

Assessment Report

Review of legal and labour migration mechanisms in the Republic of Azerbaijan

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This report is one of the first outcomes of the EU-funded ‘Support to the Implementation of the Mobility Partnership with Azerbaijan’ (MOBILAZE) project. The report aims to streamline the activities that will be carried out under the Component 2 on legal and labour migration. To this end, it analyses the existing provisions of the national legislation of the Republic of Azerbaijan in the area of legal and labour migration and the expressed needs of the Azerbaijani stakeholders in their cooperation with the EU Member States.

The report is based on the desk research and initial review of the aforementioned legislation, information gathered during the expert mission to Baku and meetings with the national stakeholders, as well as subsequent analysis.

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List of abbreviations

AZN	Azerbaijani New Manat
CIS	Commonwealth of Independent States
DWCP	Decent Work Country Programme
EU	European Union
GIZ	German International Cooperation Agency
IAMAS	'Entry-Exit and Registration' Interagency Automated Information Search System
ICMPD	International Centre for Migration Policy Development
IOM	International Organisation for Migration
ILO	International Labour Organisation
INTERPOL	International Criminal Police Organisation
LC	Labour Code
MC	Migration Code
MFA	Ministry of Foreign Affairs
MLSP	Ministry of Labour and Social Protection of Population
MOBILAZE	'Support to the Implementation of the Mobility Partnership with Azerbaijan' project
MS	Member State
PhD	Doctor of Philosophy
SBS	State Border Service
SES	State Employment Service
SMS	State Migration Service
SOCAR	State Oil Company of the Republic of Azerbaijan
SPEA	State Programme on Education Abroad
ToRs	Terms of Reference
UNDP	United Nations Development Programme
USA	United States of America

I. Project background

The project 'Support to the Implementation of the Mobility Partnership with Azerbaijan' (MOBILAZE) is one of the outcomes of Azerbaijan's continued progress in the implementation of the 'Joint Declaration on a Mobility Partnership between the Republic of Azerbaijan and the European Union and its Participating Member States'¹, signed on 5 December 2013 in Brussels. The project proposal was developed by the International Centre for Migration Policy Development (ICMPD) in close cooperation with national authorities of Azerbaijan responsible for migration management as well as with EU MS co-implementing partners (listed below), taking into account their joint priorities in the area of migration management.

The project is funded by European Union under the Annual Action Programme *Global Public Goods and Challenges Strategy 2014*. The 36 months MOBILAZE project has started on 15 January 2016 and is being implemented by ICMPD together with 9 co-implementing partner institutions from 7 EU MSs, namely **Bulgaria** (Ministry of Labour and Social Policy), the **Czech Republic** (Ministry of the Interior), **Latvia** (The Office of Citizenship and Migration Affairs of the Ministry of Interior), **Lithuania** (Migration Department under the Ministry of the Interior and the State Border Guard Service), **the Netherlands** (Immigration and Naturalisation Service and Repatriation and Departure Service, both under the Ministry of Security and Justice), **Poland** (Ministry of Interior and Administration) and **Slovakia** (Migration Office, Ministry of Interior).

The main objective of the project is to **support the implementation of the Mobility Partnership between EU and Azerbaijan with specific focus on strengthening the capacity of the government to develop and implement national migration policy.**

The specific objectives are corresponding with the five project components:

- To improve the **monitoring, analytical and forecasting capacities** of the government of Azerbaijan and the **migration policy development** (Component 1);
- To strengthen the **management of labour migration and trade related mobility** to and from Azerbaijan and to increase the public awareness about mobility between the EU and Azerbaijan (Component 2);
- To increase the capabilities of Azerbaijan's authorities in the field of **document security** (Component 3);
- To strengthen the capacity of Azerbaijan's authorities to develop and implement a national **asylum policy in line with EU and international standards** (Component 4);
- To strengthen the capacities of central and regional state and non-state actors in Azerbaijan to implement **sustainable reintegration of returned nationals** (voluntary returnees and readmitted irregular migrants) (Component 5).

The overall purpose of the project is to provide support in the different migration policy areas established in the MP, namely legal migration and mobility, fight against irregular migration, support to asylum policy and maximizing the development impact of migration.

¹ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/mobility-partnerships-visa-facilitation-and-readmission-agreements/docs/azerbaijan_05.12.2013_en.pdf

II. Project summary

Project title	'Support to the Implementation of the Mobility Partnership with Azerbaijan' (MOBILAZE)
Contract number	DCI-MIGR/2015/370-259
Duration of the Action	36 months
Objectives of the Action	<p>Overall Objective: to support the implementation of the Mobility Partnership between the EU and Azerbaijan with a specific focus on strengthening the capacity of the government to develop and implement their national migration policy</p> <p>Specific Objectives:</p> <p>SO 1: To improve the monitoring, analytical and forecasting capacities of the government of Azerbaijan and the migration policy development;</p> <p>SO 2: To strengthen the management of labour migration and trade related mobility to and from Azerbaijan and to increase the public awareness about mobility between the EU and Azerbaijan;</p> <p>SO 3: To increase the capabilities of Azerbaijan's authorities in the field of document security;</p> <p>SO 4: To strengthen the capacity of Azerbaijan's authorities to develop and implement a national asylum policy in line with EU and international standards;</p> <p>SO 5: To strengthen the capacities of central and regional state and non-state actors in Azerbaijan to implement sustainable reintegration of returned nationals (voluntary returnees and readmitted irregular migrants).</p>
Financed by	European Commission
Target group(s)	<ul style="list-style-type: none"> • Azerbaijani institutions responsible for migration management, in particular, the State Migration Service (SMS) (1); • The State Border Service and the State Border Service Academy (2); • The Ministry of Labour and Social Protection (MLSP) (3); • The Ministry of Education (4); • Baku State University (5) and other academia representatives directly participating in the action; • Migrants, including Azerbaijani migrants; • Azerbaijani regional and local stakeholders; • NGO representatives directly participating in the action; • Private sector stakeholders
Final beneficiaries	The final beneficiaries of the Action will be migrants themselves, including Azerbaijani and foreign citizens and stateless persons, as well as the wider Azerbaijani population benefiting from improved capacities of the Azerbaijani government and administration to maximise the development impact of migration and develop and implement migration policies in line with international standards.
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III. Executive summary

This assessment report ‘**Review of legal and labour migration mechanisms in the Republic of Azerbaijan**’ outlines the main legislative provisions regulating legal and labour migration from/to Azerbaijan and offers recommendations for improving this legislation.

The report was drafted within the EU-funded ‘**Support to the Implementation of the Mobility Partnership with Azerbaijan**’ (MOBILAZE) project and its Component 2 on legal/labour migration. It is based on desk research on the existing legislation and practices in Azerbaijan, an expert mission to Baku and meetings with the stakeholders (agenda available in Annex II) and a thorough analysis of both the legislation and the information gathered from the meetings.

The report begins with an overview of the legislative framework of the Republic of Azerbaijan concerning the management of labour mobility and the national labour market, as well as issues related to academic mobility, family reunification and visas (Section 1 of the report). The subsequent section (Section 2) describes the major relevant institutions, including governmental authorities, social partners and international organisations, especially in terms of their competency and responsibilities in the area of legal migration.

Section 3 focuses on labour migration, specifically labour immigration, labour emigration and national labour market regulation. The labour immigration section of the report (subsection 3.1) is dedicated to the procedures on acquisition of residence and work permits, while labour emigration section (subsection 3.2) looks into practices concerning the employment of Azerbaijani citizens abroad.

A special emphasis within the labour migration section is made on the current methodology on establishment of foreign labour demand in the domestic labour market, including recommendations for improvement of the methodology, as well as on how the MOBILAZE project can contribute to further enhancement of the labour migration framework in Azerbaijan (subsection 3.3). The section ends with a synopsis of the current regulation of labour migration quotas (subsection 3.4).

The following sections describe issues concerning academic mobility for researchers and students in the Republic of Azerbaijan (Section 4), family reunification (Section 5) and visa related issues (Section 6), all of which are highly relevant due to the recent conclusion of the EU – Azerbaijan Visa Facilitation Agreement².

Each section includes recommendations for improving current legislation and practices based on the analysis carried out as well as the expressed needs and priorities of the Azerbaijani stakeholders. The report concludes with a description of the general outcomes and observations made while working on the report.

The report has three annexes: Annex I ‘*Overview of the national legislation on legal/labour migration in the Republic of Azerbaijan*’, a starting point for drafting the report; Annex II

² The Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas entered into force in September 2014. Available at: [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0430\(02\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0430(02))

'Expert mission agenda' and Annex III *'Data and figures'*, summarising statistics gathered during the meetings with the Azerbaijan stakeholders.

IV. Methodology

The initial phase in preparing the report was a *desk research* on the legislation of the Republic of Azerbaijan in the area of legal and labour migration. The legal documents that were available only in the Azerbaijani language were translated into English.

Based on the desk research, the ICMPD/MOBILAZE team drafted a briefing note '*Overview of the national legislation on legal/labour migration in the Republic of Azerbaijan*' (Annex I), developed the Terms of Reference (ToRs) for the assignment and invited the project partner institutions from EU MS to nominate their national experts for the assessment mission to Baku and drafting of the report. The aforementioned Overview briefing note and the legislative documents formed the basis for the detailed assessment carried out by the four experts from the Republic of Bulgaria and the Republic of Latvia.

Following their review of the documents in their home countries, the experts travelled to Azerbaijan in the week of 5 September 2016 to conduct meetings with representatives from the Azerbaijani institutions and international organisations operating in the migration field and/or related to it. The meetings with the following counterparts were conducted³:

- The State Migration Service
- The Ministry of Labour and Social Protection of Population
- The Scientific Research and Training Centre at the Ministry of Labour and Social Protection of the Population
- The Ministry of Foreign Affairs
- The Azerbaijan Trade Unions' Confederation
- The National Confederation of Entrepreneurs (Employers') Organisation
- The State Committee on Work with Diaspora
- The International Labour Organisation
- The National NGO 'Hayat'

During the meetings with the stakeholders, the EU MS experts had an opportunity to clarify the issues that appeared during the initial review of the national legislation and to get details on implementation of the legislation in practice. The outcomes of the meetings were analysed and allowed the experts to make the conclusions and to draft the recommendations included in this report.

