

Impact assessment of the legal norms concerning labor migration in Georgia

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1. Introduction

1.1. Background

In 2015 Georgia elaborated national migration strategy, which includes a component on regulation of labor migration. Fundamental legal acts, containing instruments for managing access to the Georgian labor market (immigration) and ensuring rights of Georgian nationals working abroad (emigration) came into force the following year. In April 2016, the author of this study prepared a preliminary assessment of risk factors and related scenarios regarding the implementation of the Law on Labor Migration and executive regulations.¹ The risk assessment identified non-compliance of employers, reporting inaccurate or incomplete information to be short-term risks with moderate to high probability and failure to provide signals for employers as to the demand for foreign workforce in the long-run.

Over a year has passed since the instruments for regulating labor emigration and immigration have been in force and it was deemed necessary to assess their impact. Unlike the risk assessment, which concentrated on the analysis of strategic objectives of these instruments, understood in terms of Georgia's international obligations and long-term policy direction, this impact assessment provides a more detailed analysis of the instruments themselves in relation to their function as tools for ensuring compliance from employers and intermediaries, providing adequate and comprehensive information on the volume and composition of migration and for designing appropriate response to migration phenomena.

¹ P. Kazmierkiewicz, "Impact analysis of labour migration on Georgian labour market. Risk analysis" (internal), Tbilisi, April 2016.

1.2. Methodology

The analysis is made up of two main sections, discussing findings and concludes with the overview of main issues and needs. The findings concern firstly the design of the instruments themselves and secondly their observed impact on the state's capacity to reach the strategic objectives in the area of regulation of labor migration flows. Thus, *impact* is considered in two ways: firstly, through the *prima facie* assessment of the strengths and weaknesses (gaps), identified in the formulation of the legal norms separately and when taken together, and secondly, observed in the effectiveness demonstrated so far and predicted for the near future that the instruments could have in dealing with certain problems of managing the labor markets themselves.

The analysis has been done on the basis of a combination of desk and field research.² The official translations of the statutory norms and executive regulations, supplied by relevant Georgian authorities, were used for descriptive legal analysis. This was complemented by the review of positions of key stakeholders (state and non-state) during two visits of the consultant to Tbilisi on 24-27 April and 23-24 May 2017 and analysis of responses to follow-up questions, shared by some of the stakeholders in direct communication. Further guidance was received during a discussion following the presentation of preliminary results at a meeting with the key stakeholders organized by the State Commission for Migration Issues.

² Interviews with representatives of the following state institutions were conducted: State Commission for Migration Issues, Ministry of Labor, Health and Social Affairs, Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Economy, Ministry of Justice. In addition, independent experts, representatives of a private employment agency, an employers' association and of an international organization were queried.

2. Analysis of legislation concerning labor migration

2.1. Regulation of labor emigration

2.1.1. Objectives

Migration of Georgian nationals with the purpose of taking up employment abroad represents the dominant form of movement, which is of concern to the Government of Georgia. This is reflected in the Migration Strategy of Georgia 2016-2020, which was elaborated by the State Commission on Migration Issues. The Strategy sets among the long-term objectives of the country's migration policy facilitation of legal opportunities for migration of the Georgian citizens. While reviewing the current situation in the field of emigration of Georgian nationals, the document notes three main challenges, implying also the need for regulation in these areas.

Here we will review those aspects of the issue, which have direct relation to labor emigration, and which are explicitly named in the Migration Strategy (p. 13). The first priority identified in the Strategy is the reduction in the volume of irregular emigration, which is expected when a combination of legal measures (“expanding legal migration opportunities”) and of reaching out to “potential and actual emigrants” so as to raise their awareness of these opportunities. The second strategic direction is the “protection of the rights” of emigrants, regardless of their legal status, with particular attention paid to the countries of concentration of Georgian diaspora. The third objective is the elaboration of more effective mechanisms for “registering and studying emigrant flows”.

The Strategy recognizes that negotiating visa-free movement with the EU is the key instrument for realizing *the first priority* (p. 14). The document implies that the widening of legal opportunities for emigration could help the Georgian migrant workers identify and occupy higher-paid jobs that are available in “countries with developed economies” (p. 12). This link was reaffirmed at interviews with many state officials, who generally considered visa liberalization as a substantial tangible “step forward” for Georgian current and prospective migrants. In particular, the respondents believed that the new conditions for entry and stay could be a step toward regularization of the legal position of those Georgian nationals who had lost their legal status in the EU due to overstaying their visas or taking up unauthorized employment. However, it was stressed that further bilateral dialogue with the

EU Member States where the migrants reside would be needed in order to facilitate their orderly return to Georgia and enable them to re-enter lawfully under the new terms. Although liberalization is strictly speaking limited to short-term stays, and does not authorize employment, it does provide the needed assurance to those who might contemplate regularizing their status in the country of destination as well as an incentive to re-establish their ties to Georgia and thus embark on a safer and mutually beneficial migration strategy.

