods for recording data on accidents at work are still lacking and till now, there is no relevant body to oversee and enforce the implementation of occupational health and safety legislation.

Currently, the regulation of the labour market in FYROM covers a wide spectrum of enacted laws: 1) *Law on Employment and Insurance in cases of unemployment*<sup>4</sup> that regulates severance and unemployment insurance; 2) *The Law on labour inspection*<sup>5</sup> that regulates the organization and work of the State Labour Inspectorate which performs supervision over the implementation

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<sup>4</sup> Official Gazette No. 37/1997, 25/2000, 101/2000, 50/2001, 25/2003, 37/2004, 4/2005, 50/2006, 29/2007, 102/2008, 161/2008, 50/10, 88/10, 51/11, 11/12, 80/12, 114/12, 39/14, 44/14, 113/14, 56/15, 129/15, 147/15, 154/15, 27/16, 119/16 and 21/18

<sup>5</sup> Official Gazette No. 35/1997, 29/2002, 36/2011, 164/2013, 44/2014, 33/2015 и 147/2015

of laws and other regulations in labour relations, employment and protection at work and collective agreements, labour contracts and other acts. This Law does not provide any specific obligations related to migrant workers, including posted workers; 3) *The Law on Peaceful Settlement of labour disputes*<sup>6</sup> which regulates the manner and procedure for peaceful settlement of the collective and individual labour disputes, the choice, rights and obligations of conciliators and arbitrators and other issues of importance for the peaceful resolution of labour disputes. Also, the law does not provide any specific obligations related to migrants, including posted workers; 4) *The Law on minimum wage*<sup>7</sup> which determines the amount of the minimum wage, as well as other issues that refer to the minimum wage in FYROM; and 5) *The Law on protection from harassment in the workplace*<sup>8</sup> which regulates the rights, obligations and responsibilities of employers and employees in relation to the prevention of psychological and sexual harassment at the workplace.

Furthermore, employment in the public sector is regulated by two additional regulatory frameworks: 1) Law for employees of the public sector and 2) Law of administrative officers.

*The Law on records in the field of labour* regulates the establishment of the records in the field of labour and the manner of their management. The Law provides detailed instructions on data to be recorded in cases when an employee is posted abroad and data on foreign nationals working in FYROM. Pursuant to this Law, these records are kept by the employment agency. Next to this, the records on insured persons from the health insurance are managed by the Health Insurance Fund FYROM. The records for the insured and the users of the rights from the pension and disability insurance are managed by the Pension and Disability Insurance Fund.

Records on employees posted for work abroad, among personal data and qualifications, require the exact date of departure and arrival after posting and the exact dates of start and end of the social security. Moreover, pursuant to Article 32, both the employer and the employee are obliged to report dates of posting to the Employment Agency.

#### 4.1.2 Labour mobility laws and regulations

In the light of the EU approximation process, the country has undertaken reforms for the incorporation of the EU legal migration acquis. So far, the existing regulatory framework has clearly established the procedure for issuing work and residence permits and long-term resident status is awarded after 5 years of uninterrupted legal residence. However, the country still has not incorporated the *Blue Card Directive*, or in other words there is no fast-track procedure through a unified work and residence permit for highly-qualified employees.

In 2009, the government adopted a five-year strategic policy document, *the Resolution on Migration Policy for the period 2009-2014* and a joint action plan as a central component of the development of a regulatory framework in the field of migration. The migration policy in terms of labour mobility and migration is twofold: 1) exploitation of the development potential of emigration, temporary stay and employment abroad, the return flows and intellectual emigration, and 2) regulation of immigration, in particular the rules and procedures allowing foreigners to enter, stay and/or work, as well as permanent settlement. The second *Resolution on Migration Policy for the period 2015-2020* was adopted at the beginning of 2015. Its first

<sup>6</sup> Official Gazette No.87/2007

<sup>7</sup> Official Gazette of the Republic of Macedonia 11/2012, 30/2014, 180/2014, 81/2015, 129/2015 и 132/2017

<sup>8</sup> Official Gazette of the Republic of Macedonia No. бр. 79/2013 и 147/2015

strategic priority is “reducing the intensity of permanent emigration, especially the intellectual emigration, through the continuous addressing of the reasons for the expressed migration intentions”. Among other expected results under this strategic priority are: 1) reducing the emigration of talented students after graduation and increasing the employment of talented staff; and 2) improved opportunities for temporary employment, temporary/circular migration abroad through the establishment of an information system for the labour markets in the countries of admission regarding the possibilities for temporary / seasonal employment, as well as greater awareness of the citizens for the possibilities of temporary emigration abroad on the basis of education, training, etc.