³ The agenda of the assessment mission is annexed to this report (Annex II).

V. Regulation of legal and labour migration in Azerbaijan

Since regaining its independence in 1991, Azerbaijan has experienced several different trends in both internal and external migration flows. During the challenging transition phase for the economy after independence, many Azerbaijanis opted to leave the country to search for better employment opportunities elsewhere. At the same time, the Nagorno-Karabakh war generated approximately one million refugees and internally displaced persons and was the catalyst for another flow of labour migration (mainly towards Russia and to a lesser degree other CIS countries). However, the 1998 economic crisis in Russia, the major destination country for Azerbaijani migrants, partially redirected migration from Azerbaijan to Western European countries, Canada and the USA.

In the meantime the Azerbaijani economy had been developing rapidly reaching the unprecedented growth in 2007 as a result of oil export boom. This turned Azerbaijan into a migrant receiving country: labour migrants from the neighbouring countries (Turkey and Iran), the Western Balkans and the CIS region came to Azerbaijan to find work in the construction sector.

As oil production is by far the predominant sector of Azerbaijan's economy, the recent decline in oil prices led to a downturn in economic growth. However, Azerbaijan was not the only country hit by the drop in oil prices. Russia's economy, still a major country of destination for the Azerbaijani labour migrants, shrank again in 2014 leading to reducing employment opportunities for the migrants from the CIS.

2015 was another difficult year for the Azerbaijani economy due to a massive devaluation of its local currency. Although the official unemployment rate is still relatively low (around 5%⁴), the economic crisis has made it extremely difficult for Azerbaijanis to find jobs. As a result, there is currently another wave of outflow of labour migrants leaving the country.

The policies and institutional development in Azerbaijan in the area of migration has reflected the major migration trends. After the government's adoption of the State Migration Policy Concept in 2004 and the State Migration Programme for 2006 – 2008 (aimed at improving migration management and coordination among public agencies), the State Migration Service was established in 2007.

Azerbaijan has an exhaustive set of legislation regulating migration. The Migration Code was adopted in 2013. This key legislation in migration area contains the provisions that used to be spread in other normative documents that ceased to exist with the adoption of the Migration Code. In this sense, the adoption of the Migration Code is an important benchmark in the development of Azerbaijan's migration policies.

Currently migration for economic reasons (primarily in search of employment) has become an increasingly significant form of migration from Azerbaijan. The Ministry of Labour and Social Protection of Population confirmed that after the economic crisis, even though the government has created more jobs in the public sector, the national labour market cannot accommodate all working-age population. In this situation it is natural for people to turn to

⁴ According to data from the State Statistical Committee of the Republic of Azerbaijan: <http://www.stat.gov.az/source/labour/indexen.php>

neighbouring countries and further abroad looking for job opportunities. Russia is still the major destination country for the Azerbaijani labour migrants.⁵

The country has specific mechanisms in place to support its own citizens, i.e. through Azerbaijani embassies and consulates abroad, and to use the potential of the labour migrants who come to Azerbaijan for the benefit of the country. For example, labour migrants are hired for specific employing technical jobs in the oil industry when there are no Azerbaijani specialists with the necessary qualifications. However, as migration flows are not static, regular changes and improvements in the existing legal and labour migration regulation will be necessary.

The following sections are dedicated to the legislative and institutional frameworks, as well as concrete areas of legal migration. These sections not only summarise the existing regulations, but provide recommendations in these areas for adapting the practices to fit to new migration situations.

⁵ According to EUROSTAT's residence permit statistics for Azerbaijanis, labour permits are only a small share of all permits issued in the EU-28 amounting only to 7% or around 1,800 (available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics). Russia issued 48,846 labour patents to the citizens of Azerbaijan in 2015 (data provided by the former Federal Migration Service of Russia upon request from ICMPD).

1. Legislative framework

The Constitution of the Republic of Azerbaijan⁶

The Constitution of the Republic of Azerbaijan, representing the supreme law in the country, contains general provisions guaranteeing human rights. However, it does not touch upon legal/labour migration specifically, with the exception of the anti-discrimination provisions concerning those individuals who do not possess Azerbaijani citizenship, as seen below:

- Article 25 guarantees equal rights and liberties for everyone irrespective of their nationality;
- Article 69 provides that foreign citizens and stateless persons staying in Azerbaijan may enjoy the same rights and must fulfil all obligations comparable to citizens of Azerbaijan, if the contrary is not specified by any legislation or an international agreement adopted by Azerbaijan. The rights and liberties of foreign citizens and stateless persons permanently living or temporarily staying in the territory of the Republic of Azerbaijan may be restricted only according to the international legal standards and laws of the Republic of Azerbaijan;
- In addition to the above, according to article 55, foreign citizens and stateless persons may be employed at state institutions in an established order.⁷

The Migration Code of the Republic of Azerbaijan⁸

The Migration Code of the Republic of Azerbaijan (MC) is the main legal act relating to migration in general and legal/labour migration specifically. The document contains the norms for implementing the state migration policy, regulating migration processes and establishing the legal situation of foreigners and stateless persons in the country.

The MC entered into force on 1 August 2013. With its adoption, the following legislative acts were no longer in effect:

- The Law of the Republic of Azerbaijan 'On the legal situation of foreigners and stateless persons' of 13 March, 1996;
- The Law of the Republic of Azerbaijan 'On immigration' of 22 December, 1998;
- The Law of the Republic of Azerbaijan 'On labour migration' of 28 October, 1999;
- The Law of the Republic of Azerbaijan 'On approval of the Regulation on rules of transit of foreigners and stateless persons through the territory of the Republic of Azerbaijan' of 27 December, 2002.

Migration Code of the Republic of Azerbaijan determines norms for implementation of a migration policy of the Republic of Azerbaijan, regulation of migration process and relations emerging in this field, norms related to legal status of foreigners and stateless persons in the Republic of Azerbaijan. The essential provisions of the MC regulate temporary and

⁶Constitution of the Republic of Azerbaijan from 1995. Available at: <http://en.president.az/azerbaijan/constitution>.

⁷ However, it should be noted that other legal acts do not specify any conditions or procedures enabling a foreign citizen to work for a governmental institution. For instance, the Law of the Republic of Azerbaijan 'On the state service' focuses only on the order of employment for positions at state institutions for Azerbaijani citizens.

⁸ Migration Code of the Republic of Azerbaijan from August 2013. Available at: <https://migration.gov.az//images/pdf/2a699048de80e870085a78f6615ff110.pdf>

permanent residency in Azerbaijan, the requirements for a foreigner or stateless person to be granted a work permit and other related areas (covered in the report in detail starting from Section 3).

The MC is a comprehensive legal act consisting of 95 articles clustered in 6 sections.

- **Section I** introduces the main principles of migration legislation in Azerbaijan, relevant definitions, stakeholders, etc.;
- **Section II** deals with the rules of entry and exit into and from Azerbaijan;
- **Section III** establishes the rules for issuing documents certifying arrival, temporary stay, residence and work of foreigners and stateless persons in Azerbaijan;
- **Section IV** is dedicated to labour migration issues;
- **Section V** outlines the procedures related to the legal status of foreigners and stateless persons in Azerbaijan;
- **Section VI** describes the procedure for the expulsion of foreigners and stateless persons from the territory of Azerbaijan.

The Labour Code of the Republic of Azerbaijan⁹

The Labour Code of the Republic of Azerbaijan (LC) addresses all issues related to the social and economic rights of workers, employment relationships, occupational safety and health, collective bargaining and other matters.

According to article 14, a relevant body of an executive authority carries out the state policy on employment relationships. The same executive body performs the state policy on labour migration.

Article 13 of the LC is dedicated to the labour rights of foreigners and stateless persons. This article confirms that:

- Foreigners and stateless persons are entitled to all labour rights identical to the rights of citizens of the Republic of Azerbaijan and have obligations according to these rights, if the laws or international treaties joined by the Republic of Azerbaijan do not prescribe otherwise;
- Granting privileges to foreigners and stateless persons in an employment relationship in comparison to citizens of the Republic of Azerbaijan is inadmissible;
- Employers shall obtain a work permit according to the procedure and conditions established by the MC for each foreigner or stateless person whom they want to employ, except in cases where a work permit is not required (article 64 of the MC);
- A relevant body of executive authority is responsible for ensuring that the rights of migrant workers are guaranteed by their employer; The Labour Code prohibits restricting labour rights of foreigners and stateless persons with the exception of cases prescribed by the law.

The Law of the Republic of Azerbaijan on Citizenship¹⁰

⁹ Labour Code of the Republic of Azerbaijan from 1999. Available at: <http://www.mlspp.gov.az/en/pages/4/125>.

¹⁰ Law of the Republic of Azerbaijan 'On Citizenship' from 1998. Available at: <http://www.refworld.org/pdfid/3ae6b52717.pdf>.

The Law 'On Citizenship' establishes the regulatory framework provided in the Constitution concerning Azerbaijani citizenship and contains provisions on:

- The right to Azerbaijani citizenship;
- The retention of Azerbaijani citizenship for those residing outside the country;
- Non-recognition of a foreign citizenship by a citizen of Azerbaijan;
- Acquisition and restoration of Azerbaijani citizenship;
- Renunciation of Azerbaijani citizenship.

The Law of the Republic of Azerbaijan on State Policy on Azerbaijanis Residing Abroad¹¹

The Law of the Republic of Azerbaijan 'On state policy on Azerbaijanis residing abroad' is one of the main legal instruments defining the Azerbaijani diaspora and regulating the state's relationship with Azerbaijanis residing abroad.

The law determines legal principles that provide an opportunity to set a strategy to enhance the engagement of the Azerbaijani diaspora, as well as defines the competences of the state bodies related to the implementation of this policy.

The Law on Passport of the Republic of Azerbaijan¹²

The Law of the Republic of Azerbaijan 'On passport' guarantees the right of citizens of Azerbaijan to exit and enter the country in accordance with the Universal Declaration of Human Rights and with the relevant international agreements adopted by Azerbaijan. This law also determines the rules and procedures for issuing passports.