Considering that visa liberalization only came into force on 28 March 2017 and that it has so far not been accompanied by national regularization schemes, it is not possible to assess the impact of the new travel regime on legalization of residence and employment of the Georgians in the EU. Ministry of Foreign Affairs expects that it will be able to verify the change in the volume of migration six months since the entry into force of the liberalization. However, the consensus among the officials is that the new arrangement removes one of the fundamental barriers to working out specific bilateral solutions for managing migration between Georgia and the main countries of destination within the EU (circular migration, regularization, labor migration agreements). The literature on the directions and factors of Georgian emigration appears to give some grounds for believing that the EU might ultimately be a destination for Georgian migrant workers that would offer opportunities for increased legal residence and employment. As Labadze and Tukhashvili noted in 2013, in the first decade of the millennium, a major reorientation of the flow of Georgian migrants took place from Russia to the EU, which led to the emergence of sizable groups of Georgian migrants in several EU countries, in particular Greece and Italy.³ The EU's position as a major destination is likely to continue given the decline in attractiveness of the Russian market due to rouble's devaluation and contraction of Russia's economy in 2014-2015. In turn, the 2014 study by Lesinska and Jaroszewicz,⁴ forecasting the impact of visa liberalization on the migration flows, found that in the Georgian case, abolition of visas would have a limited "pull" effect for those who had not migrated before, and instead would mainly result in family reunification and regularization of illegal migration.

The respondents agreed that in the short term, the absence of land connection to the EU's territory and relative paucity as well as the cost of flights dampen the interest in migration. In

³ L. Labadze, M. Tukhashvili, *ENPI – Costs and Benefits of Labour Mobility between the EU and the Eastern Partnership Partner Countries, Country Study: Georgia*, European Commission 2013.

⁴ M. Jaroszewicz, M. Lesinska (eds.), *Forecasting Migration Between the EU, V4 and Eastern Europe: Impact of Visa Abolition*, Centre for Eastern Studies: Warsaw 2014.

fact, visa-free regime is seen as a stabilizing factor, reducing the overall cost of travel (in particular, removing much of the need for taking advantage of intermediaries) and allowing the migrants to use the 90-day period for using more rational migration strategies, reducing the incidence of overstayed legal residence, which often forced the migrants to seek irregular employment as well.

2.1.2. Instruments

Description

In fulfilment of the strategic directions of the government, the Law on Labor Migration of 2015 sets norms for legal obligations of individuals and legal persons acting in the field of providing employment abroad. The Law applies both to the entities registered in Georgia and to foreign companies, binding them to follow a set of standard rules when offering employment abroad. The obligations fall under two main categories: toward an employee and toward the Georgian authorities, represented by the Ministry of Labor, Health and Social Affairs.

The Law seeks to protect the migrant worker's rights in two ways. Firstly, it requires that employment abroad should be based on a formal agreement and proceeds to define admissible forms: a contract on the provision of employment, a contract for assistance in the provision of employment and a contract signed in Georgia with the foreign employer. In general, the Law respects the primacy of the labor law of the destination country and does not admit clauses in contravention of that law (Article 12). The Law requires that the employment provider (Georgian or foreign employer or a contractor of a private employment agency) is obliged to conclude a written contract with the migrant worker. Article 10 stipulates the necessary clauses to be contained in the contract. These aim at ensuring that the two parties agree on the duration of the contract, the terms and forms of payment (including the bank details), the range of duties and the conditions for the termination of the contract. Importantly, the contract needs to be made in the Georgian language.

Secondly, under Article 9 the employers and intermediaries are required to advise migrant workers prior to their departure on the legal rules for entry, stay and departure as well as on the regulations for employment, contained in the legislation of Georgia and of the destination

country. Moreover, the migrant needs to be informed of the contact data of the relevant Georgian institutions (consular posts, ministries) in charge of protecting migrant workers' rights.

The other set of requirements is toward the Ministry. Both the branches of foreign enterprises employing Georgian nationals abroad and employment agencies are obliged to register with the Ministry all the employees with whom they concluded contracts or facilitated employment. They are also required to maintain records of employment (signed contracts) and make them available upon request from the Ministry. The Law also envisions that these entities will "from time to time" supply written reports on their activities. However, the Law does not lay down the mechanism, stating merely that the process should be done "in accordance with established procedures".

Prima facie assessment

Here the instruments envisaged in the Law on Labor Migration will be scrutinized for their effectiveness through the analysis of the legal norms themselves. The actual impact of the regulation will be investigated in the following section.

The Law introduces the conclusion of a written employment contract as a basic instrument for ensuring protection of migrant workers' rights from fraud, abuse and discrimination. However, this norm lacks adequate force to achieve the desired effect. Firstly, in the current institutional setup, there is no body that would have the required competences, dedicated procedures and resources to verify that the terms of employment (hours, rate, condition) stated in the contract correspond to reality. This shortcoming significantly reduces the impact of the norm on the actual relations in the workplace. Secondly, in line with the general principle, stated in the Law, the disputes in the workplace will be resolved by reference to the law of the country of destination. Thus, the specific formulation of the contractual norms, listed in the Law, will be determined and interpreted in line with the standards, applied in the destination country. In effect, the employment contracts will be enforced by the state organs of the destination country. In the absence of bilateral agreements regulating labor migration from Georgia to nearly all the destination states, the employers will give precedence to the legal requirement of a given jurisdiction.

The above fundamental limitations of the mechanism for protecting migrants' rights also

adversely impact the capacity for tracking the cases of registered employment of Georgian nationals abroad. A fundamental issue is the unclear link between concluding a contract and the notification of the Ministry of Labor, Health and Social Affairs of this fact. The Law does not explicitly require that the employment providers, subject to the norm, may only legally hire migrant workers according to the stipulated procedure. Instead, reporting is obligatory for employment agencies who need to provide ex-post registration of persons to whom the service was provided. As a result, only a small share of the instances of the Georgian nationals employed legally abroad may be captured through this procedure.

