

Report 3

for

Chapter 2 – Free Movement of Workers

**Revised priorities in the remaining legal harmonisation and institutional reform in the
area of Free Movement of Workers**

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TABLE OF CONTENTS

1. Introduction.....	3
2. Current status.....	3
2.1 Approximation of Albanian law with EU <i>acquis</i> in Chapter 2	3
2.2. Bill on Foreigners (2021).....	6
4. Annexes.....	13
4.2. Annex 1 – Detailed priority measures.....	13
4.3. Annex 2 – Narrative for Chapter 2 within the revised NPEI 2021-2023 document	13

1. INTRODUCTION

The aim of the present report is to revise and update the activities planned for Chapter 2 (Free Movement of Workers) in the period 2021-2023. Furthermore, it serves to offer long-term general guidance, taking account of the idiosyncrasies of the chapter in question.

In order to achieve the above stated objectives, the experts made the following preliminary steps:

1. Identification of legislative and implementation objectives outlined in the current version of NPEI 2021-2023,
2. Identification of recommendations of the European Commission laid out in the Report of 2020,
3. Analysis of Screening Reports for Montenegro and for Serbia with the view of identification of opening and closing benchmarks, which may also be employed vis-à-vis Albania,
4. In depth analysis of the Bill on Foreigners, which is due for approval by the Albanian Parliament as well as its compatibility with EU *acquis* in Chapter 2 (see Report 2),

This Report is structured in the following fashion. As the starting point the current state of affairs is presented. This is followed by the analysis of the short and mid-term priority measures. Building on that assessment, Annexes I and II cover the updated sections of NPEI 2021-2023 (respectively, the narrative and the actual plan of measures).

2. CURRENT STATUS

2.1 Approximation of Albanian law with EU *acquis* in Chapter 2

Approximation of Albanian law with EU *acquis* has so far progressed rather slowly and, as things stand in September 2021, it is at the early stages. This, however, should not be surprising and merits explanation before the summary of key findings is provided.

To begin with, Chapter 2 (Free movement of workers) belongs to Cluster 2, therefore it is likely to be opened in the early stages of accession negotiations. Yet, key rules underpinning free movement of workers may only fully apply after the accession to the European Union. It should be also noted that Free movement of workers is traditionally an area where citizens of the new Member States do not benefit from market access, and they may be covered by transitional periods.¹ Similar restrictions may be also introduced by the newcomers. Furthermore, most of the legal acts in Chapter 2 are directly applicable regulations, therefore they will become applicable to Albania as of the date of accession without the need of prior legislative measures. Unlike in many other areas of EU law (consumer protection, transport, environmental law, to name a few) approximation before the negotiations are well advanced is not necessary. Still, however, provisions on residence rights, including permanent residence, as well as restrictions laid down in Directive 2004/38 on free movement rights may be used as models for Albanian legislation on voluntary basis. Another important factor which is of fundamental importance for planning and selection of priorities is that many a times the

¹ Seven-year transitional periods were a part of the accession package for Greece, Spain, Portugal, Estonia, Latvia, Lithuania, Poland, Hungary, Czech Republic, Slovakia, Slovenia, Bulgaria, Romania, and Croatia. The latest three Accession Treaties (2004, 2007, 2013) followed exactly the same model 2+3+2 years, allowing the current and the new Member States to maintain restrictions (but only for free movement of workers, not the right of establishment).

same legal act of national law serves approximation of domestic rules with EU acquis on free movement of persons and EU acquis on rights of third country nationals. The first belongs to Chapter 2, however the latter is a part and parcel of Chapter 24. It cannot be emphasised enough that different rules apply to EU citizens (and their family members irrespective of their nationality) who benefit from free movement rights, and third country nationals who are governed by less generous regime (which excludes the free movement).² Such amalgamated rules belonging to both chapters have paved their way into Bill on Foreigners. As elaborated on further below, it may be fitting at a later stage of approximation to clearly delimit and separate rules on residence of EU citizens and their family members (irrespective of nationality), from the Albanian provisions applicable to third country nationals. This will only have merits as of the date of accession, unless the Albanian authorities opt to offer EU citizens' rights based on the free movement regime. This policy choice is unlikely, though, to bear a fruit of reciprocity on the EU side (see earlier comments re transitional periods).

Based on legal gap assessment (see Report no 2) the current state of compliance is presented below. It was prepared on the presumption that Bill on Foreigners will turn into law in its current shape.