The Regulation of the Republic of Azerbaijan on Determination of Quotas for Labour Migration¹³

The 'Regulation on determination of quotas for labour migration' compliments other legislative norms in place relating to labour migration in Azerbaijan.

The document defines the conditions, procedures and rules for setting annual labour migration quota (i.e. limit on the number of foreigners and stateless persons authorised to be employed in Azerbaijan).

In addition to the aforementioned laws and regulations, Azerbaijan is a party to **international conventions** and other bilateral and multilateral agreements relevant for legal and labour migration:

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ratified in 1999);
- Convention on the legal status of migrant workers and members of their families, coming from the CIS participating states (in force since 2010);
- Agreement on cooperation in the field of labour migration and social protection for migrant workers, adopted by the CIS member states (in force since 1996);

¹¹ Law 'On state policy on Azerbaijanis residing abroad' from 2002. Available at: <http://cis-legislation.com/document.fwx?rgn=3661>

¹² Law of the Republic of Azerbaijan 'On passports' from 1998. Available at: <http://e-ganun.az/framework/9008>

¹³ Regulation on Determination of Quotas for Labour Migration from 2013. Available at: <http://e-ganun.az/framework/32546>.

- Protocol on amendments to the Agreement on cooperation in the field of labour migration and social protection for migrant workers, adopted by the CIS member states (signed in 2005);
- Agreement between EU, its Member States and the Republic of Azerbaijan on Partnership and Co-operation (in force since 1999);
- ILO conventions and protocols ratified by Azerbaijan (with the recently adopted Decent Work Country Programme for the period until 2020);
- European Convention on Human Rights (ratified in 2002).

In terms of labour migration, Azerbaijan has concluded a number of **bilateral agreements** with other countries on the social protection of migrant workers. Agreements are primarily signed with the countries of destination for Azerbaijani citizens and the countries of origin for migrants in Azerbaijan.

For instance, in 2004 Azerbaijan signed an agreement with **Ukraine** on the employment and social security of Ukrainian citizens working temporarily in Azerbaijan and Azerbaijani citizens temporarily working in Ukraine. The agreement regulates the recognition of professional experience, social security, pension rights and health insurance. Azerbaijan signed similar bilateral agreements on cooperation in labour migration with **Moldova, Kazakhstan, Kyrgyzstan** and **Belarus**. In addition, there are two agreements between Azerbaijan and **Turkey**: one on general migration matters and the other on social protection. At the time of writing, Azerbaijan was in progress of negotiating an agreement with **Russia** dedicated to social protection issues.

2. Institutional framework

2.1. Agencies at the ministerial level

The laws related to legal and labour migration rarely specify a governmental authority responsible for their implementation; rather, they refer to a general phrasing of a *responsible authority*. On the one hand, this provides flexibility for reorganising and creating new governmental bodies. On the other hand, the absence of a clearly defined responsible institution can create challenges for interpreting and implementing the legislation, in particular. Foreigners and stateless persons who are not familiar with the legal system in Azerbaijan could also misinterpret the legislation.

The competence of the institutions mentioned below were confirmed at the meetings with the Azerbaijani national stakeholders during the expert mission in September 2016, as well as by open sources.

The State Migration Service¹⁴

The State Migration Service (SMS), the main body responsible for migration processes management in Azerbaijan, was created in 2007. The core areas of responsibility of the SMS include:

- Registration of foreigners;
- Issuance of temporary and permanent residence permits for foreign citizens, as well as other documents to foreigners and stateless persons;
- Extension of temporary periods of stay in the country;
- Issuance of work permits;
- Determination of refugee status;
- Procedures related to Azerbaijani citizenship.

Following the Presidential Decree dated 4 March 2009 the SMS received the competences of the unified state authority based on the 'one-stop-shop' principle.

The Ministry of Foreign Affairs¹⁵

The Ministry of Foreign Affairs (MFA) of the Republic of Azerbaijan is responsible for implementation of the country's foreign policy. In terms of migration issues, the key unit of the Ministry is the Consular Department, which is responsible for implementing the visa policy.

The decisions to issue a visa involve verifications by the State Security Service and the State Migration Service; whereas the actual printing of a visa is carried out at the Azerbaijani embassy/consulate in the country of application (visa policy is described in Section 6 of the report).

The Ministry of Labour and Social Protection of Population¹⁶

The Ministry of Labour and Social Protection of Population (MLSP) is the principle governmental authority responsible for managing national labour market. The Department for Employment Policy and Demography specifically works on labour migration issues and State

¹⁴ Official website of the State Migration Service of the Republic of Azerbaijan: <https://migration.gov.az>.

¹⁵ Official website of the Ministry of Foreign Affairs of the Republic of Azerbaijan: <http://www.mfa.gov.az/en>.

¹⁶ Official website of the Ministry of Labour and Social Protection of Population of Azerbaijan: <http://www.mlsp.gov.az>.

Employment Service¹⁷ (which functions in the framework of the Ministry) facilitates professional integration of immigrants.¹⁸

The MLSPP is the main focal point for concluding international bilateral agreements in the area of legal and labour migration.

The Ministry of Education¹⁹

The Ministry of Education is another relevant body for legal migration as it facilitates international cooperation in education, such as academic exchange programmes.

The government of Azerbaijan implemented the State Programme on Education Abroad from 2007 to 2015. Under this programme about 4.000 Azerbaijani students received scholarships to pursue an academic degree abroad (undergraduate and graduate degrees, including PhD programmes). One of the conditions for students' participation in the programme was their return to Azerbaijan after completing their studies. At the time of writing, the second phase of the programme had not been approved by the government, however, according to the Ministry of Education, there are follow-up initiatives foreseen.

The Ministry of Education has the authority to recognise diplomas obtained abroad.

The Commission on Establishment of Labour Quotas

All of the aforementioned governmental institutions²⁰ along with the Ministry of Economy, the State Oil Company of the Republic of Azerbaijan (SOCAR) and representatives of social partner institutions (i.e. the Azerbaijan Trade Unions' Confederation), form the Commission on Establishment of Labour Quotas. The Commission, chaired by the Minister of Labour and Social Protection of Population, submits recommendations for quotas for foreign labour for each calendar year to the Cabinet of Ministers for approval.

The Ministry of Internal Affairs²¹

The Ministry of Internal Affairs (MIA) is responsible for fighting organised crime and trafficking in human beings, among other tasks. With the creation of the SMS in 2007 and later with the introduction of the 'one-stop-shop' in 2009, the registration of foreign citizens and stateless people was transferred to the SMS in 2013.

In terms of legal and labour migration, the SMS, not the Ministry of Internal Affairs, is the primarily implementing agency. The Ministry does, however, own an essential information 'Entry-Exit and Registration' Interagency Automated Information Search System (IAMAS). The system is run by a joint commission that consists of members of other ministries and agencies.

¹⁷ The association of private employment agencies, the National Association for Labour and Career, was established in 2010. However, it only has an advisory role – does not offer employment directly to job-seekers.

¹⁸ Another body incorporated into the structure of the Ministry of Labour and Social Protection of the Population is the State Labour Inspectorate Service. However, at the time of writing, the activities of the Service were put on hold due to various factors including the lack of specialists and the need to reform the Service to increase its efficiency.

¹⁹ Official website of the Ministry of Education of the Republic of Azerbaijan: <http://edu.gov.az/en>.

²⁰ The Ministry of Foreign Affairs, the State Migration Service, the Ministry of Labour and Social Protection of the Population and the Ministry of Education.

²¹ Official website of the Ministry of Internal Affairs of the Republic of Azerbaijan: <http://mia.gov.az/>.

The Ministry of Justice²²

The Ministry of Justice is in charge of drafting and reviewing legislation including migration related legislation. The Ministry was a leading institution in developing the MC adopted in 2013. In addition to developing legislation, the Ministry is responsible for registering marriages between Azerbaijani and foreign nationals.

The State Border Service²³

The State Border Service of the Republic of Azerbaijan (SBS) was founded in 2002 and reports directly to the President. The SBS is responsible for operating IAMAS at the international airports and other border crossing points. The system stores data and biometric information on both Azerbaijani and foreign nationals, and has a several sub-systems on various areas such as national identity cards, passports, visas, residence permits, registration of vehicles, border alert lists, INTERPOL alerts, etc.

The State Committee on Work with Diaspora²⁴

The State Committee on Work with Diaspora was founded in 2002 to support President's Heydar Aliyev initiative to establish better contacts with the growing communities of Azerbaijanis residing abroad. For a number of reasons emigration from Azerbaijan had been growing since 1993.

According to the Law of the Republic of Azerbaijan 'On state policy on Azerbaijanis residing abroad' the following categories of people are considered to be diaspora members:

- Azerbaijani citizens;
- Individuals who were previously citizens of the former Soviet Socialist Republic of Azerbaijan or the Republic of Azerbaijan and their children;
- Those who consider themselves Azerbaijani based on their ethnic, linguistic, cultural or historical ties.

The Committee has eight departments, four of which deal with legal and administrative matters. The remaining four department focus on a region or regions: 1) Russia, Belarus, Ukraine and Moldova; 2) the EU; 3) Central Asia, Turkey and the neighbouring region; 4) the Americas.

The Committee performs the following key tasks:

- Collecting and analysing data on Azerbaijanis residing abroad;
- Organising events gathering diaspora members in Azerbaijan (i.e. the congress that gathers diaspora members from all over the world in Baku every five years) and abroad;
- Providing support to diaspora members through diaspora organisations.

2.2. Social partners

The Azerbaijan Trade Unions' Confederation²⁵

The core responsibility of the Azerbaijan Trade Unions' Confederation is to protect the rights of its members. Migrants in Azerbaijan and Azerbaijani migrants abroad rarely enter or form trade unions, thus the Confederation has limited means to ensure the rights of migrants are.

²² Official website of the Ministry of Justice of the Republic of Azerbaijan: <http://justice.gov.az/eng>.

²³ Official website of the State Border Service of the Republic of Azerbaijan: <http://www.dsx.gov.az/>.