2.2. Regulation of labor immigration

2.2.1. Objectives

As noted in the risk assessment, conducted by the consultant in April 2016, the regulation of immigration was one of the components of Georgia's efforts toward securing visa liberalization with the EU. The long-term Migration Strategy sets a range of objectives, conducive to regulating conditions of entry and employment of foreign workers in Georgia. Primary among them is the positive contribution that the influx of workers could make toward establishing "a flexible labour market". The document forecasts that sustained economic growth of the country will stimulate demand for "both high - and low-skilled human resources". Although the link to greater legal opportunities for emigration of Georgian citizens is not made explicit, it may be concluded that the realization of another strategic objective – securing higher-paid jobs for Georgian nationals – is likely to create gaps on the local market.

At the same time, the Strategy hints at the need for regulating access to the market. The first step that is proposed is conducting a labor market survey on a regular basis "to assess the capacity of the labor market" for absorbing foreign workforce by identifying needs by sector and skill levels. Further, the Strategy considers that the current legal framework for regulating labor migration might need to be revised if it is shown that the regulation does not fully meet the needs of the local economy and labor market. Apart from the economic rationale, the document indicates security grounds for introducing controls. The country's visa and residence policy is being improved with a view to ensuring that the migrant flows are properly registered and that as a result, illegal migration is reduced. The Strategy

recognizes the dilemma between the overall priority of removing barriers to entry and stay of foreigners and “effective management of migration, including illegal migration”, which might be interpreted as a potential avenue for introducing and modifying instruments for tracking and regulating labor immigration as well.

2.2.2. Instruments

Description

The Law on Labor Migration charges the Government with the overall responsibility for developing “a uniform national policy in the field of labour migration” (Art. 5, item a). However, it is mainly preoccupied with the area of regulating labor emigration and in the drafting process, the component on the control of migrant employment in Georgia was excluded from the Law. Thus, it does not state the rules for legal employment of non-nationals in the territory of Georgia, which would be accompanied by legal sanctions.

Nevertheless, the Law authorizes the government to “prepare proposals in order to improve the legislation of Georgia on labour migration” (Art. 6.1, item b) as well as authorizes various ministries to introduce executive regulations in this field, including labor immigration. While the Law does not expressly require co-ordination of activities between these ministries, it identifies those state bodies, whose activities form part of the state’s policy on labor immigration. These include: (1) the Ministry of Labor, Health and Social Affairs, the leading body in the field of labor migration, (2) the Ministry of Foreign Affairs, responsible for issuing visas, including those with purpose of employment, (3) the Ministry of Justice, which grants residence permits, including those issued on the grounds of employment, and (4) the Ministry of Internal Affairs, which maintains records of foreigners’ entries and departures as well as of the purpose of their stay. Article 6.2 mandates that the Ministry of Labor, Health and Social Affairs is empowered to “issue subordinate acts” in the field of both labor emigration and immigration while the other aforementioned ministries ought to share the data, related to the legalization procedures (entry, stay and employment).

The regulation of labor immigration consists of three main elements: authorization of foreigners’ entry and stay with purpose of employment, conclusion of a written contract of

employment in Georgia and notification to be submitted to the authorities. The first element is in the competence of the Ministry of Foreign Affairs and the Ministry of Justice, while the other two are the responsibility of the Ministry of Labor, Health and Social Affairs.

Under the Law on the Legal Status of Aliens and Stateless Persons, foreigners legally resident in Georgia enjoy equality of rights (including employment) unless the Georgian legislation states otherwise (Art. 25, clause 1). Thus, for instance, holders of permanent residence permits are entitled to employment on equal terms with the Georgian nationals. At the same time, the Law is concerned with the legality of residence and introduces certain formal controls on access to the Georgian labor market in the form of specific entry and residence requirements. However, the Law does not regulate the conditions under which foreigners may be employed, stating merely in Article 29 that “labour activities of aliens shall be governed by the legislation of Georgia”.

The Law defines labor activity to be “any activity for which a person receives labour remuneration” (Art. 2, item m) and introduces a general principle, according to which “individuals arriving in Georgia to conduct labour activities” are required to obtain an immigration visa of D1 type (Art. 7, item d). The decision on issuing the visa is made by the Ministry of Foreign Affairs through its diplomatic and consular offices abroad. On 13 June 2015 the responsibility of administering immigration visas on behalf of the MFA was granted to legal entities under public law of the Ministry of Justice (PSDA), enabling foreigners who are legally resident in Georgia to apply for this type of visa without the need to leave the country’s territory.

However, under Article 10 of the Law visa requirement may be waived for certain categories of foreigners, as specified by the Georgian legislation. On 1 September 2014, as part of the implementation of EU-Georgia visa liberalization action plan, the amended Law on the Legal Status of Aliens and Stateless Persons reintroduced short-term visa requirement for 13 countries. Moreover, for the nationals of states, not subject to visa requirement, the period of visa-free stay was reduced from 360 days to 90 days in a 180-day period. These rules were in turn liberalized in May 2015 when the Parliament passed amendments, extending the visa-free stay period from 90 to 365 days for the nationals of 94 (later extended to 95) states (including all the NATO and EU member states) (Art. 10, clause 3 of the Law and Government Ordinance No. 255 of 5 June 2015).

Longer-term legal stay in Georgia requires obtaining a residence permit, which is valid for up to 6 years (temporary residence permit) or indefinitely (permanent residence permit). One of the categories of the temporary residence permit is a work residence permit, which may be issued to any foreigner legally residing in Georgia who intends to “carry out entrepreneurial or labour activity” in the country. Under Article 14, clause 2, work residence permit may be granted also to a holder of a permit, issued on other grounds. Article 21 allows for termination of a foreigner’s legal stay on the basis of a visa or residence permit if the activity, for which the visa or permit was issued (e.g., employment), had come to an end.