One of the most important pieces of legislation in the field of labour mobility is the *Law on Foreigners* which was formally adopted in February 2006. With this Act the country aligned its migration legislation with the EU Acquis and follows the Migration Resolution. The Act regulates the basic principles of the national policy for employment and work of foreigners, issuance of the working permits, types and procedure of issuance of the working permits, the conditions for cross-border cooperation with foreign companies, seasonal work, right of foreign students to work, work performed by foreign companies or self-employed persons. The law also regulates other issues related to work of foreigners, such as supervision, data management, protection of the employment rights of foreign workers etc. It also foresees establishment of quotas for work permits for foreigners that may be engaged in the territory of the Former Yugoslav Republic of Macedonia. Quotas are proposed to the Government by the Minister responsible for issues in the field of labour, on a proposal by the Employment Service Agency, in cooperation with the ministers responsible for the respective fields, in accordance with legislation. However, the quota cannot, on an annual basis, exceed 5% of the population of the country that is legally employed, according to the data of the State Statistical Office. Work permits are required for foreign nationals, and an employment contract must be signed upon hiring. And finally, the Law also stipulates that it does not apply to citizens of the European Union when an international agreement provides for reciprocity in terms of free access to the labour market, employment and free flow of services by posted workers, as well as in relation to other forms of work that are subject to the Law. The issue of their employment and residence can be regulated by a relevant agreement.

The existing *Law on Working Relations* regulates the conditions for posting of workers abroad. As stipulated under Article 248, based on the employment contract, the employer has the right to post employees abroad, while the length of posting will be calculated in accordance with a reference period of one year starting from the date of post. Also, the law provides the right to the employee to decline the post, but only under specified conditions such as: pregnancy, disability, health issues, and care for children under 7 years old, care for children under 15 years in case of single parents and other reasons as determined under the employment contract or the collective agreement. However, if the existing employment contract does not foresee work abroad, a new contract will have to be signed prior to the post. When the employee signs a contract for work abroad, pursuant to the *Law on Working Relations*, the following provisions need to be explicitly specified: duration of posting, national holidays and non-working days, minimal annual leave, the salary and the currency in which it is paid, other financial benefits and the conditions upon the finalization of the post. Moreover, the law regulates the conditions when an employee is posted on short-term to provide services to another employer.

As of 26.12.2012, *the Law on posting of workers from the Republic of Macedonia in other countries for carrying out construction works through project contracts and other seasonal*

*works* was adopted. The posting of workers from FYROM to other states for carrying out project contracts is performed under conditions and in a way as determined by a contract and/or agreement signed between the country and the other state. In case that the posting for carrying out project contracts is implemented in accordance with a predefined quota, the legal basis for posting would be the defined quota. In case of workers being posted for carrying out construction works and other seasonal works without a signed project contract, the posting is regulated under the contract and/or agreement signed between FYROM and the other state, with the Law on posting and the contract signed between the worker and the employer. In case of seasonal work, workers are selected in accordance with a previously defined quota and defined requirements by the receiving country. Before the posting, the employer from the other state is responsible to send a list of selected candidates to the Ministry of Labour and Social Policies.

Another important piece of legislation in terms of labour mobility is the *Law on private agencies for employment* which was in an enactment procedure at the time when the research was conducted. It regulates the conditions, the manner of establishment and the operation of private employment agencies. Prior to this law, the establishment and operation of two types of private agencies, i.e. the employment agencies for employment mediation in the country and abroad and the temporary employment agencies, were regulated by two separate laws, *the Law on Temporary Employment Agencies* and *the Law on Employment and Insurance in the Case of Unemployment*. Such an arrangement often led to legal uncertainty among potential candidates and founders of agencies. Taking into account the importance of flexibility in the labour market and recognizing the role that private employment agencies can play in the labour market, while at the same time ensuring that workers' rights are protected, the Ministry of Labour and Social Policies started the adoption of a new Law on private agencies for employment. The need for a new regulatory framework with regard to labour mobility comes from the increasing number of opened job positions outside the borders of FYROM. The opened job positions range from hairdressers in Qatar or Dubai, construction workers in Germany, work on a boat in Norway, seasonal waiters, to fruit pickers etc. Agencies that mediate the job positions abroad offer different amounts of wages, but the lowest ones are still attractive enough for citizens in Macedonia. Advertisements are not only offered by agencies, but they are also published on web pages that no one controls. Another issue raised by these developments is that none of the institutions in the country controls what is offered in such advertisements and the state does not have data where these workers go, what work they actually do and whether their basic workers' rights are met. It is expected that the new law will also improve the data on labour mobility as private employment agencies will be obliged to provide data on the persons sent for employment abroad on a monthly basis to the National Employment Agency.

And finally, the country does not make full and broad utilization of the European network of employment services (EURES). The initial steps towards preparing for participation in the EURES network have started during 2009. In this regard, amendments in the *Law on working relations* were introduced that allowed the Employment Agency to bring into operation an electronic system ensuring online access to all job vacancies communicated to the agency. Moreover, the classification of vacancies complies with the EURES requirements. So far, Macedonia has partially transposed the acquis into national legislation, i.e. in the following legislative acts: Law on Employment and Work of Foreigners, Law on Employment and Insurance in the Case of Unemployment and Law on Agencies for Temporary Employment. As a future EURES partner, the National Employment Agency provides numerous needed services. The minimum standards for the provision of these services are covered by the available

regulatory framework. Services related to employment and unemployment insurance, support of and assistance to labour market participants, will be equally accessible and applicable also for the citizens of the Member States of the Union once the country has acquired the status of a full member of the European Union.