	EU acquis	CURRENT COMPLIANCE LEVEL
1	Articles 21, 45 Treaty on the Functioning of the European Union	Partial
2	Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union	Partial
3	Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States	Partial
4	Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers	Partial
5	Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community	Noncompliance

² In this respect nationals of the EFTA-EEA countries (Norway, Iceland, and Liechtenstein), including their family members (irrespective of their nationality) are covered by the same rules as EU citizens. Free movement is also guaranteed for Swiss nationals and their family members (irrespective of their nationality), however EU acquis pre-dating Directive 2004/38 applies.

6	Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights	Noncompliance
7	Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets	Noncompliance
8	Commission Implementing Decision (EU) 2018/170 of 2 February 2018 on uniform detailed specifications for data collection and analysis to monitor and evaluate the functioning of the EURES network	Noncompliance
9	Commission Implementing Decision (EU) 2017/1257 of 11 July 2017 on the technical standards and formats required for a uniform system to enable matching of job vacancies with job applications and CVs on the EURES portal	Noncompliance
10	Commission Implementing Decision (EU) 2017/1256 of 11 July 2017 on templates and procedures for the exchange of information on the EURES network national work programmes at Union level	Noncompliance
11	Commission Implementing Decision (EU) 2018/1020 of 18 July 2018 on the adoption and updating of the list of skills, competences and occupations of the European classification for the purpose of automated matching through the EURES common IT platform	Noncompliance
12	Commission Implementing Decision (EU) 2018/1021 of 18 July 2018 on the adoption of technical standards and formats necessary for the operation of the automated matching through the common IT platform using the European classification and the interoperability	Noncompliance

	between national systems and the European classification	
13	Commission Implementing Decision (EU) 2017/1255 of 11 July 2017 on a template for the description of national systems and procedures to admit organisations to become EURES Members and Partners	Noncompliance
14	Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems	Noncompliance
15	Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems	Noncompliance
16	Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality	Noncompliance

This means:

- Noncompliance in case of 12 legal acts,
- Partial approximation in case of 4 legal acts.

It should be noted that legal acts 5-16 can only apply when Albania becomes a Member State of the European Union. Legal acts 1-4 may be turned into Albanian law beforehand, however this – as already mentioned – is a policy choice for the Albanian government to make and it won't guarantee reciprocity on the EU side.

2.2. Bill on Foreigners (2021)

Bill on Foreigners was approved by the Albanian Parliament; however, it has been returned to the Parliament by the President for further consideration. If it enters into force, it will replace Law No 108 of 28/03/2013 on Foreigners as well as all bylaws based on it (Articles 146-147 of the Bill). It not only serves a major overhaul of the Albanian immigration rules but also it aims to approximate the Albanian law, albeit partially, with several pieces of EU *acquis*. They include:

- Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside

and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, Official Journal of the European Union,

- Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing,
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air,
- Council Decision 2004/573 of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders,
- Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers,
- Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer,
- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals,
- Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment,
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals,
- Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data,
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities,
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents,
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification,
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,
- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services,
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States,

- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas,
- 2002/946/JHA: Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

It is notable that only one legal act from this list belongs to Chapter 2 (Directive 2004/38), while all others are included in Chapter 24. For this reason, they are not considered in the present Report. As for Directive 2004/38 itself, the Bill on Foreigners offers only partial approximation (see Table of Concordance annexed to Report No 2).

3. PRIORITIES

3.1. Current priorities laid down in NPEI 2021-2023

Table 1: Current priority measures in NPEI 2021-2023

	Law approximation priority measures	Implementing priority measures
Chapter 2: Free movement of workers	<ul style="list-style-type: none"> - Draft Law "On the ratification of the Agreement on Social Protection between the Republic of Albania and the Swiss Confederation" (4 Q 2021) - Draft decision "On the approval in principle of the Agreement on Social Protection between the Republic of Albania and Bulgaria" (4 Q 2021) - Draft Law "On the ratification of the Agreement on Social Protection between the Republic of Albania and Bulgaria" (4 Q 2021) - Draft Decision "On the approval in principle of the Agreement on Social Protection between the Republic of Albania and the Republic of Kosovo" (4 Q 2021) 	<ul style="list-style-type: none"> - Translation, drafting the agreement, drafting law and decisions