The formal procedure of employment of a foreigner who is not a permanent resident or a refugee was set down in the Resolution of the Government of Georgia No. 417 of 7 August 2017. The Resolution regulates the conditions under which a local employer (whether established in Georgia or a representation of a foreign entity, registered in Georgia) may legally employ a labor immigrant. It requires that two conditions need to be met for employment to be lawful: the migrant resides legally and a written contract in the language understood by the migrant is concluded between the migrant and the employer (Art. 2). The Resolution requires that the contract should identify the basic data on the parties but leaves the terms subject to mutual agreement. At the same time, the regulation establishes certain rules, aiming at protecting migrant workers’ rights: equality of wages for comparable work with the Georgian citizens, entitlement to benefits and allowances on equal terms with the nationals and access to guarantees, stipulated in the general labor legislation (Art. 5).

The Resolution also introduced a requirement to report instances of paid employment by foreigners by the employers to the Ministry of Labor, Health and Social Affairs. Under its terms, the employer is bound to notify the Social Service Agency of the Ministry within 30 days of the entry into force of the contract. In compliance with the Order of the Minister of 1 November 2015, a standard form was introduced, which includes the starting date and duration of the employment contract, the identity data of the employee (the name, identification number, place of origin) as well as the job title and required qualifications.

Prima facie assessment

The current legislation does not provide sufficient elements for comprehensive regulation of labor immigration with regard to three main objectives, outlined at the beginning of the chapter: controlling access to the market to various categories of immigrants (through a system of visas and permits), monitoring the volume and composition of labor immigration (through reporting mechanisms) and ensuring effective protection of migrant workers' rights (through application of standard contracts).

The legal framework (the Law on Labor Migration, the Law on the Legal Status of Aliens and Stateless Persons and executive acts) generally promotes freedom of taking up employment by all legally resident foreigners. No system for restricting access, such as quotas, work permits or additional requirements as compared to nationals, has been put in place. This means that the legislation does not set itself the explicit objective of combating or reducing the volume of *unauthorized employment of foreigners* and consequently relevant mechanisms for achieving this objective are not in force. In addition, certain specific solutions have been at work to promote freedom of movement and economic activity, which further make such objective hard to attain in the current framework.

Firstly, the entry controls, instituted by the Law on the Legal Status of Aliens and Stateless Persons of 1 September 2014 have been relaxed toward the nationals of 94 states (later 95) who since June 2015 enjoy the right of entry and stay for up to a year without the need to apply for visas. As the Georgian legislation does not foresee the requirement to obtain a work permit apart from a visa, there are no instruments for controlling access to employment for this category of foreigners. This also has implications for the area of irregular migration. The Law on the Legal Status of Aliens and Stateless Persons does not feature unauthorized employment among grounds for rejecting a visa or residence permit application or for denying re-entry.

Secondly, the notification system, introduced through the order of the Minister of Labor, Health and Social Affairs in November 2015 in fulfillment of the Law on Labour Migration, is of limited use for monitoring the volume of labor immigration. The procedure of notification is *post factum* (reporting on the fact of conclusion of a written contract with a foreign employee) and places the requirement on the employer alone. The information supplied by the employer cannot be objectively verified through reference to the data on migrants' employment. There is no system of obligatory registration of a migrant worker's

intent to undertake employment. Moreover, foreigners are granted the right to change employers or work for multiple employers without the need to register their current place of work.

Finally, the notification mechanism lacks enforcement mechanisms to ensure compliance of employers with the requirements to secure migrants' rights through conclusion of standard written contracts. Unlike the procedure regulating provision of employment outside Georgia, which involves financial sanctions, stipulated in the Law on Labour Migration, failure to comply with the requirements on employing foreigners in Georgia does not result in statutory sanctions. Moreover, some of the definitions used in the regulation of the notification procedure remain open to interpretation, which might make enforcement difficult: for instance, Article 4 of the Resolution of 7 August 2015 requires that the employer needs to provide remuneration to a foreigner not lower than that offered to a Georgian national "for work of the same value". The fact that the legislation does not refer to an objective indicator (e.g. minimum wage or standard rate) but that it relies on the notion of "value", which is determined case by case, makes the regulation subject to interpretation.

3. Impact of regulation on the labor market

3.1. Compliance of employers and intermediaries

As of the time of the assessment (April-May 2017) neither mechanism for reporting labor migration (abroad and in the territory of the country) was found to be fully functional. However, as noted in the analysis of the legislation, the procedure regulating provision of employment outside of Georgia generated a far higher response. Out of the 647 entities, which had been put in the register of employment providers, 413 submitted notification forms. The total of 387 migrants were declared to have been provided with employment by 1 March 2017. A representative of the service responsible for the collection, believes that despite the efforts made to raise awareness among the private employment agencies (spreading the information three weeks prior to the deadline), not enough entities were familiar. In her view, a higher number of companies could have turned in the form if they had been aware of the requirement. The difficulties in securing adequate response could also have been related to the novelty of the mechanism, and hope was expressed that the rate could be improved over time when the collection would become a regular procedure.

In contrast, far lower numbers of migrant workers employed in Georgia were revealed through the notification procedure. In November and December 2015, as few as 7 migrants were reported (5 men, 2 women) to be employed and the figure for the entire 2016 year stood at only 79 migrants (72 men, 7 women). The following table gives the breakdown by country of origin and sector of employment.