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

So far, FYROM has concluded bilateral agreements with Germany on posting workers and with Slovenia and Qatar on seasonal workers. However, representatives from the Ministry of Labour and Social Policies claim that in practice only the contract with Germany is functional. The contract with Slovenia is under modification and at this moment not operational, while the contract with Qatar, although signed, has not been applied yet.

In practice, FYROM has a regulatory framework that enables posting of workers. *The Law on posting of workers from the Republic of Macedonia to other countries for carrying out construction works through project contracts and other seasonal works* applies only to countries with which FYROM has concluded agreements on posting. As stated above, at this moment, the country can only post workers to Germany. According to the register from the Ministry of Labour and Social Policies, during 2017 only 570 workers have been posted to Germany, mostly for works in the construction industry.

Although bilateral agreements on social security are meant to have contributions paid in another country recognized, while at the same time ensuring labour mobility and not regulating posting per se, some of the interviewed stakeholders believe these do provide an additional legal basis for the posting of workers. Currently, there are 22 bilateral agreements on coordinating social security systems, 11 of which are with EU Member States. Stakeholders provided data that during 2017 only 345 persons were posted based on these bilateral agreements. These bilateral agreements regulate health insurance, pension and disability insurance, insurance in case of unemployment, child allowance, and allowances and benefits for maternity leave. It is unclear whether the 345 persons are all different from the 570 persons posted to Germany, or whether some of them are the same people due to the different methods of collecting data by the institutions.

There are some established legal mechanisms for monitoring and control of companies that are posting workers. Although the existing Law on posting stipulates that supervision over companies that have the right to post workers is carried out by the State Labour Inspectorate, at least once a year, two of the interviewed stakeholders from the Ministry of Labour and Social Policies confirmed that till now they have never received any complaint directly from a posted worker, nor from the State Labour Inspectorate or labour unions.

“Despite of the existence of some supervision mechanisms, in practice migrant, seasonal and posted workers from FYROM to other countries till this moment have not provided any formal complaint. We have never started an investigation procedure on this matter.”

(A representative from the Ministry of Labour and Social Policies)

On the other hand, an interviewed stakeholder from a labour union confirmed that in practice there are numerous abuses of cheap labour from FYROM engaged in seasonal work.

“There is a significant number of Macedonians that go for seasonal work to Italy, under their private arrangement. Most of them work in agriculture, but there is also an increasing number of Macedonians working in construction. The workers in agriculture live and work under poor conditions. The majority of them are accommodated in the plantation or in abandoned houses. We went there to visit these workers personally. They are certainly treated as a cheap labour force. If you have a Macedonian passport you are paid 6.5 EUR per hour, while the holders of a Bulgarian passport receive 8.5 EUR per hour and Italians are paid 9.16 EUR per hour. The question is how to protect these workers? For all the reasons stated above, we suggest an office for migrant workers from Macedonia to be opened in Italy.”

(A representative from a labour union)

Research provides evidence that not all stakeholders that provide services in the field of labour mobility are familiar with the Posting of Workers Directive nor with the adopted *Law on posting of workers from the Republic of Macedonia in other countries for carrying out construction works through project contracts and other seasonal works*. Representatives from public institutions that work on policy development are generally informed on the directive and the national regulatory framework for posting, but other stakeholders such as employment agencies and unions are not or are only generally aware.

All interviewed stakeholders agree that the existing regulatory framework for labour migration in general and posting in particular can be improved. Some of them also agree that in general, labour migration and posting of workers are policy issues that until this moment have not been properly discussed and managed.

“We do not have a database of workers abroad. It would definitely improve the evidence that we have. However, I am not sure that the number of posted workers from Macedonia is that significant.”

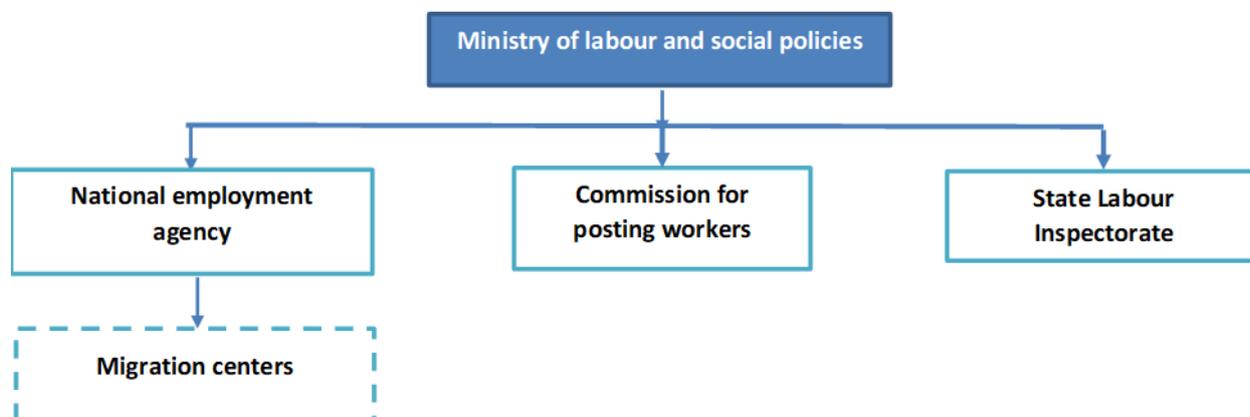
(Interviewed stakeholder)

One of the interviewed stakeholders recommends that the recruitment process when posting workers should be improved. That means that if an employer from Qatar needs employees from Macedonia, the company itself should actively participate in the recruitment process. The same stakeholders recommend that as soon as the workers are selected, improved legal services should be introduced to ensure that all legal rights of the posted/migrant workers are ensured.