²⁴ Official website of the State Committee on Work with Diaspora: <http://www.diaspora.gov.az/>.

²⁵ Official website of the Azerbaijan Trade Unions' Confederation: <http://ahik.org/>.

There are exceptions, however. When a collective bargaining agreement is concluded between an employer and a group of employees (with migrants possibly belonging to this group), the Confederation has a right to protect the migrant workers.

The Confederation conducts awareness-raising campaigns – also through collaboration with international partners (i.e. ILO) – by developing and distributing information brochures for departing and arriving labour migrants.

The Azerbaijan Trade Unions' Confederation has six regional offices.

The National Confederation of Entrepreneurs (Employers') Organisation²⁶

The National Confederation of Entrepreneurs (Employers') Organisation does not directly deal with matters related to legal/labour migrants. However, one of the forthcoming initiatives of the Confederation is the establishment of an online platform listing the labour force requirements of various employers. This platform is being created with the support of Germany and shall be made available to all employers in the near future. It has the potential to be beneficial to all actors in addressing labour migration needs.

2.3. International organisations

Besides ICMPD, there are a number of international organisations operating in Azerbaijan that support initiatives concerning legal/labour migration, including the International Organisation for Migration (IOM), the German International Cooperation Agency (GIZ) and the United Nations Development Programme (UNDP). The most relevant partner for the government in terms of labour policy reform is the International Labour Organisation (ILO), which has been present in the country since 2002. In September 2016 Azerbaijan and the ILO signed the Decent Work Country Programme (DWCP) for 2016 - 2020.

²⁶ Official website of the National Confederation of Entrepreneurs (Employers') Organisation: <http://ask.org.az/>.

3. Labour migration

3.1. Labour immigration

Labour migration is defined by the MC as the migration of an individual legally from one country to another in order to carry out paid labour activities.²⁷ The concept of 'paid labour activity' in this particular context and throughout the MC reflects the government's intention to separate paid employment from other forms of work (unpaid internships and traineeships, volunteering, etc.).

Similar to the definition of labour migration, the MC also defines a labour migrant as an individual legally migrating from one country to another in order to carry out paid labour activity.²⁸

Section IV of the MC covers all major issues related to legal migration and, more specifically, labour migration:

- Every foreigner who has reached the age of 18 can work in Azerbaijan after obtaining a work permit;
- A work permit is granted to a foreigner or stateless person to carry out a paid labour activity in Azerbaijan;
- If a foreigner or stateless person obtains a work permit to carry out a paid labour activity, a permit for temporary residency is issued;
- It is prohibited to sign a labour contract with a foreigner without obtaining a work permit.

According to the MC, an employer is responsible for obtaining a work permit for a foreign worker. The MC provides detailed information on the documents necessary for a work permit. An employer shall submit the following documents to the SMS:

- An application form as approved by a relevant executive authority;
- A passport copy or any other travel document of a foreigner or stateless person;
- A copy of a document confirming that a foreigner or stateless person has qualifications to carry out the job;
- A reference justifying the necessity of involvement of a foreigner or stateless person in the proposed job place;
- A copy of an appropriate document allowing a foreigner or stateless person to the territory of the Republic of Azerbaijan on the basis of other grounds;
- A copy of a charter of a juridical person and a copy of a state registration certificate approved by a notary office, in case an employer is a juridical person;
- A copy of an identity document and tax registration ID certificate approved by a notary office, in case an employer is a physical person;
- A reference confirming the healthy situation of a foreigner or a stateless person and absence of hazardous diseases contained in the list approved by a relevant executive authority

²⁷ Article 3.0.9 of the MC.

²⁸ Article 3.0.10 of the MC.

The documents shall be submitted either as a hard copy or electronically. The SMS notifies the employer in writing if the Service establishes incapability or any other insufficiency in the submitted documents.

Applications are processed within twenty working days. The SMS forwards the documents (articles 65.0.2, 65.0.3, 62.0.4, 65.0.5 and 65.0.7) to the MLSP for review. Within the next five working days, the MLSP should inform the SMS of its decision regarding the application (also mentioning the impact on the local labour market, if applicable²⁹). If the SMS does not receive a decision within the time allotted by the legislation, the decision of the MLSP is considered to be positive and a work permit is granted (after the employer submits a document confirming payment of a state fee for obtaining work permit³⁰).

Work permits are granted for one year or for a shorter period corresponding to the contract's duration. The duration of the work permit may be extended for the period not exceeding one year each time. For prolongation of the work permit duration, an employer shall submit a written application to the relevant executive authority 30 days prior to expiration of the work permit duration. An employer shall submit the documents prescribed in Articles 65.0.1, 65.0.3, 65.0.4 and 65.0.7 of the Migration Code in order to prolong the duration of the work permit. Prolongation of the work permit duration is carried out in accordance with the rules prescribed in article 67 of the Migration Code. A foreigner or a stateless person shall obtain a new work permit in case of transfer to another position within the same company. In case of re-organization of the juridical person (merger, acquisition, division, separation, transformation) a foreigner or a stateless person shall obtain a new work permit. Duration of a newly obtained work permit of a foreigner or a stateless person in case of transfer to another position within the same company may not exceed the remaining period of the previously obtained work permit. In case of transfer of a foreigner or a stateless person within the same company, documents prescribed in article 65.0.1 and article 65.0.3, in case of re-organization of the juridical person (merger, acquisition, division, separation, transformation), documents prescribed in article 65.0.1 and 65.0.6.1 shall be submitted to the relevant executive authority. No state fee is paid for obtaining a work permit in case of a transfer of a foreigner or a stateless person within the same company.

When the duration of a work permit of a foreigner or stateless person has been expired or revoked prior to expiration, another employer may employ him/her through obtaining a new work permit. It is forbidden for an employer to obtain two work permits for a foreigner or a stateless person at the same time. If an employment contract concluded between an employer and a foreigner or a stateless person is revoked prior to its expiration, an employer shall notify the relevant executive authority within 5 working days. If an employer terminates a contract before the corresponding work permit expires, the latter is considered to be invalid. If there is no other ground for a foreigner to stay in the territory of the Republic of Azerbaijan, a foreigner has ten working days to leave the country according to article 65 of the MC an application for a work permit can be rejected under the following circumstances³¹:

- Not all required documents have been provided;
- The provided documents have been forged or the information is not accurate;

²⁹ In order to protect the national labour market, the MC obliges an employer to justify hiring a foreign citizen.

³⁰ State fees for different types of residence and work permits are available at the SMS website at: <https://migration.gov.az/cat.php?scatid=070&lang=en>.

³¹ Article 66 of the MC.

- An applicant for a work permit is underage;
- The annual quota for employment of foreign citizens has been reached;
- An applicant carries a dangerous infectious disease prescribed in the list established by the relevant executive authority;
- An applicant lacks the qualifications or experience for an intended job;
- An Azerbaijani citizen has all the necessary qualifications to be recruited for the specific position.

If an application has been rejected, an employer can re-apply for a work permit only once the reasons for the refusal are no longer applicable. A re-application is only possible, if the foreign citizen has grounds for staying in Azerbaijan legally during the re-application process.

The State Migration Service shall inspect compliance of employers with the relevant legal acts and norms of the Migration Code regulating the use of foreigners and stateless persons as labour force.

According to the legislation (the MC), there are some categories of foreigners for whom a work permit is not necessary:³²

- Permanent residents;
- Entrepreneurs;
- Diplomats and employees of diplomatic missions and consulates;
- Employees of international organisations;
- Head of organisations established under international agreements and their deputies;
- Employees of relevant executive authorities;
- Employees of the media with accreditation in Azerbaijan;
- Military personnel and specialists invited to serve or work in the armed forces of Azerbaijan;
- Persons dispatched for a business trip no longer than ninety days within a year of activity defined by a relevant executive authority;
- Persons belonging to a professional category established by the relevant executive authority in order to carry out certain works or services in the sectors determined by the relevant executive authority as invited by citizens of the Republic of Azerbaijan or heads of branches and representations of juridical entities and their deputies founded in the Republic of Azerbaijan;
- Seamen;
- Academic staff and lecturers invited to institutions of higher education for delivering lectures;
- Trainers and athletes invited to work in sport clubs, as well as artists registered at a relevant executive authority;
- Persons engaged in a professional religious activity at an officially registered religious institution;
- Heads of branches and representations of foreign legal entities and their deputies founded by one or more foreign citizens in the Republic of Azerbaijan;
- Persons married to a citizen of the Republic of Azerbaijan, provided that the citizen is registered as residing in Azerbaijan;
- Persons who have submitted an application for refugee status, have obtained refugee status or have been granted political asylum;

³² Article 64 of the MC.

- Persons having in their custody citizens of the Republic of Azerbaijan who are underage or disabled persons;
- Persons involved in a labour activity as defined by a relevant executive authority.

The aforementioned foreigners and stateless persons can start working in Azerbaijan even when the annual quota for foreign workers has been reached.

Recommendations

The following recommendations for enhancing labour immigration management could be considered:

1. As already mentioned above, the general recommendation concerning the MC and other legislative documents is to explicitly define an institution responsible for the implementation of legislation, thus refraining from the term of 'relevant executive authority'. Although the legal acts are approved by presidential decrees that identify the main responsible authority implementing the legislation (such as the SMS for the MC), defining an implementing agency directly in the legislation ensures clarity;
2. When a work contract and a work permit ceases to be valid (due to various reasons), a foreign employee has ten days to leave the country. It is recommended to allow a foreign employee to stay in the country (i.e. for three months) to seek another job and extend the duration of their residence and work permits. This measure would support the foreigner's integration in Azerbaijan;
3. The provisions regulating self-employed workers and seconded employees should be included in the MC, as there are cases when an employee has been sent to a branch of a foreign company located in Azerbaijan or has been transferred as part of an intra-corporative agreement. The procedure regulating such employment and applications for a work/residence permit – with possible exemptions – should be introduced;
4. The work of the State Labour Inspectorate Service under the umbrella of the MLSPP has been put on hold. During the experts' meetings in Baku, it was acknowledged by different actors that the Service needs to be reformed in order to carry out its work more effectively. In terms of labour migration, the work of labour Inspectorates is especially important, as monitoring labour conditions helps prevent labour exploitation and trafficking. Therefore, it is essential to reform and relaunch the Service.