Table 1. Migrant workers reported to be legally employed in Georgia, 2015-2016

Country	2015	2016
Azerbaijan	1 (service)	46 (construction, legal, medical services, finance)
Turkey	4 (cook, technician, manager)	24 (finance, service, management)
Ukraine	2 (sales/manager)	4 (manager)
United Kingdom		2 (manager)
Other		3 (manager)
TOTAL	7	79

Source: Ministry of Labor, Health and Social Affairs of the Republic of Georgia

The higher rate of reporting on provision of employment abroad was attributed to the presence of sanctions as well as to the existence of a register of private employment agencies. The particular difficulty of monitoring the volume and conditions of employment of foreigners in Georgia is related to the fact that there are no sanctions attached that could be enforced in the current legal framework. The Department of Labor Control within the MoLHSA lacks competence to carry out inspections on grounds other than cases of trafficking or forced labor, and even if an inspection were to take place, it would hardly be able to reveal the actual scale of foreign employment as inspections must not be carried out unless the employer is duly notified in advance.

On the other hand, the current system does not provide sufficient incentives for Georgian employers to reveal the actual scale of foreign labor. When filling notification forms and making work contracts available for inspection, the employers are asked to provide the authorities with the types of data that are not provided as a rule by the entrepreneurs hiring Georgian workforce only (remuneration, level of qualifications and staff size). This may be viewed as putting them at a competitive disadvantage if made public. As noted in the risk assessment, carried out in 2016, the fact that the notification system is the first initiative aiming at collecting information and ensuring compliance of employers makes it particularly challenging to win their support for such a system.

One area, in which the Georgian state applies elements of control, is the issuance of work residence permits. Although the Ministry of Justice, which is in charge of the procedure, formally does not authorize employment of foreigners, it carries out verification of the applicants and may require that they provide details on the actual terms of employment. In particular, the decision on issuing the permit is dependent on the past record of employing foreigners by a given employer so that in cases when it was shown that the applicant did not actually fulfil its declared obligations in the past, the authorities may deny issuing another permit. While the procedure has a limited scope (covering only those foreigners who still need to apply for visas and permits to legalize their stay in Georgia), it includes an important element of ensuring compliance through verification of applicants' declarations against their performance record.

At the current stage of development of the domestic labor market, the majority of respondents do not consider it advisable to introduce entry controls for foreign workers as a general rule. The procedure of legalizing residence for work purposes covers mainly the employees of foreign businesses, for which it does not represent substantial burden as it is in essence a registration procedure, not involving many of the instruments, applied in EU Member States, such as the preference to nationals in offering employment or the system of labor inspections. As it was noted in the risk analysis, prepared by the author in 2016, extension of obligatory mechanisms of registering foreign employment to Georgian companies who have used foreign workers to a limited extent so far could prove very difficult to enforce. In fact, considering long period in which contractual arrangements between the Georgian employer and foreign employee were a matter of private agreement only, we might expect that what used to be unregulated could become irregular. An undesirable effect could be the increase in the rate of unauthorized employment in which the employers would avoid reporting.

At the same time, interviews with representatives of employers showed that the current labor market remains non-transparent and showed interest in the more active role of the state in facilitating exchange of information between market players (employers and employees). Georgian employers, especially small and medium enterprises, need support in identifying available candidates with required competencies and skills, both domestic and foreign. In turn, the foreigners who are willing to take up employment while already legally residing in Georgia might in turn be interested in the current information on the demand from local employers for their particular qualifications and work profile. Such facilitation seems

particularly called for in the sectors, in which demand for workforce has consistently not been met with domestic resources. As discussed in the following section, there are plans to run regular sectoral labor demand surveys, which should reveal current and future demand for specific occupations.

3.2. Scope and validity of the collected data

The previous chapter demonstrated that the waiver of entry visas for the nationals of 95 states, mainly falling under the category of industrialized countries, has significantly reduced the application of the system for legalizing entry with purpose of employment. According to the Ministry of Foreign Affairs statistics, only 609 work visas were issued in 2016 and as a rule they were obtained by the nationals of countries still subject to the short-term visa requirement. In those cases, visas could be issued on condition of the prior conclusion of a work contract. Further, to legalize the employment beyond the period of 90 days, indicated in the work visa, it is necessary to obtain a work residence permit with duration of up to 6 years. In contrast, the foreigners making use of visa-free entry are not bound to obtain such permit in order to engage in lawful labor in Georgia. At the same time, Article 5 of the Law on Legal Status of Aliens and Stateless Persons defines the grounds of legal stay of foreigners in Georgia who can apply for the work residence permit.

The maintenance of this dual-track residence regime does not allow for estimating the total inflow and volume of labor immigration in the absence of a single system for legalizing foreign employment. Such estimates are typically obtained through the introduction of mechanisms authorizing employment of foreigners – work permits, issued to foreigners in the destination country on the basis of employers’ declarations of intent to hire specific individuals and entry into the country on the basis of work visa. Proper tracking of the inflow and movement of foreign workforce requires, firstly, that the workers are designated as a separate category of immigrants who may enter, take up and change residence as well as depart the country on the basis of designated documents, issued to authorize specific work relation with a given employer at a certain location.

Managing foreign labor market places the state authorities in the position of guarantors of interests and rights of both parties to the work contract. On the one hand, comprehensive systems of work authorization place responsibility on the foreign worker to prove their intent of employment prior to and at entry and then to perform labor activity within the terms

(including the position, location and duration) of the written contract. These legal obligations placed on the foreign worker serve to ensure that the worker fulfils his or her duties toward the Georgian employer. In turn, the state is called to provide effective protection of migrant workers' rights in the workplace (due remuneration, work conditions, access to services) through validating (registering) the contract and carrying out labor inspections (either planned or emergency if requested by the migrant or third parties).