## 4.2 INSTITUTIONAL ARRANGEMENT

In FYROM there is no separate agency responsible for monitoring and controlling labour migration between the country and the EU. Labour migration is only partially monitored within the Ministry of Labour and Social Policies as an integral part of the entire spectrum of labour and employment issues. As foreseen under the Rulebook for Internal Organization of the Ministry of Labour and Social Policies, the development and implementation of employment policies with regard to posted workers are delegated to the department for the labour market. Moreover, the same department is responsible for the introduction and implementation of bilateral agreements on the coordination of social security systems.

Figure 4: Institutional arrangement



There are **four migration service centers** functioning within the Employment Agency where migrant workers can get information on the labour market in FYROM and in most European countries. It is foreseen that the migration centers have the competency to provide training, counselling on certain topics, information and advice to migrants (Macedonian citizens) on employment and living conditions in a specific country, visa, work permits and residency procedures, immigration programmes, support and rights of migrants, reintegration programmes, and family reunification. Posting has not been explicitly targeted by the migration service centers. However, it remains unclear whether these centers are operational and in what capacity.

Next to this, the work permits for foreigners are issued by the Employment Agency, while the Ministry of Interior Affairs is responsible for temporary and permanent residence permits. The National Employment Agency proposes the annual work permit quotas to the Ministry of Labour and Social Policies and keeps the statistical overview of the issued work permits.

Additionally, the Law on posting of workers from FYROM to other countries for carrying out construction works through project contracts and other seasonal works, foresees an establishment of a separate Commission with a competency to define a yearly quota of workers that will be posted for carrying out project contracts. The Commission is appointed by the Ministry of Labour and Social Policies and consists of 5 members, one from each of the following ministries: The Ministry of Labour and Social Policies itself, the Ministry of Economy, the Ministry of Finance, the Ministry of Transport and Communications and the Chamber of Commerce of Macedonia.

**The Labour Inspectorate** is not involved in monitoring labour migration both from and into the country. The responsibilities delegated to the Labour Inspectorate are monitoring the implementation of the existing regulatory frameworks and related by-laws with regard to labour relations, employment, health and safety at work, collective agreements, employment contracts and other acts that regulate the rights and obligations of both employers and employees.

Some of the experts interviewed were not familiar with a clearly established grievance procedure for a worker who has worked abroad. However, they were all aware that the body in charge of grievance procedures for posted workers is the Labour Inspectorate.

“For example, if an employee has been posted for work in Germany and he has not received any salary during the last 5 months, in that case the employee will submit a complaint at the Labour Inspectorate in Macedonia, due to the fact that the employment contract is legally valid in Macedonia”.

(Representative from the MLSP)

Interviewed experts believe that there is a lack of political will and determination to improve the management of labour migration and mobility. In the light of improving the institutional arrangement for labour migration and posting of work, one of them proposes an establishment of a regional employment agency that will improve the posting in neighborhood countries, such as Serbia, Croatia, Albania, Kosovo, Bulgaria and Montenegro. Moreover, additional efforts should be undertaken in the light of strengthening the capacities of the employment agency in Macedonia in terms of the country’s objective of integration with the European labour market.

### 4.3 INTER-AGENCY COOPERATION

Generally, in FYROM, labour migration is not efficiently monitored and managed. There are no exact statistics on Macedonians living abroad. Although the Ministry of Labour and Social Policies has made some efforts to capture the migration profile on an annual basis, still the exact numbers are not available. Although the existing legislation specifies that each citizen of the Republic of Macedonia staying outside the borders for a period longer than 90 days is requested to report the stay to the nearest police station, in practice, this does not happen.

“We have citizens that work abroad for more than 10 years and we do not have information who are these citizens, where are they. They do have an address in Macedonia, but they are actually employed in another country. How could we gather data on this profile of migrant workers?”

(An employee in the MLSP)

Generally, stakeholders agree that labour migration is difficult to be controlled and managed, especially in a situation where labour markets are becoming extensively globalized and digitalized. Under these terms, when a country offers better working conditions for certain professions, labour migration can be certainly expected.

In terms of inter-agency cooperation there are no clearly established structures and protocols for cooperation on questions that reflect different aspects of labour migration. For example, there is an established cooperation between the national employment agency and employment agencies on occasions when specific profiles of workers are required. In such cases, private agencies contact the national employment agencies to confirm the availability of such profiles in their own database. The research findings also confirm that there are no explicitly defined channels of cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions in place. In addition, there is no joint database on labour mobility.