3.2. Labour emigration

Azerbaijani citizens have a right to freely enter and exit the country in accordance with the Law of the Republic of Azerbaijan 'On passports'. The right to exit the country can be revoked temporarily in cases stipulated by the MC. All those who exit and enter Azerbaijan are registered through IAMAS.

The right of Azerbaijani citizens above the age of eighteen to engage in a labour activity in a foreign country is stipulated in Chapter 10 (Section IV) of the MC.

Specifically, this means that an Azerbaijani national who receives an official invitation from an individual or a legal person registered abroad or in the Republic of Azerbaijan can leave to work in a foreign country. Azerbaijani citizens working abroad are required to register themselves at a diplomatic representation of Azerbaijan in their country of destination (if there is no such representation in that given country, the documents must be sent by post to the MFA in Baku) within one month following their arrival. In order to register themselves, they must provide a document proving their employment; otherwise, the government cannot guarantee the protection of their rights.

In some cases Azerbaijani citizens receive an offer of employment abroad through intermediary services. Such services can only be provided by legal entities. However, only those agencies that have the governmental authorisation (licenses) can carry out these activities. The decision making on granting the licence shall not exceed five working days (upon payment of a governmental fee). The validity period of the licence can be extended, temporarily suspended or revoked by the MLSPP. The officially recognised intermediaries are not authorised to request a fee for their service from the citizens. All contracts, concluded on behalf of a future migrant worker, shall contain provisions guaranteeing social protection of an Azerbaijani citizen. The control over fulfilment of all necessary requirements is exercised by the governmental institutions.

Although it is not necessarily related to the matters of legal emigration, on this occasion it is suggested to refer to the issues of Azerbaijani citizenship in greater detail. According to the Paragraph 1 of article 18 of the law 'On Citizenship' of the Republic of Azerbaijan the ground for loss of citizenship (taking into account the provisions of the Convention on the reduction of statelessness of 30 August 1961) is that a citizen of the Republic of Azerbaijan voluntarily acquires a citizenship of another state. In case a citizen of the Republic of Azerbaijan has a dual citizenship, his/her citizenship is not recognised with the exception of provisions contained in the international agreements signed by the Republic of Azerbaijan and in cases resolved in accordance with paragraph 32, article 109 of the Constitution of Azerbaijan and if a person fails to notify the Azerbaijani authorities in the due time this person is subject to a criminal liability.

However, it is often difficult for Azerbaijani authorities to prevent Azerbaijani citizens from using loopholes to evade the law. For instance, it happens that citizens not only fail to notify the authorities that they have another citizenship, but use the passport issued by other countries to enter Azerbaijan with a visa (even though they would have a full right to enter Azerbaijan as citizens – without visa). Once caught, the challenge is that the authorities cannot apply a penalty right away (at airports, etc.).

Recommendations

In order to support the labour emigration and trade related mobility of Azerbaijani citizens (temporarily and via legal channels) the following recommendations could be considered:

1. With regard to implementation and existing practices, it is recommended to provide Azerbaijani migrants with short-term courses (or other counselling options) in the countries of destination - at the Azerbaijani embassies and consulates - on the legal procedures in these countries, including rapid information provision in case of important changes of the legislation (for example, via the websites and Facebook pages of the embassies, consulates and diaspora organisations). This service would be beneficial in those countries with a high number of Azerbaijani nationals;
2. Concerning the issue of dual citizenship, for the transition period, it is suggested lifting the ban on dual citizenship for certain countries (where the Azerbaijani diaspora is numerous, for instance). Another measure could be the introduction of administrative, rather than criminal penalties in the legislation. The two measures might encourage citizens to inform the authorities of their dual citizenship.

3.3. Determination of the demand for foreign labour in the domestic labour market

The development system of an overarching system to determine and anticipate the need for specific skills in Azerbaijan is still ongoing. Although some mechanisms of foreign labour demand determination are already provided in the national legislation, some gaps still exist between normative basis and practice. The lack of transparency in procedures, the unavailability of reliable migration and labour market data, and lack of coordination between the main stakeholders all create challenges.

The Republic of Azerbaijan has a restrictive and predominantly demand driven labour migration system based on a thorough labour market test complemented at the quota system. The immigration of workers from third countries is a response to the existence of unmet labour shortages identified through these two tools. The labour market test and the quota system together form the current framework for determining foreign labour needs in Azerbaijan (see Scheme 1 below).

Scheme 1: Foreign labour demand identification mechanisms (according to current legislation)



Although some elements to determine demand for foreign labour are set in the national legislation, the operational mechanisms and procedures to implement them are unclear.

The labour market test is one of the instruments that enable the government acquiring information about the local labour market. The procedure confirms (or repudiates) the lack of local labour that could be employed in a given position. This means that a foreigner may be granted a work permit for a specific employer only if none of the local job seekers meets the job requirements.

Although the MC does not directly touch upon the labour market test, the article 61.2 stipulates that the principal conditions for carrying out paid labour activity by foreigners and stateless persons are:

- The availability of a vacancy that cannot be filled by a citizens of the Republic of Azerbaijan who has the professional skills or qualifications required for such job;

- The inability of employment services to meet employer's need for manpower at the cost of local labour resources, which is in line with the essence and principles of the procedure.

There are no generally accepted principles of how the labour market test should be carried out, but it is clear that the procedure should be more transparent, predictable and understandable. Currently the normative basis does not formulate clearly how the labour market test is/or should be conducted. There is no clear distribution of responsibilities/obligations/tasks between the employer/potential foreign employees and the SMS. Neither the procedure of the labour market test nor the time frames are defined clearly.

The quota system sets the maximum limit of foreign workforce that can be employed in the Azerbaijan labour market. Azerbaijan has introduced an institutional framework for analysing and forecasting the local labour market needs for foreign labour to determine migration quotas. According to the MC (article 51.5), the issuance of a work permit is conducted within the framework of labour migration quota. The MC also stipulates that the migration quota is established taking into account the situation on the domestic labour market, demand for manpower, existence of vacancies which are not applied by the citizens of the Republic of Azerbaijan with professional skills and qualifications relevant for requirements of the job, ability of employment service bodies to meet requirements of employers for manpower at the cost of local labour resources, as well as necessity of attracting highly qualified foreign specialists (article 51.6).

The main principles how the proposals for the labour migration quota are prepared are set in the Regulation of the Cabinet of Ministers dated on 14 March, 2016 Nr. 124 'Rules of establishment of labour migration quota'. The regulation also states that the proposals for the quota for next year should be established in accordance with the forecasts of demand for foreign labour. The Commission on Establishment of Labour Quotas for Foreigners in the Republic of Azerbaijan is responsible for the forecast preparation. The Commission consists of representatives of the Ministry of Labour and Social Protection of Population, the Ministry of Economy, The Ministry of Foreign Affairs, the Ministry of Education, the State Migration Service and SOCAR. To prepare the forecast for foreign labour demand the involved institutions submit to the Commission reports and data about the country's macroeconomic and labour market developments, information about local labour reserves, number of foreigners which have got work permissions or plan to extend them, previously approved quota fulfilment as well as employers projection-reports on demand for foreign work force. The information is summarised/analysed by the MLSP.

The key information source for forecasting foreign labour demand and establishing the labour migration quotas is the *Projection-report on demand for foreign work force for next year*, which employers who intend to employ foreign employees submit to the SMS once per year. The report gives outlook on foreign labour demand for the next year by sectors and occupations. Generally about 500 employers submit these reports to the SMS. This might be conditioned by a large numbers on illegal employment in Azerbaijan. According to the National Confederation of Entrepreneurs (Employers') Organisation of the Republic of Azerbaijan about 60% of the population either works without proper employment contracts or under improperly concluded agreements (also confirmed at the expert meeting with the ATUC). This in turn raises doubts whether the gathered information show the whole picture about the demand for foreign labour.

Generally, the 'Rules of establishment of labour migration quota' define responsibilities of the institutions involved in the forecasting process of foreign labour demand and quota establishment. However, a major problem is the lack of coordination and information exchange between the main actors: the process seems to be fragmented and not always transparent and understandable including also for the involved parties themselves.

In addition, there is a lack of information about the methodology on creation of the above mentioned reports and data analysis for producing the forecasts. Most of the documents and forecasts are determined for the internal use and aren't available for public. In general, this undermines the confidence in the process.

The MLSPP acknowledges that there are challenges related to the process of quota establishment: it is important to improve the forecasting methodology. One of the priorities is to develop the methodology that would give also an outlook for labour market needs (including for foreign labour) in medium and long term perspectives.

The need for medium/long-term projections also supports the relative short time between producing useful – detailed and robust – analyses/forecasts of foreign labour demand and incorporating the knowledge into migration policy/migration quotas: medium to long-term projection can cater the time frame, however are mostly not detailed enough and need to be enriched by other – qualitative type – information, which takes time and again exacerbates the time frame.

Another key issue is the low credibility of official statistics. Most of the institutions involved into legal/labour migration management stress challenges related to access to reliable labour market and migration statistics. This in turn poses significant obstacles to get an accurate picture of the situation in labour market as well as to develop reliable forecasts.

There are two critically important mechanisms for effective forward-looking labour market policy (including management of labour migration) and skills development:

1. Skills forecasting and labour market information systems (for the early identification of skills needs);
2. Social dialogue to coordinate the process that ensures that the policy is in line with labour market needs and the national development strategy.

Both of these mechanisms can be improved in Azerbaijan. Only recently Azerbaijan has established a platform for trilateral social dialogue. The cooperation between social partners (the Azerbaijan Trade Unions Confederation and the National Confederation of Entrepreneurs (Employers') Organisation of the Republic of Azerbaijan) and the government is still weak.

One of the critical issues is the lack of research capacities: most of the studies on labour market are carried out by either international organization or research centres. The research activities are based more on a holistic approach than on systemic arrangements. There are no or very few local researchers/collaborative teams/networks that have access to various information sources and use diverse tools and methods for analysing skill needs.