It is worth noting that the state may resort to sanctions or other necessary measures in order to enforce the obligations of the parties or prevent fraud or abuse. For instance, it may deem invalid a contract that violates standard rules of the labor market (minimum wage, working hours or conditions), deny access to migrant workers who cannot demonstrate that a legal and valid contract has been concluded or expel and temporarily ban the re-entry of a foreigner who has been found to work without authorization as well as administer fines and other measures against employers who fail to meet the requirements of legal employment of non-nationals.

The revision of the current system into one which would address the needs of both the employers and employees more effectively through state regulation could also help mitigate the major shortcoming, which is forecasting the level and composition of foreign immigration that would stimulate growth, address sectoral gaps and improve the level of qualifications needed to maintain its competitiveness. As it was shown in last year's risk assessment, the last labor demand survey, carried out in 2015, is of limited use for this purpose as it relies only on the declarations of those employers who would legally employ foreigners, and may not account for the preferences of a large group of employers who continue to offer employment irregularly.

At the same time, the 2015 labor demand survey had a pilot character, and initiated work on new methodology. As the Analytical Division of the MoLHSA reported, the survey confirmed relatively low level of reported employment of foreigners, which made it difficult to generalize the microeconomic findings to assess effective level of demand. It is now recognized that more targeted studies are necessary in several sectors to identify specific occupations in demand. Such studies could build on the solid foundation, which is the development of an integrated analytical tool for monitoring and visualizing a large number of indicators for the Georgian labor market. The tool allows to track long-term trends in the

performance of the regional and national labor market, and may be used to set parameters for sector-specific surveys in order to identify the current and prospective needs for additional workforce, including foreign labor, in certain locations and of a certain profile.

3.3. Effective regulation of labor emigration through circular migration schemes

Labor emigration of Georgian nationals represents a potential opportunity for professional growth for workers as well as for economic welfare for individuals and households. However, recent research on the conditions of migration reveals significant challenges to migrants' safety, protection of their rights and to career development. Focus groups carried out by GYLA among Georgian migrants in four EU member states as well as in Turkey and Ukraine alert to various kinds of threats related to migrants' irregular status. For instance, women employed in Italy for over five years suffered from both economic and legal vulnerabilities. Absence of savings and dependence on a single source of income were made worse by the migrants' lack of protection in the workplace against employers' actions and their fear to report the violations due to their irregularity. Unregulated status also reduced migrants' willingness to seek legal support from authorities or report abuses.

As indicated in the author's study, published in Tbilisi in 2013,⁵ many of the issues faced by Georgian migrants could be resolved through effective circular migration schemes. Among the benefits were listed legalization of residence and work, protection of workers' rights, guarantees of income and other terms of employment. While visa liberalization combined with national and bilateral regularization schemes could address the issue of securing legal status, the other issues require putting in place a comprehensive framework, offering migrants necessary pre-departure guidance, security of income and terms of employment as well as mechanisms for enforcement of rights. However, to be effective, circular migration schemes require proper design and planning, implying high capacity on part of the authorities of both the country of destination and origin of migrants.

The Handbook on Managing Labour and Circular Migration, developed by the Prague Process, notes that effective implementation of a circular migration program "would first require specific objectives" to be set and shared among a variety of stakeholders (policy-

makers, employers, migrants).⁶ This is particularly important for the source countries, which may need to secure their long-term interests through proper design of the program. Handbook notes that the “countries of origin and destination and origin” are typically not equal as far as their “pull” on migrants is concerned and as a result a conflict of interest may arise in which they “may not share the same vision and interests in managing temporary migration”.⁷ This is evident in the most common barriers to effective schemes of this type – tendency by migrants to overstay the period of employment in the destination country and interest of the host country in attracting the qualified workforce, leading often to brain drain. In both cases, the source country risks that instead of ensuring that migrants gain experience and qualifications that could benefit home economy, the program could provide an incentive for long-term integration into the labor market of the destination country.

The other issue with circular migration is that it implies fundamental capacity of the source country to ultimately reintegrate the program participants into appropriate fields of its economy. This is particularly relevant for professionals and skilled workers who are initially pulled by the prospects of higher wages and opportunities for acquiring or refining their skills. For circular migration program to work, the country of origin must ensure that the local employers have the capacity to offer conditions that could be in the long run attractive to the participants.

To reduce the risks, Georgia as the source country needs to properly identify the objectives that the program should reach that would be consistent with its long-term migration policy aims. The first consideration is the choice of the destination countries in such a way that would facilitate back and forth mobility rather than lead to permanent departure of migrants. Secondly, demand for certain skills and qualifications as well as opportunities for professional growth in a given economy should be considered. Thus, it is not recommended to opt for the economies which already exert strong pull on professionals or specialists who in particular may not currently be reintegrated into the Georgian market. Finally, such programs need to build on the existing trade and investment ties, facilitated by favorable bilateral legal arrangements and working networks. Such conditions stimulate the mobility between the two countries and provide incentives to migrants not only to remit part of their earnings but also to

⁵ P. Kazmierkiewicz, “Opportunities for developing circular migration schemes between Georgia and the EU”, GYLA: Tbilisi 2013.

⁶ *Prague Process Handbook on Managing Labour and Circular Migration*, Prague, September 2014, p. 48.

⁷ *Ibid.*, p. 42.

reinvest their savings. Although the EU association status and ongoing legal reforms have already helped establish foundations for such decisions, an invaluable role is played by the Georgian diaspora. GYLA assessment indicates that active diaspora support rendered to migrants in some EU countries (e.g. Poland) was essential to securing legal status of Georgian workers and to establishing safe environment for repeat migration.