Although the Posting of Workers Directive and the Enforcement Directive envisage establishment of liaison offices, in Macedonia no such office has been established yet and they are not on the policy agenda.

Till today, cooperation with other countries is mostly done through electronic exchange of needed data on concrete cases and each country has its own database. As elaborated in section 5.1.3, till now FYROM has concluded bilateral agreements with Germany on posting workers and with Slovenia and Qatar on seasonal workers (both of them non-operational at the time when this research was conducted). Additionally, there are 22 bilateral agreements on coordinating social security systems, 11 of which are with EU Member States. The bilingual PDs A1-forms ensure electronic exchange of data on posted workers between the sending and receiving country. The bilateral agreements foresee explicit measures to ensure the protection of data during the information exchange.

#### 4.4 HUMAN RESOURCES

Public institutions in Macedonia have significant human resources as the state is the major employer in the country. However, the available human resources have not been properly planned, managed and distributed to the right sectors and in accordance with the needs for services.

Another challenge is that very few of the stakeholders engaged in the chain of posting have been properly trained on the implementation of the Posting of Workers Directive. During 2015, some of the interviewed stakeholders went through a training on the Directive, but the generated knowledge has not been effectively applied and implemented yet. On the other hand, one of the stakeholders suggested that further training is needed as probably the knowledge generated by the previous training is lost and has never been institutionalized.

As foreseen under the National Program for the Adoption of the Acquis (NPAA), there is a separate working group for the chapter “Freedom of movement of workers”. Interviewed stakeholders believe that this is the team and the human resources that should be further strengthened and then from this team it should be expected to further transfer its capacity, expertise and knowledge. Apart from the human resources at the institutional level, employment agencies, the majority of trade unions, employers’ associations and other stakeholders have not been trained on the Posting of Workers Directive.

In terms of language barriers, this issue has not been addressed as yet. Respondents expect that such barriers do exist on each level, i.e. in ministries, the health insurance fund, employment agencies etc. The bilingual forms on social security are perceived as a major achievement in terms of addressing labour mobility.

With regards to general understanding, some of the policy-makers that are directly involved in labour mobility, do recognize posted workers and share the opinion that currently the number of posted workers is not significant. Their understanding is limited to regular posting through the Act on posting and through the signed bilateral agreements. Very few stakeholders, such as representatives from the Ministry of Labour and Social Policies or from the Pension and Disability Insurance Fund, are familiar with the Directive. These are the same stakeholders who are directly involved in implementation of the existing act on posting or in implementation of the bilateral agreements on social security. The majority of stakeholders are not aware of recent revisions of the Directive and the envisaged obligations.

#### 4.5 STAKEHOLDER ENGAGEMENT

On a national level, there is some stakeholder engagement in the process of EU integration, particularly in the chapters that cover employment and labour migration in the European labour market. Generally, stakeholder engagement can be primarily identified in bodies foreseen in the existing regulatory framework or established by the Government:

- 1) **The Economic and Social Council** represents a tripartite body established by the Government of FYROM and the social partners (the union of the trade unions of FYROM, the Confederation of Free Trade Unions of FYROM and the Organization of Employers) for conducting social dialogue in order to create conditions for economic and social stability. The Council also has members from other relevant institutions such as the Ministry of Economy and the Ministry of Finance. The Council does not have a decision-making role, but holds a consultative role instead. The Council meets regularly to discuss issues of concern to both employers and employees and reviews amendments to labour-related laws. However, the latest EU progress report for Macedonia for 2018 concludes that although there are adequate legal provisions to enable the functioning of a social dialogue, the participation of social partners in formulating policy and in decision-making processes remains inadequate and should be further strengthened and improved.
- 2) **Commission for posting workers**, established in accordance with the Law on posting, it is appointed by the Minister of Labour and Social Policies. It consists of 5 members, one from each of the following ministries: the Ministry of Labour and Social Policies itself, the Ministry of Economy, the Ministry of Finance, the Ministry of Transport and Communications and the Chamber of Commerce of Macedonia.
- 3) **Defining the quotas for the working permits for foreigners**. The Law on employment of foreigners in FYROM stipulates that the quota is proposed to the Government by the Minister in charge of affairs in the field of labour, after a recommendation by the National Employment Agency, in cooperation with other relevant Ministries. The Economic and Social Council can also provide its opinion on this matter.
- 4) **Council for Occupational Safety and Health**, established in accordance with the Law on Occupational Safety and Health, functions as an expert advisory body. The Council comprises of 15 members, four from representative employers' organizations, four from representative trade unions, three nominated by the Government and four from different areas related to safety at work, occupational medicine, the Association of Safety Officers and experts in occupational medicine. However, the recent EU progress reports for FYROM note that the Council is not functioning at present as no meetings have been reported. As stipulated by the Law on Occupational Safety and Health, employees in enterprises with more than ten persons can appoint workers' representatives who have the right to be present and to state their opinion during inspections and to see the minutes submitted by the inspector. However, inspectors are not fully aware of their obligation to involve these representatives in inspections and the common practice is that they do not contact them.