Recommendations

One can explore the following measures in several areas to improve the labour market analysis and the determination of foreign labour demand:

1. Improving the procedure of the labour market test:
 - Exact definition of the labour market test procedure should be provided;
 - Clear conditions, tasks and requirements to employer or employee conducting the labour market test should be set;
 - The requirement to register a vacancy in the State employment service (SES) should be introduced and the capacity of the SES strengthened;
 - Mechanisms for the labour market test validation should be established;
 - The exact time frame for the labour market test should be set.

2. Improving the process of foreign labour demand determination within the framework of the labour migration quota establishment:
 - Internal information exchange and coordination between involved institutions should be facilitated;
 - Cooperation mechanisms between social partners and the Commission on Establishment of Labour Quotas for Foreigners should be established by ensuring a wider representation of social partners in the Commission;
 - The forecast for foreign workforce prepared by the Commission should be made publically available or at least made available for social partners (to facilitate more open discussion on short term labour market needs).

3. Improving the quality of labour market and migration data:
 - The capacity of the State Statistical Committee of the Republic of Azerbaijan should be strengthened to improve the quality/accessibility of the labour market data. The labour force survey methodology as well as data collection process/fieldwork should be improved;
 - The data accumulation and analytical capacities of the SES should be strengthened to provide wider statistics about the registered unemployed and vacancies;
 - The migration flow accounting and estimation process should be improved through the analysis of various administrative registers or mirrors statistic.

4. Introducing a system for anticipation of future labour market needs:
 - Institutional/organisational framework and appropriate tools/methodology for medium/long-term labour market forecasting should be developed;
 - The labour market analysis and research capacities should be strengthened: within the government bodies responsible for labour market/employment policy implementation and supporting independent research initiatives/studies on labour market issues;
 - Representatives of the social partners/sectors/industries should be more actively engaged in the process of labour market forecasting/discussions about future labour market needs. Formal cooperation mechanisms between social partners and policy makers should be established;
 - The role of employers in the identification of labour market needs should be increased, for example, by facilitating more discussions and forums on this issue together with the responsible authorities.

3.4. General conclusions on labour migration quota

Since restoration of independency, the Republic of Azerbaijan has been to a large extent a country of origin for migrants. However, the strong economic growth during the previous decade has made it increasingly attractive as a country of destination for migrant workers. According the official statistics since 2008, the migration flows have reversed and the net migration rate has become positive and the unemployment rate for the last 3 years has remained at the low 5% level³³. Despite the economic slowdown in the recent years the pressure on the labour market is still an important driver for economic migrants.

In 2010, Azerbaijan introduced a migration quota system in order to regulate the incoming labour migration flow. The quota system defines the maximum number of foreign nationals who may be employed in the country in the course of the year on the basis of a work permit. The labour migration quota is regulated by two documents the Migration Code and the 'Rules of establishment of labour migration quota'.

The MC stipulates that the labour migration quota is applied for the purposes of efficient usage of local labour resources and increasing the effectiveness of activities in the sphere of regulation of labour migration processes. The goal of the quota system is to protect the domestic labour market and increase the utilization of local labour reserves³⁴.

Although the labour migration quota system is a strong tool for regulating the labour migration flow, it has also some side effects. The system may hinder Azerbaijan's ability to attract labour resources necessary for the economic growth. For example, this might be the case for the high-skilled labour within the knowledge-intensive industries that are of high importance to accelerate economic restructuring. The current quota system limits labour market's ability to adjust/respond to the increasing labour demand and increases rigidities on the labour market³⁵. To avoid this, there shouldn't be any discrepancies between quotas and the actual labour market needs for foreign labour. However, the current methodological and capacity problems within the labour demand identification mechanism make it difficult to estimate the right quota level – the quotas may be set lower than actual labour market needs for migrant workers.

For example, the IOM and the American Chamber of Commerce point out that amount of quota is insufficient and that it interferes with business interests of employers in Azerbaijan who are not able to hire the manpower they actually need.³⁶ The SMS also confirms that usually the annual quota is filled.

Furthermore, the current labour migration quota system does not take into account the expansion demand for foreign labour. The yearly quota includes not only the work permits for new employees, but also for those who need their work permits to be reissued or extended. At the same time, since 2010 the labour migration quota hasn't significantly increased: in 2010 the allocated quota was 9,870, but in 2016 – 9,480. It should be noted that the work permits are issued for the maximum of one year and the validity can be extended for not longer than one year.

³³ According to the data of the State Statistical Committee of the Republic of Azerbaijan: <http://www.stat.gov.az/source/labour/indexen.php>.

³⁴ Article 1.3 of Regulation on Determination of Quotas for Labour Migration.

³⁵ Please, see the subsection 3.3 for more details

³⁶ The Twinning project "Support to the professional development of the staff of the State Migration Service of the Republic of Azerbaijan", Gap Analysis Report, 2013

Another challenge is the lack of transparency regarding the quotas establishment process. The process of determining the figures and the procedures introduced to ensure that the quotas number is respected have room for improvement. However, especially if the level is below the actual requirements or if processing procedures lead to extensive application backlogs that creates more difficulties.

To make the labour migration system more responsive to labour markets needs the numerical ceiling for migrant workers should be removed and replaced with a demand-driven migration component. There are many advantages of a demand-driven labour migration system. The most obvious advantage is its simplicity. The system is the same for all forms of labour migration and for all sectors and occupations. The system also provides great flexibility for employers: companies can quickly respond to all forms of labour demand.

The demand-driven system should comprise legal channels where migration of workers would be directly linked to employers' demand and initiatives. However, to maintain the governmental capabilities to manage the labour migration flows, the specific safeguards should be established. One of those could be a shortage occupations list through which foreign specialists could be attracted with preferential conditions to meet labour shortages in specific occupations. If an occupation is on the shortage occupations list, it means that it is officially recognised as the one where there are insufficient resident workers to fill the available jobs. Similar to making proposals for labour migration quotas also the recommendations for occupations to be included in the shortage occupations list could be prepared, however on more limited number of occupations.

To employ a migrant worker under occupation that is not on the shortage occupations list, the employer has to apply the labour market test in order to determine whether Azerbaijan has no available worker before a third-country national is employed. Additional within the labour market test for the vacant occupations where employers plan to hire foreign employee a minimum wage levels should be set.

Recommendations

1. To make the labour migration system more flexible and responsive to labour market needs the current quota system could be replaced with more complex and demand-driven labour migration mechanisms based on the labour market test procedure;
2. Providing the more robust and comprehensive labour market test:
 - The functions for the formal labour market test coordination and validation should be assigned to the SES;
 - An employer has to apply the labour market test before a foreign national is employed. For these purpose vacancies advertising options should be provided – a vacancy advertisement could be placed on the SES web-page or similar place accessible for wider public;
 - The labour market test should imply obligation for an employer to advertise a vacancy for a certain time period (i.e. one month or fifteen days);
 - A mandatory minimum wage level should be applied for a vacant post in the situation when an employer plans to hire a foreign national. A minimum wage level should be set by the government and it might be differentiated by occupations or industries (for example, in the amount of two average salaries of local employee in the specific occupation or industry).

3. Introducing a shortage occupations list to address skilled labour shortage:
- The shortage occupations list should include occupations where foreign specialists could be attracted with preferential conditions, for example, not applicable for the labour market test or would apply for an accelerated labour market test procedure;
 - To identify which occupations should be included in the shortage occupations list appropriate mechanisms for identification of shortage occupations should be established. It is crucial to ensure that the shortage occupations list would contain only highly skilled occupations and occupations which are of critical importance to meet the Azerbaijan's medium and long term economic goals;
 - To prepare recommendations for occupations to be included in the shortage occupations list a special commission should be established which would include representatives of the government, employers and trade unions. These functions could be taken over by the Commission on Establishment of Labour Quotas for Foreigners.

4. Academic mobility (researchers and students)

The legislation of the Republic of Azerbaijan guarantees the entry of students, academic staff, lecturers, scientists and researchers to the country. The entry and residence of students in the Republic of Azerbaijan is regulated by the MC. Article 45.0.9. stipulates that a temporary residence permit is issued to a foreigner in case he/she is enrolled in a full-time course at institutions of the higher education and technical schools and in case they get education at the secondary schools in the Republic of Azerbaijan.

According to the MC regulation for education and science purpose an entry visa of ordinary type is needed. Article 27 of the MC stipulates that a scientific or an education visa is issued to foreigners and stateless persons entering the Republic of Azerbaijan to carry out scientific activities, to attend relevant conferences, seminars and other scientific events, to get education by enrolling in an educational institution or to get retrained based on an application of governmental authorities acting in this sphere, scientific research institutions, educational institutions registered by the state. The period of stay in the country within a scientific or an education visa should not exceed 90 days (the MC does not provide the information the time frame – 180 or 360 days – for this 90 days limit).

For an application for a visa for the purpose of education or science, the following documents are required:³⁷

- Document certifying that a person has sufficient funds to pay for his/her expenses related to education and residence in the Republic of Azerbaijan (when a foreigner or a stateless person in the Republic of Azerbaijan is not financed by the country of citizenship or country of permanent residence);
- An application form (sample approved by the relevant executive authority);
- Passport or other border crossing document and copies of their main pages;
- Two coloured photos sized 3 x 4 cm in compliance with the biometric identification requirements;
- A copy of a medical insurance certificate (in case inviting party does not undertake medical services);
- A receipt certifying payment of the state fee for visa issuance (fees vary from country to country);
- An invitation (and a copy of certificate on state registration - for non-governmental organizations) and a document certifying reasons of an invitation.

When it comes to work permits, the legislation foresees the following provisions that allow for concessions:

- According to article 64.0.10. of the MC academic staff and lecturers invited to institutions of higher education for delivering lectures are not required to obtain a work permit;
- According to article 1.7. of the Regulation of the Cabinet of Ministers dated on 14 March, 2016 Nr. 124 'Rules of establishment of labour migration quota' those foreigners that are not required to get a work permission under the MC of the Republic of Azerbaijan, may be involved in labour activity on the paid basis within beyond the established quota.