These various objectives all need to be weighed in order for circular migration to be an optimal instrument of migration management. Thus, circular migration might in the first place be a tool for diversification of migration destinations through facilitating new flows. Another consideration is that the program might seek to improve the legal and socioeconomic standing of migrants resident in a given country. In both scenarios, the most difficult aspect is ensuring that the program is matched with targeted reintegration activities, focused on certain categories of Georgian migrants who meet the current and prospective needs of local, sectoral and national economy.

The first consideration (diversification) needs to take into account both the opportunities for integration of Georgian migrants into the economy of the destination country, the existing legal framework for access to its labor market and prospects for migrants' return to Georgia. From this perspective, the choices of Estonia and Poland for pilot initiatives appear to be justified although some additional work is needed on working out conditions for reintegration. The two countries have not been natural destinations for Georgian workers and schemes are essential for providing necessary pre-departure information and ensuring support while in migration. Secondly, the economies of these host countries are in need of a variety of foreign workers at different levels of skills (including unqualified workforce). Moreover, the example of Poland shows that the destination country considers Georgian nationals as a priority group for entry into its labor market, offering them the right to be employed in a facilitated manner (without the need to apply for a work permit). At the same time, migrants on the Polish labor market may be in need of targeted assistance to ensure that they gain skills that are in demand in Georgia and that they are matched with appropriate Georgian employers who could directly make use of these skills. An issue in promoting migration to new, untested destinations is that the programs may need to be adapted over time so as to best fit the optimal period of stay abroad, incentives for return and extent of assistance. A circular migration scheme might thus serve as a diagnostic tool, supplying necessary information on what sectors and categories of migrants might be selected with the biggest benefit for the Georgian economy.

In turn, circular migration schemes to countries, which are more established destinations for Georgian migrants (such as Germany) may need to be designed differently as they serve to achieve another set of objectives. The primary concerns for Georgia are: the relative attractiveness of the labor market of the country in terms of wages and job opportunities (making it difficult for Georgians to contemplate return home), the high competitiveness of the German market, in which migrants might actually face barriers to upward mobility and the vulnerable position of migrants vis-à-vis employers resulting from migrants' irregular status and low bargaining position. Circular migration schemes aim to address these challenges through a combination of measures: legal terms of residence and conclusion of a written contract, matching with Georgian employers in a given sector and close monitoring of German employers by the authorities as well as dedicated training and orientation components, offered both prior to departure and on the job. An example of this type of program was GIZ's 3-year project, which envisaged such crucial elements as the placement of Georgian workers with German employers and recognition of qualifications as well as identification of Georgian employers matching the profiles of the returnees.⁸

Visa liberalization alleviates the issue of ensuring legal entry into the EU and providing Georgian migrants with time for surveying the local labor market. However, circular migration programs might still address other challenges faced by migrant workers: guarantees of the terms of employment through conclusion of a written contract and monitoring by labor authorities as well as access to trainings and recognition of qualification, facilitating professional development and reducing incidence of "brain waste" (work below one's qualifications). Such schemes are of particular benefit to source countries, which lack sufficient resources for attracting own nationals back to their home economies. In these circumstances, negotiating a working circular migration scheme should include an element of compensation for the source country for temporary absence of qualified or specialized labor from its labor market as well as feature mechanisms for matching the returnees with Georgian employers who in turn need to be provided with assistance under the terms of the program. Such assistance could take the form of partial remuneration support to the returnees in order to partly bridge the wage gap as well as provision of reintegration trainings by the authorities to lessen the burden for the employer.

⁸ More on the project „Strengthening the Development Potential of the EU Mobility Partnership in Georgia through Targeted Circular Migration and Diaspora Mobilization”, see *Prague Process Handbook*, pp. 56-57.

4. Conclusions and recommendations

4.1. Long-term implications: migration policy as a tool to realize strategic objective of flexible labor market

As noted above, the recent liberalization of conditions of entry into the EU and rising demand for Georgian workforce in several key destinations, experiencing workforce shortages in both skilled and unqualified labor segments, can be expected to serve as long-term “pull” factors for workers from Georgia. These circumstances are set to affect the Georgian labor market, and need to be taken into account as factors in the overall labor market management. In this context, it is worth looking at the European experience in which active measures on the labor market serve to diminish negative effects of the market and to ensure equal position of the various parties. Migration policy is in particular applied as an instrument serving to meet a number of emerging needs on the domestic job market: reducing competition in sensitive sectors, regulating terms of employment and facilitating demand. All these elements are crucial for realization of Georgia’s strategic objective of achieving “flexible labor market”, which is highly dependent on the availability of labor resources, both domestic, foreign and returning.

In the 2014 study of the systems of control established in three EU member states,⁹ the author argued that Germany, Netherlands and Poland managed to combine openness of their labor markets to large numbers of foreigners (EU nationals in Western Europe and nationals of Eastern Partnership states in Poland) with effective mechanisms reducing negative impact of immigration on the overall labor market. In particular, it was argued that “the enforcement of wage standards, occupational health and safety rules and legal contracts is necessary to ensure that the influx of foreign workers does not lead to unfair competition, the lowering of labour standards and discrimination in the workplace”.¹⁰ These aspects appear to be valid in the Georgian case as well considering the features of its labor market:

- Ensuring level field of competition in sectors, which are considered strategic from the point

⁹ P. Kazmierkiewicz, *Work Permits and Labour Inspection: Cases of the Netherlands, Germany and Poland*, GYLA/CIPDD: Tbilisi 2014.

¹⁰ *Ibid.*, p. 5.

of view of the country's long-term development needs to ensure that immigration does not have a depressing effect on wages and that employers are given incentives for training and promoting advancement of Georgian workforce. This appears to be a particularly vital element of migration policy, which needs to acknowledge the priority of the raising of the qualifications of Georgian labor and of the protection of honest employers from unfair competition (irregular employment). The provisions of labor legislation on equal pay among domestic and foreign workers serve to realize this objective.