There is no agreed terminology on posting and in many occasions stakeholders, such as representatives from the Ministry of Labour and Social Policies, employment agencies and labour unions, use detached workers or identify posted workers as seasonal workers. The absence of understanding and knowledge on posting also confirms that stakeholders are not really involved in the process of policy development on posting and labour mobility. This research confirms that the majority of stakeholders work independently, without joint consultations or strategic actions on improving workers' rights.

On the other hand, Macedonian labour unions operate only in the territory of FYROM, and the majority do cooperate with trade unions and other relevant stakeholders in EU countries. This cooperation is mostly obvious through memberships in larger EU networks, networking through the networks, partners' meetings, study visits etc. Generally, FYROM has a relatively good union density. According to the register of the Ministry of Labour and Social Policies, there are in total 43 registered trade unions in the country. They are active in various sectors and industries: energy and mining; trade; construction; transport, textile; pharmacy and health; police; agriculture; film and culture; telecommunication; tourism etc. There are four national trade union confederations in the country: 1) Federation of Trade Unions of Macedonia; 2) Confederation of Free Trade Unions; 3) Independent and Autonomous Trade Unions of Macedonia and 4) the Confederation of Trade Union Organizations of Macedonia. Each of the confederations operates locally with local branches. For example, the Federation of Trade Unions of Macedonia is affiliated with 16 of the officially registered unions and has 10 regionally established branch offices. Its main objectives are protection of workers' rights, social justice, financial security, health care, pension and disability insurance, legal protection, solid housing policy, qualification and training of workers.

In addition, according to the register of the Ministry of Labour and Social Policies there are nine employer organizations in the country. They are active in various fields starting from general services aimed at employers, to work with companies from very specific industries such as public telecommunications, agencies for temporary employment, water management, and with the majority of employer organizations in the transport industry. Although some of the organizations work on expanding the business of their members on regional, EU or international level, labour migrations are not explicitly targeted by any of them.

This research provides evidence that although two of the interviewed labour unions are aware of the working conditions especially during seasonal works, till this moment no meaningful joint advocacy efforts have been implemented. For example, one of the interviewed trade union representatives works with seasonal workers from eastern Macedonia that mostly work in Italy. According to their estimates, there are about 80,000 seasonal workers in Italy from Macedonia. In their opinion, there is no control over labour migration and that sometimes it is even developing into permanent emigration. Usually these workers receive lower remuneration than seasonal workers from other countries or than Macedonians with Bulgarian passports. Till now, these insights from the field have not been used by trade unions or public institutions in the light of improving the working conditions of seasonal workers. One of the recommendations provided by this union was the establishment of an office for Macedonian workers in Italy that will provide services and advice during their stay. So far, this initiative has not been implemented yet.

Till today, the major actors in formal posting and labour mobility from Macedonia to other countries are the Ministry of Labour and Social Policies, the National Employment Agency and

the Health Insurance Fund. An additional stakeholder with regard to foreigners working in Macedonia is the Ministry of Interior Affairs. All these stakeholders, through direct work with companies coordinate, keep data and control the formal posting from and to Macedonia. Additionally, the existing Act on posting foresees that the State Labour Inspectorate is responsible for supervising the application of the regulations in the field of labour legislation as well as the trade companies that have received the right to post workers, for at least once a year. Some of the stakeholders confirmed that in practice there are no records on the working conditions of posted workers. They recommend that trade unions be obliged to undertake more serious advocacy efforts in this field and ensure professionalization of their services. In general, on the national level there is no public debate on posted workers.

During a previous EU-supported project aimed at accessing and improving the conditions for the posting of workers, institutional capacities have also been strengthened. One of the interviewed stakeholders confirmed that materials and brochures were produced, but they have never been disseminated or made available to the public. The same stakeholder recommends that the process needs to be revived again, that the generated knowledge on the institutional level needs to be transferred to other stakeholders that participate in the chain of labour mobility and that institutions in the country need to be aware that we are obliged to find ways on how to apply new knowledge and create institutional memory. All stakeholders agree that cooperation among the social partners needs to be improved and further strengthened. It should take place on a continuous basis, not only project-based. Some of them also recommend that all weaknesses should be identified and then addressed, as only this way the labour market can be improved. Stakeholders' engagement on issues related to labour migration and posting in particular can be improved through the establishment of a national body or institution that will engage all social partners and will initiate coordination and consultative meetings on a regular basis. Among other competencies, this body should also create and update a central database on labour migration.

In general, the EASI program has provided significant financial support in addressing the Posting of Workers Directive. So far, the program has supported six projects that explicitly address the Directive, of which two are implemented by a national stakeholder, i.e. the Independent Union of Workers from the Energy, Mining and Industry of the Republic of Macedonia. The Independent Union of Workers from the Energy, Mining and Industry of the Republic of Macedonia is engaged as a partner organization from FYROM in two other projects, while for one of the projects it was not possible to identify the Macedonian partner. In the attempt to find these projects for our research purpose, it was difficult to identify which national stakeholders have been involved in building the national capacities on the Directive so far. There is no clear register neither of projects and activities implemented or under implementation that reflect on posted workers nor on all national and international stakeholders that have the capacity and knowledge that are topic-relevant. All projects under the EASI program foresee capacity building, study visits and policy development in terms of posted workers, while two of the projects are in specific industries such as the mining and transport sector.