³⁷ Article 27 of the MC.

According to the legislation of the Republic of Azerbaijan foreign students are not entitled to work while staying in the country.

On the governmental level Azerbaijan has been supporting its citizens to pursue an academic degree abroad. One of the past initiatives was the State Programme on Education Abroad (SPEA). Through this programme the government allocated funds and scholarships to the Azerbaijani students applying to foreign universities. One of the conditions for the participation in the SPSA was that after graduation a student returned back to Azerbaijan. At the time of the report drafting, the second phase of the programme hasn't been yet approved by the government.

If an Azerbaijani student receives a degree abroad, upon returning to Azerbaijan he/she needs to approach the Ministry of Education to complete the nostrification process and get the diploma recognized in Azerbaijan. Although private business employers do not necessarily require their employees to provide a proof that a foreign diploma has been legalised in Azerbaijan, if a person wants to enter public service, the nostrification is absolutely obligatory.

Recommendations

1. Since the current legislation of the Republic of Azerbaijan does not provide that a foreign student enrolled in an academic programme in the country is allowed to work, it is advised to consider granting students the right to work (at least after completion first year of studies and limited time: for example, ten hours per week for undergraduate students and more hours to the graduate students). The EU has a similar practice, as confirmed by the Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.
2. According to the 'Rules of establishment of labour migration quota' the Ministry of Education shall submit the data on number of citizens, who are going to complete their education by professions and specialization at higher, specialized secondary and preliminary vocational educational institutions next year to the Commission on Establishment of Labour Quotas for Foreigners not later than August 1 of a current year. Taking into account that while foreign students study in the Republic of Azerbaijan they need to learn the Azerbaijani language, they have connection to the Azerbaijani society and in case they would have also a possibility to work at least limited time, it all may provide that a foreigner gets the Azerbaijani diploma, has the right work, experience and professional skills, including language skills, that are necessary to be hired in the Republic of Azerbaijan. Therefore, it is advisable for the Ministry of Education to submit not only the data on number of citizens, which are going to complete their education by professions and specialization at higher, specialized secondary and preliminary vocational educational institutions next year, but also data on number of foreigners which are going to complete their education in the Republic of Azerbaijan and might have the knowledge and professional skills that would correspond to labour demand;
3. It would be also advisable - as a part of ensuring a well-qualified workforce for the future - to grant foreign graduates a possibility to remain legally in the territory of the

Republic of Azerbaijan for some period (for instance three or six months) with the intention to identify work opportunities or to set up a business. Researchers should also have that possibility upon completion of their research activity. It can be that an authorisation issued for the purpose of identifying work opportunities or setting up a business does not grant any automatic right to access the labour market or to set up a business. On the EU level, this practice is foreseen by the 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.

4. Considering that conducting a research may take up to a several years, it would be advisable - in order to preserve family unity and to enable mobility - to allow researcher's family members to be entitled for a residence permit in Azerbaijan. The EU practice on this matter is regulated by the Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research in order to preserve family unity and to enable mobility, family members should be able to join the researcher.
5. In order to support the Azerbaijani nationals departing to study abroad, it is advised to establish a proper information tool (on-line or printed and distributed through different institutions and organisation, for instance, consular sections abroad and/or diaspora organisations) on the procedure needed to be performed upon return to Azerbaijan on legalisation of educational certificates and diplomas;
6. To enhance cooperation in the sphere of education and to benefit Azerbaijani citizens, it is suggested concluding agreements with other countries concerning the mutual recognition of diplomas, certificates and other evidence of formal education.

5. Family reunification

According to the MC family members of a foreigner or a stateless person are defined as his/her spouse, children under the age of 18, children who are 18 or older, but unable to work, and parents financially supported by him/her³⁸. The Azerbaijani legislation does not automatically recognise the foreigner's children older than 18 years as his/her family member.

The MC also defines a notion of a 'close relative'. Close relatives are fathers, mothers, spouses, children, siblings and their children, grandparents and grand-grandparents, grandchildren and the in-laws³⁹.

A family member has the right to reside in the country temporarily or permanently. A person temporarily residing in the Republic of Azerbaijan is a foreigner or stateless person obtained a permit for temporary residence in a way envisaged by the MC and a person permanently residing in the Republic of Azerbaijan is a foreigner or stateless person obtained a permit for a permanent residency.

The MC does not establish the family reunion and family reunification procedures in details, which makes it impossible to establish the rules and regulations related to this procedure.

To receive a permanent residence the foreigner has to present a document certifying existence of necessary funds to meet his/her minimal needs and of members of his/her family (that are in the Republic of Azerbaijan). If he/she does not possess enough funds the SMS rejects an application for a permanent residency.

The foreigners or stateless persons that are married to citizens of the Republic of Azerbaijan obtain temporary or permanent residence permits in accordance with relevant provisions of the Migration Code. According to article 64 of the Migration Code, these persons do not need to receive a work permit for engagement in work or any other paid activity in the territory of the country.

With the exception of cases prescribed in article 43 of the MC, temporary stay of foreigners and stateless persons in the Republic of Azerbaijan may be extended in following cases: (1) in case of a need for an urgent medical treatment of a foreigner or a stateless person in the territory of Republic of Azerbaijan; (2) in case of a serious illness or death of a close relative of a foreigner or a stateless person in the territory of the Republic of Azerbaijan, (3) in case of submission of a well-grounded application by the inviting part/organization on behalf of a foreigner or a stateless person who did not manage to complete the work or service for what he/she visited the Republic of Azerbaijan, (4) in accordance with the article 19.4 of the MC (in case of a natural disaster preventing travel of a vehicle or other mean of transport; disorder of a vehicle or any of its part, or in case of a need for a repair as a result of a transport accident (upon submission of a reference document); in case of serious illness of persons transiting through the territory of the Republic of Azerbaijan and when the passage of a person may create a risk for the health of a person.

Recommendations

The general recommendation to the MC would be:

³⁸ Article 3.0.11 of the MC.

³⁹ Article 3.0.12 of the MC.

1. To clearly define family reunification procedures;
2. To consider expanding a notion of a 'close relative' (i.e. providing for cases when a child is not the joint child of the sponsor and his or her spouse).

6. Visa policy

The MC describes the types of visas, the issuance procedure, the information to be indicated on a visa application form, as well as the documents required for a visa application.

According to the MC a foreigner can receive an ordinary, transit or electron visa based on the below⁴⁰:

- Foreigners and stateless persons can submit a visa application to the diplomatic representations and consulates of the Republic of Azerbaijan in their country of residence or in a third country in person or via their representatives as a hardcopy or electronically;
- In cases defined by the relevant executive authority, foreigners and stateless persons can obtain a visa in the territory of the Republic of Azerbaijan. According to the Decree of the President of the Republic of Azerbaijan No. 326 dated September 13, 2010, upon their arrival in the Republic of Azerbaijan foreign citizens and stateless persons can get the entry visas at the visa sections of the international airports in Azerbaijan in several cases:
 - For instance, if a person visiting the Republic of Azerbaijan has the official invitation of the President of the Republic of Azerbaijan, the Prime-Minister, the Chairman of the Milli Majlis (the National Assembly), the Head of the Administration of the President, the Head of the Supreme Majlis of the Nakhichevan Autonomous Republic;
 - Persons visiting the Republic of Azerbaijan due to the death of a family member, on the basis of the relevant confirmation documents.

The MC defines the period of stay in the country with a valid visa as follows⁴¹:

- Up to 30 days if a visa is issued for tourism;
- Up to 60 days if a visa is issued for attending cultural and sports events;
- Up to 90 days if a visa is issued for the scientific, educational, work related, humanitarian, medical and private purposes;
- Up to 180 days if a visa is issued for an official and business visit.

The legislation of the Republic of Azerbaijan does not have any provisions that determine in what period of time a foreigner's stay in the Republic of Azerbaijan shall not exceed 30, 60, 90 or 180 days.

The Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas (further – Visa Facilitation Agreement) stipulates that the total period of stay either in territory of the EU MS or in territory of the Republic of Azerbaijan shall not exceed **90 days per period of 180 days**. The EU practice is described in article 11 of the Convention implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders⁴² that

⁴⁰ Article 24 of the MC.

⁴¹ Articles 25, 26, 27, 28 and 33 of the MC.

⁴² Convention implementing the Schengen Agreement of 14 June 1985 between the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. *Official Journal L 239, 22/09/2000 P. 0019 – 0062*.

says that a short-stay visa may be 'a travel visa valid for one or more entries, provided that neither the length of a continuous visit nor the total length of successive visits exceeds three months in any half-year, from the date of first entry'.

According to article 7 point 2 of the Visa Facilitation Agreement, the period of time for taking a decision on a visa application may be extended up to 30 calendar days in individual cases, notably when further scrutiny check of the application is needed.

According to article 16.1. and 37.10. of the MC, a visa application can be rejected and a previously issued visa can be cancelled in the following cases:

- When it is required for protection of national security or public order, rights and legal interests of the citizens of the Republic of Azerbaijan and other persons;
- When there is information that a person has committed a crime against peace and humanity, war crimes, an act of terrorism, financing of terrorism or s/he is a member of a transnational organized criminal group;
- When a person is imprisoned for committing a crime against citizens of the Republic of Azerbaijan or interests of the Republic of Azerbaijan, if his/her imprisonment has not been served or revoked in a way defined in the law;
- When a person has been expelled from the Republic of Azerbaijan previously, if the restriction period to his/her entry to the country has not ended;
- If a person is considered undesirable in the Republic of Azerbaijan;
- If a person violated declared purposes of arrival in the country during his/her previous stay in the Republic of Azerbaijan;
- If a person provides falsified information about himself/herself or on the purpose of his/her travel, when submitting an application for entry to the Republic of Azerbaijan;
- If a person has been involved in any administrative liabilities for violating the migration legislation twice or more in the last three years.

The above mentioned grounds for visa refusals and revocations are also grounds for an entry ban to the Republic of Azerbaijan. The MC, however, lacks specific grounds on directly visa refusals (i.e. when a person provides incomplete documentation or the documents are missing, a purpose of travel is not clear and a person cannot provide a valid explanation and/or cannot prove that he/she has accommodation to stay in the territory of Azerbaijan).