- Regulation of terms of employment through conclusion of standard contracts whose provisions could be enforced through courts and monitored through the operation of controlling bodies (such as labor inspection) is necessary as a way of ensuring that the parties to the contract are equally protected: employers from migrants' departure and inadequate performance and employees from deferral or non-payment of wages and violations of other terms of employment. As noted above, state involvement in enforcement of contracts has a stabilizing effect on the labor market, building also trust of both parties (employers and employees) toward one another and toward the state as the guarantor of the contract. The requirement for the work contracts to be in compliance with the norms of the Georgian labor legislation aims to realize this regulation objective.
- Finally, management of the national labor market may serve to overcome some fundamental barriers to establishing relations between employers and employees. In the Georgian context, effective demand for foreign workforce may be underestimated as the employers lack some key data that could guide them to announce interest in additional labor. In the risk assessment of 2016, the author suggested that such fundamental statistics as the supply of foreign migrant workers by sector and skill level and the number of unfilled registered job openings in the locality in a given sector need to be collected regularly and aggregated. These data could, for instance, provide input in the employers' decisions on the volume of workers they could employ and on the wage level that could be optimally offered.

While international experience may serve as a useful guide for the elaboration of a mix of controlling, regulating and facilitating measures, some fundamental differences between Georgia and the EU member states must be noted. First of all, the review of official documents and the interviews with key stakeholders suggest a consensus that administrative restrictions on foreigners' access to the domestic labor market are not supported. For Georgia, mobility of both its own nationals and of foreigners entering the country is seen as an asset, serving to promote competitiveness and best ensuring the development of own labor resources. In

contrast, a general principle underlying EU member states' labor immigration policies is one of complementarity of foreign labor, which may only be brought in if it is demonstrated that the influx would not jeopardize the development of own labor resources pursued through active measures of the state. The contrast is also observed on the level of regulation of access to the labor market in which EU member states regularly apply tests of the impact of the presence of foreign workforce on local economies, sectors and professions so as to reduce negative consequences (as discussed above). In turn, Georgia has done away with instruments for authorization of work (merely requiring notification) and does not require that foreigners may only be legally employed if they enter the country with declared purpose of employment, which can be then verified through monitoring by relevant inspection bodies.

4.2. Areas of need and recommended measures in the short- to mid-term

The vision, outlined above, presenting elements of migration policy that could be harnessed toward effective regulation of domestic labor market cannot be realized without addressing certain immediate issues, which have so far limited the effectiveness of instruments, adopted in the areas of both labor emigration and immigration. Table 2 suggests the need to focus on three main areas: (1) providing incentives for employers and intermediaries to reveal the current extent of the use of foreign labor and their effective demand in the future (*micro level*), (2) raising the capacity for collection, aggregation and analysis of data on the presence of foreigners on the Georgian labor market by sector, level of qualifications and occupations to enable forecasting of demand (*macro level*) and (3) greater integration of policies on labor migration with the other strategic policy areas to identify added value of migration to the country's development of own labor resources, attracting investment and increasing competitiveness (*strategic level*).

Table 2. Key issues and possible responses

Issue	Needs
Insufficient awareness and trust of employers and intermediaries	<ul style="list-style-type: none"> • Revision of the notification scheme so as to remove sensitive aspects (such as level of remuneration) • Piloting the revised version of the notification scheme through a survey • Consultations with representatives of employers and PEAs on the scope of collected information and method of collection

	<ul style="list-style-type: none"> • Considering mechanisms that would ensure full coverage (mandatory registration of contracts)
Low capacity for collection and analysis of data	<ul style="list-style-type: none"> • Updating the register of employment providers to include only active providers • Inclusion of labor migration component into statistics collection procedures • Regular commissioning of local and national labor demand surveys (with foreign employment subset)
Integration of labor migration issues into overall state migration policy	<ul style="list-style-type: none"> • Integration of all systems of collecting data on labor immigration (visas, permits, entries/departures, contracts) • Greater involvement in the work of the labor migration working group of key stakeholders, including representatives of employers, experts on domestic labor market, and researchers in the field of labor migration • Preparation of studies on relation of migration policy to other strategic policy areas: e.g., entrepreneurship, regional development, sectoral growth, innovation

Source: Analysis of interviews with key stakeholders

Concluding, Georgia is in the process of identifying specific objectives of its migration management that could help assess both the positive contribution that it could make to the realization of its broader development and sectoral strategies and the negative impact of unassisted immigration and emigration on the viability of its key sectors of the economy, the balance between supply and demand for specific occupations and skills and on the competitive position of Georgian employers. The key market players (Georgian and international employers, intermediaries and both Georgian and foreign workers could benefit from the government's active role in this regard. Firstly, the government is expected to provide essential information on the current and prospective needs of the labor market (through conducting of labor market surveys and impact studies as well as through providing access to aggregated data). Secondly, it may act as a guarantor of the rights of the parties to work contracts (ensuring greater stability and transparency of work relations and thus helping build trust between the parties). Notwithstanding different perspectives that EU member states and Georgia take on the objectives of their migration policies, the European

experience suggests that properly targeted regulation, consisting of both controlling and facilitating elements, does not have a dampening effect on the availability of needed labor resources. The analysis provided above may also indicate that such regulation can have a stabilizing effect, ensuring sustained supply of additional foreign workforce, providing incentives for return of Georgian migrants abroad and increasing opportunities for the development of own labor resources.