## **4.6 PUBLIC GOVERNANCE**

Public governance is analyzed in terms of the World Bank Governance Index (WGI) which provides indicators and data that are comparable across countries. According to this method, governance is defined as ‘the traditions and institutions by which authority in a country is

exercised. This includes (a) the process by which governments are selected, monitored and replaced; (b) the capacity of the government to effectively formulate and implement sound policies; and (c) the respect of citizens and the state for the institutions that govern economic and social interactions among them.’ (Kaufmann et al., 2010: 4). The World Bank is measuring the governance indicators for FYROM on a regular basis starting from 1996 (for more details please see Figure 5).

Figure 5: Overview of World Bank Governance Index

Dimension	What is measures?	Results for Macedonia
Voice and accountability	Measures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.	Macedonia has been constantly evaluated as a country with very weak mechanisms for voice and accountability. Although in the period from 2006-2008 the country showed a good progress with a rank of 0,17 to 0, and 20 in 2008, during 2016 a downward trend has been identified with an estimate -0,24 which is very similar to the estimates during the very beginning of the transition of the country. The estimate for 2017 was also weak at -0,17.
Political Stability and Absence of Violence/Terrorism	Measures perceptions of the likelihood of political instability and/or politically-motivated violence, including terrorism.	Generally, starting from 1996 it was estimated that FYROM is a country with weak political stability and presence of violence/terrorism. The major changes have taken place in the period from 2013-2014 when the country improved its estimate from - 0,42 to 0,26. Right afterwards, Macedonia again is estimated as a country with a weak political stability.
Government effectiveness	Measures perceptions of the quality of public services, the degree of its independence from political pressures, the quality of policy formulation.	Estimates provide evidence that till 2014, the country had very weak Government effectiveness, which ranked from -0,75 to -0,02. Starting from 2014 the country showed continuous progress when it was estimated as of 0,14.
Regulatory quality	Measures perceptions of the ability of the government to formulate and implement sound policies that permit and promote private sector development.	FYROM started to show some progress in 2007 and that progress was slow, but continuous till 2017 when it was evaluated with 0,50 which also represent its best estimate till now.
Control of corruption	Reflects perceptions of the extent to which public power is exercised for private gain (both petty and grand forms of corruption), as well as "capture" of the state by elites and private interests	Estimates provide evidence that FYROM has a constant struggle with the control of corruption and till now no significant reforms have been implemented. The latest estimate was -0,31 for 2017.
Rule of law	Reflects perceptions of the extent to which agents have confidence in and abide by the rules of society (quality of contract enforcement, property rights, the police, and the courts, and the likelihood of crime and violence)	Estimates provide evidence that FYROM has a constant struggle with the rule of law and negative estimates since 1996. The latest estimate was -0,24 for 2017. In conclusion, there is an absence of confidence and abide by the rules of society.

## 5 SYNTHESIS AND CONCLUSIONS

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This research provides evidence that in practice, posting is happening in FYROM. Generally, the posting that is regulated by the existing regulatory framework is low-value chain posting that takes place mostly in the construction industry in Germany and there is an increasing high-skill posting that takes place mostly in the IT sector and telecommunications.

Besides the legally regulated posting of which the trend is low at this point, other institutionally unrecognized forms of posting are taking place as well, the majority of which represent chain posting. For example, during our research we have identified an example of a Macedonian company that hires high-skill professionals and sends them for implementation of projects to Sweden. In order to avoid the administrative procedure for a company from a non-EU country, the company opened a branch in Poland and arranged for Polish working permits for employees, all of them Macedonian nationals. After the finalization of the project, some of the employees were sent for another project in the Balkan region, and after a period of time some of them were posted back to Sweden again. Next to this, especially for seasonal work, Macedonian companies are posting or sending for work abroad nationals of other countries. These are only two examples of posting that happens in Macedonia but remain unrecognized by policy-makers.

Macedonia has established a **regulatory framework** that enables labour mobility and that positions the country to send and receive posted workers: The Law on posting of workers from the Republic of Macedonia in other countries for carrying out construction works through project contracts and other seasonal works which applies only to countries with which FYROM has concluded agreements on posting. Currently, FYROM can only post workers to Germany. During 2017 only 570 workers have been posted to Germany, mostly in the construction industry. Next to this, the Law on Foreigners enables Macedonia to provide employment for foreigners and position itself as a receiving country.

In terms of **institutional arrangement**, there is no separate agency responsible for monitoring and controlling labour migration between the country and the EU. Labour migration is only partially monitored within the Ministry of Labour and Social Policies as an integral part of the entire spectrum of labour and employment issues. Although interviewed experts identify four migration centers with competence to provide training and counselling for emigrants, it remains unclear whether these centers are operational and in what capacity. The institutional set-up is further enriched with the Ministry of Interior Affairs being responsible for temporary and permanent residence permits for foreigners in Macedonia and the Labour Inspectorate being in charge of monitoring the implementation of existing regulatory frameworks with regard to labour relations, health and safety at work etc.