3.2. Proposed changes to priorities in Chapter 2 NPEI 2021-2023

Law approximation and implementation of EU *acquis* in Chapter 2 requires very careful short, mid, and long-term planning. Bearing in mind that EU law on free movement of workers may only apply fully when Albania becomes a Member State of the EU only some legislative measures may be taken ahead of accession, while several pieces of EU *acquis* will start to apply automatically on the date of accession (or expiry of the likely transitional period). Furthermore, application of EU *acquis* on coordination of social security systems, EURES, issuing of European Health Insurance Cards requires not only proper legal and procedural framework but also increased capacities of Albanian officials as well as considerable budgetary appropriations to finance IT infrastructure. Furthermore, screening of Albanian law as to its compliance with Article 45(4) TFEU will be necessary, as the current blanket ban on access to civil service for individuals who are not Albanian is not compatible with EU *acquis* (Article 45(4) TFEU as interpreted by the Court of Justice of the European Union). Bearing this in mind a number of additional priority actions for Chapter 2 is provided in the table below. The main additions include:

- 1) Preparation and adoption of Road Map for approximation and implementation of EU *acquis* in Chapter 2
- 2) [Screening of Albanian law as to compliance with Article 45\(4\) TFEU](#)
- 3) [Approval of a new law on Foreigners \(the Bill currently under review by the Albanian Parliament\).](#)
- 4) [Advancement of negotiations and conclusion of new bilateral agreements between Albania and EU Member States or potential EU Member States, on the coordination of social insurance systems.](#)
- 5) [Update of the plan to reflect ratification of Agreement between Albania and Kosovo on the coordination of social insurance systems.](#)

The Road Map should cover at least the following actions:

- Preparation of key policy decisions on liberalisation of the labour market for access of EU citizens and their family members (bearing in mind the likelihood of asymmetry stemming from possible transitional periods for free movement of Albanian workers).
- Preparation of comprehensive overhaul of Law on Foreigners 2021 (assuming it is adopted this year), which will hinge upon the decisions mentioned above (either opening up the labour market prior or immediately post-accession or when the transition periods cease to apply). It should be noted that some provisions of Albanian may be adopted before the accession but enter into force after the accession. The overhaul should aim at full approximation with Directive 2004/38/EC (as shaped by the case-law of the Court of Justice of the European Union). This should include granting of automatic right of residence, abolition of residence permits for EU citizens (and their family members, irrespective of their nationality)
- Plan for translation of all relevant EU legal acts, with particular emphasis on EU regulations, which will become directly applicable after the accession.
- Securing the budgetary appropriations and foreign assistance to develop IT infrastructure for application of EU *acquis* in Chapter 2, in particular in relation to EURES and coordination of social security.

- Screening of Albanian legislation as to its compliance with Regulation 492/2011 on the rights of workers (social advantages, access to trade unions and workers guilds, access to education, language proficiency requirements in access to employment).
- Development of case-law manuals (jurisprudence of Court of Justice of the European Union) and comprehensive training plan for immigration authorities.

Screening of Albanian law as to compliance with Article 45(4) TFEU (public service exception) may be included as one of the activities under the Road Map umbrella or as a separate endeavour.

Table 2: Revised priority measures in NPEI 2021-2023

	Law approximation priority measures	Implementing priority measures
Chapter 2: Free movement of workers	<ul style="list-style-type: none"> - Law "On the ratification of the Agreement on Social Protection between the Republic of Albania and the Swiss Confederation" (4 Q 2021) - Decision "On the approval in principle of the Agreement on Social Protection between the Republic of Albania and Bulgaria" (4 Q 2021) - Law "On the ratification of the Agreement on Social Protection between the Republic of Albania and Bulgaria" (1 Q 2022) [Adoption of Decision in principle and Ratification in the same quarter looks a bit tight] - Adoption of Bill on Foreigners (4 Q 2022) 	<ul style="list-style-type: none"> - Strengthening of the capacities of Migration Sector, of the Ministry of Interior (2021-2023) - Strengthening of the capacities of the Labour Inspectorate (LI) in order to verify the implementation of the rights of EU employees and their employment relations (2021-2023) - Strengthening of the capacities of the Albanian Public Employment Service to build a labour market information system in Albania which incorporates the criteria required by EURES (2021-2023) - Preparation of a Roadmap for approximation and implementation of EU <i>acquis</i> in Chapter 2 (2021-2022) - Screening of Albanian legislation as to compliance with Article 45(4) TFEU (public service exception) (2021-2023)

4. ANNEXES

4.2. Annex 1 – Detailed priority measures

See electronically attached.

4.3. Annex 2 – Narrative for Chapter 2 within the revised NPEI 2021-2023 document

See electronically attached.