In terms of **inter-agency cooperation** there are no clearly-established structures and protocols for cooperation on questions that reflect different aspects of labour migration. There is no joint database on labour mobility.

In general, the available **human resources** have not been properly planned, managed and distributed to the right sectors and in accordance with the needs for services. Another challenge is that very few of the stakeholders engaged in the chain of posting have been properly trained on the implementation of the Posting of Workers Directive.

On a national level, there is some **stakeholder engagement** in the process of EU integration, particularly in the chapters that cover employment and labour migration in the European labour market. Stakeholder engagement could be identified on various levels: 1) **The Economic and**

**Social Council** that represents a tripartite for social dialogue; 2) The **Commission for defining the quotas for the working permits for foreigners** – the final decision on the quota is taken through involvement of all relevant ministries including labour unions; and 3) The **Commission for posting workers** established by the Minister of Labour and Social Policies and composed of 5 members, one representative each from the Ministry of Labour and Social Policy, the Ministry of Economy, the Ministry of Finance, the Ministry of Transport and Communications and the Economic Chamber of Macedonia.

Very few stakeholders are familiar with the Posting of Workers Directive, the majority of whom are directly involved in implementation of the existing act on posting or in implementation of the bilateral agreements on social security. The majority of stakeholders are not aware of recent revisions of the Directive and their envisaged obligations. There is no agreed terminology on posting and in many occasions, stakeholders use detached workers or identify posted workers as seasonal workers. The absence of understanding and knowledge on posting also confirms that stakeholders are not really involved in the process of policy development on posting and labour mobility. This research confirms that the majority of stakeholders work independently, without joint consultations or strategic actions on improving the rights of workers.

**In terms of public governance**, the World Bank Governance Index classifies Macedonia as a country with poor public governance, particularly as regards voice and accountability indicators, control of corruption and rule of law. This means that the country faces serious challenges in ensuring that citizens are able to participate in selecting their government, as well as have freedom of expression and freedom of association.

## 6 POLICY IMPLICATIONS AND RECOMMENDATIONS

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### 6.1 LEGAL FRAMEWORK

Although the existing regulatory framework provides a solid legal basis for posting workers from and to FYROM, its enforcement has been very limited so far. For that reason, policy-makers should further develop and manage labour mobility as a development factor. In addition, policy-makers should recognize labour mobility as an important instrument that can contribute to the improved matching of skills and jobs, transfer of knowledge and technology, increased economic productivity and employment creation.

Along with the definition of the strategic orientation, the regulatory framework should be further strengthened and improved as a supporting mechanism:

- a. *The Law on labour inspection*<sup>9</sup> should provide specific obligations related to migrant workers, including posted workers. In addition, the Law should establish stronger control mechanisms to monitor the working conditions of mobile workers.
- b. Full transposition of the *Blue Card Directive*, in order to ensure that a fast-track procedure through a unified work and residence permit for highly-qualified employees is in place.
- c. Full transposition of the Posting of Workers Directive and its application to all sectors.

### 6.2 INSTITUTIONAL ARRANGEMENT

In the light of improving the institutional arrangements for labour migration and posting of workers, additional institutions should be established as a supporting mechanism for enforcement of the existing regulatory framework. The following institutions should be established:

- a. A regional employment agency that will improve labour mobility among neighborhood countries, such as Serbia, Croatia, Albania, Kosovo, Bulgaria and Montenegro.
- b. A national office for the labour force. The office should conduct a regular analysis of the occupational shortages on national level and of the most recent developments in industry. These findings should be provided to the Bureau for educational development for further strategic planning on educational level and to the Government for further planning of labour market shortages. Additionally, the office should collect data from all institutions regarding labour mobility and provide a yearly report on most recent developments.
- c. Establishment of an information system for the labour markets in the countries of admission regarding the possibilities for temporary / seasonal employment (including posting), as well as greater awareness of the citizens for the possibilities for temporary emigration on the basis of education, training, etc.

In addition, efforts should be undertaken to strengthen the capacities of the employment agency in Macedonia in terms of the country's objective of integration with the European labour market.

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<sup>9</sup> Official Gazette No. 35/1997, 29/2002, 36/2011, 164/2013, 44/2014, 33/2015 и 147/2015

### **6.3 INTER-AGENCY COOPERATION**

In terms of inter-agency cooperation, the following reforms should be undertaken:

- a. To establish clear structures and protocols for cooperation in matters that reflect different aspects of labour migration on both national and international levels;
- b. To explicitly define channels of cooperation, information sharing and exchange between national institutions and EU Member States and EU-level institutions;
- c. To develop a joint database on labour mobility on the national level.

### **6.4 HUMAN RESOURCES**

The EU financial support that is aimed at strengthening human resources in terms of labour mobility in general and posting of workers in particular, should be better coordinated at the national level. Moreover, adequate mechanisms should be established in order to ensure that the generated knowledge will be properly institutionalized.

### **6.5 STAKEHOLDER ENGAGEMENT**

Stakeholder participation in the entire policy cycle of labour migration should be ensured and strengthened.

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