To illustrate above mentioned, while preparing the report, the Latvian Office of Citizenship and Migration Affairs requested the information on visa applications of Azerbaijani citizens to Latvia. According to the Latvian statistics on rejected visa applications, 262 refusals were registered in 2015 in total:

- 68 due to doubts on the authenticity of supporting documents, reliability of statements made by an applicant or his/her intention to leave the territory of the Member States prior to visa's expiration date;
- 65 due to doubts on reliability of the provided information on a purpose of travel or the conditions were not met;
- 49 due to the absence of justification of an intended purpose of stay and residence.

In first half of 2016, 54 refusals were registered and 52 of them were done due to the fact that the Azerbaijani citizen did not provide the justification of the intended purpose of stay and residence. The refusal of visa in majority of cases mainly depends on personal

responsibility – whether all necessary documents and information is provided to the competent diplomatic representations and consulates of the EU MS or not.

According to article 37.11. of the MC, foreigners and stateless persons can file a complaint to courts in an administrative order and/or in compliance with the legislation of the Republic of Azerbaijan against bureaucracy in processing of application or against the rejection of the application. The MC does not provide that a foreigner can appeal against a visa cancellation. Submitting a complaint on the rejection of processing visa application is a rather complicated procedure as foreigner shall file a complaint to a court in an administrative order.

The MC does not contain any provisions for visa extension, for instance due to the *force majeure* or humanitarian reasons preventing foreigner from leaving the territory of the Republic of Azerbaijan. On the EU level such provision is laid down in Paragraph 1 and 2 article 33 of the Visa Code that says that the period of validity and/or the duration of stay of an issued visa shall be extended where the competent authority of a Member State considers that a visa holder has provided proof of force majeure or humanitarian reasons preventing him from leaving the territory of the Member States before the expiry of the period of validity of or the duration of stay authorised by the visa. The period of validity and/or the duration of stay of an issued visa may be extended if the visa holder provides proof of serious personal reasons justifying the extension of the period of validity or the duration of stay.

Recommendations

1. To stipulate that a short-stay visa may be a travel visa valid for one or more entries, provided that neither the length of a continuous visit nor the total length of successive visits exceeds three months during half a year from the date of first entry;
2. To establish in the MC that the report to a Joint Committee of experts is submitted about every breach of the Visa Facilitation Agreement. The Ministry of Foreign Affairs acknowledges that sometimes there are cases when a visa application review takes longer (i.e. up to three to six months) and this might be considered an infringement of the Visa Facilitation Agreement;
3. To consider a possibility to specify (expand) in the legislation the grounds for a refusal or revocation of visas;
4. Considering the provision of Paragraph 1 article 21 of the EC Regulation No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, it is advised to inform Azerbaijani citizens about necessity of providing all sufficient information and documents for applying for a visa in order to achieve a lower visa refusal number;
5. To stipulate that a foreigner can appeal against a visa cancellation considering a possibility that a foreigner can submit an appeal against visa refusal to the diplomatic representations and consulates of the Republic of Azerbaijan in their country of residence;
6. To consider a possibility to include to the legislation the regulation about visa extension.

VI. Conclusions

The main observation made while preparing of this report is that Azerbaijan has established a comprehensive legislative system to manage labour migration. The country has travelled a long way since the creation of the State Migration Service almost ten years ago and the adoption of the Migration Code in 2013. Nevertheless, some aspects of the legislation can benefit from specification and timely improvements.

One of the key conclusions that can be drawn is that there is **the lack of coordination among the main governmental actors involved in migration management**. Although this is not a legislative challenge, it hinders the proper implementation of the legislation in place to a great extent. The SMS and the MLSPP acknowledge regrettably that this is not always the case that the two institutions have a chance to coordinate their actions and exchange information properly. A possible solution to tackle this challenge would be establishing an official coordination body that would bring all actors relevant to the field of legal migration. This body could exist in a form of working group meetings or a council with all state institutions involved, with social partners and international organisations (that have running projects in the area of legal migration) as observers.

A general suggestion related to the legal and labour migration legislation would be **to assign in the legislation a governmental authority responsible for the implementation**. Although the absence of a clear indication of what authority is responsible for the implementation (just a notion of *an executive relevant authority* that is seen in the most normative documents) gives the government some flexibility, on the other hand it can be deceiving and create misunderstanding both for the executive authorities themselves and those individuals and legal entities affected by the legislation.

The central element of labour migration is acquisition of work permits. The Azerbaijani legislation contains clear indication of what requirements one needs to fulfil to obtain a work permit. Substantially one can consider **loosening the procedure for a work permit acquisition** by not limiting the duration of a work permit to a maximum of one year (it could be tied to the actual duration of a work contract), reducing a list of document necessary for a renewal of a work permit and allowing a foreigner to stay in the country after expiry of his/her contract to look for a another job. This would not only create favourable condition for labour migrants, but also lift a burden from the authorities.

Another key element in the area of labour migration is the procedure of establishing of foreign labour quota. The suggestion would be to **make the procedure for defining the number of labour quotas more transparent and actual needs/demand driven**. The first step towards improvement of the existing system could be the development of a mechanism that would allow the MLSPP to make a suggestion to the Commission on Establishment of Labour Quotas for Foreigners taking into account the actual needs of the labour market based on the priorities defined by the government to boost economic development. Another angle to regulation of labour migration would be a **further research on the efficiency of the quota system as a whole** for proper regulation of the economically driven migration.

In order to support student mobility of its own citizens, the **adoption of the second phase of the State Programme on Education Abroad** would be crucial. If the requirement to come back to Azerbaijan after successful completion of studies remains, the youngsters that have also gathered international experience would certainly contribute to Azerbaijan's prosperity. Having said that, it is also important to **make sure that foreign graduates of the**

Azerbaijani universities have a chance to stay in the country after the graduation at least for some time to look for a job and write down this in the legislation. One of the conditions could be, for instance, graduation with honours: that would allow Azerbaijan to pick-up the brightest heads.

The issues of family reunifications are reflected in the legislations not prominently. It is recommended **to give family members of legal migrants more rights, including enabling them to work.**

All main provisions on visa practices have been enshrined in the legislation. What seems to be a challenge is a **practical implementation of the policies, when it comes to the EU – Azerbaijan Visa Facilitation Agreement:** granting a visa that is valid for five years is still not possible technically for Azerbaijan. However, there are implementation challenges both on the side of the EU and Azerbaijan. To improve the functioning of the Visa Facilitation Agreement in the future, it is recommended **to follow up on every complaint submitted by a citizen of Azerbaijan and to report it to the EU partners.**

The concluding recommendation relates to defining a general direction of Azerbaijan's migration policy. **A new national strategy on migration or a concept of development of migration policy would certainly benefit the country.** The migration landscape has changed significantly over the years and a list of priorities in migration policies officially defined by the government would build an action plan for all the actors. The priorities on legal migration and trade related mobility could build a significant part of the new strategy. With the State Migration Service of Azerbaijan celebrating its tenth anniversary in 2017, the timing for adoption of a consolidated policy document is striking.

The observations and recommendations provided in this report don't claim to be overwhelming and take into account all spheres of legal migration in Azerbaijan. However, the authors believe that if further researched and developed the provided recommendations can improve the legislation and contribute to creating favourable conditions both to the Azerbaijani authorities and to the migrants themselves.

On the operation level of the MOBILAZE project, the review creates a road map for further development of the Component 2 on legal/labour migration. Moreover, the meetings with the Azerbaijani stakeholders held during the expert mission in September 2016 brought more clarity on what aspects of managing legal migration are of highest priority to the government. This allows fine-tuning the upcoming projects' activities within the Component 2 and beyond in the most possible effective way.

VII. References

Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas. Available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0430\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0430(02)&from=EN)

Agreement on cooperation in the field of labour migration and social protection for migrant workers, adopted by the CIS Member States. Available at: <http://cis.minsk.by/page.php?id=7742>

CIS Convention on the legal status of migrant workers and members of their families, coming from the CIS participating states. Available at: <http://www.e-cis.info/page.php?id=20831>

Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. Official Journal L 239, 22/09/2000 P. 0019 – 0062.

Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:En:PDF>

The Constitution of the Republic of Azerbaijan. Available at: <http://en.president.az/azerbaijan/constitution>

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>

The Labour Code of the Republic of Azerbaijan. Available at: <http://www.mlsp.gov.az/en/pages/4/125>

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The Law of the Republic of Azerbaijan 'On the state service'. Available at: http://www.commission-anticorruption.gov.az/upload/file/CivilServiceLaw%20_eng_.pdf

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The Law of the Republic of Azerbaijan 'On Citizenship'. Available at: <http://www.refworld.org/pdfid/3ae6b52717.pdf>

The Law of the Republic of Azerbaijan 'On State Policy Concerning Citizens Residing Abroad'. Available at: <http://cis-legislation.com/document.fwx?rgn=3661>

Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part. Available at: http://eeas.europa.eu/archives/delegations/azerbaijan/documents/eu_azerbaijan/eu-az_pca_full_text.pdf

Protocol on amendments to the Agreement on cooperation in the field of labour migration and social protection for migrant workers, adopted by the CIS 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 (Visa Code). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ajl0028>

The Regulation of the Republic of Azerbaijan 'On Determination of Quotas for Labour Migration'

The Twinning project “Support to the professional development of the staff of the State Migration Service of the Republic of Azerbaijan”, Gap Analysis Report, 2013

Joint Declaration on a Mobility Partnership between the Republic of Azerbaijan and the European Union and its Participating Member States. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/mobility-partnerships-visa-facilitation-and-readmission-agreements/docs/azerbaijan_05.12.2013_en.pdf

For the purpose of this report some of the legal provisions of the Republic of Azerbaijan available only in the Azerbaijani language were translated into English. The unofficial translation can be provided to interested parties for research purposes upon request sent to mobilaze@icmpd.org

Annex I

Overview of the national legislation on legal/labour migration in the Republic of Azerbaijan

This summary provides an overview of the national legislation regulating legal and labour migration in the Republic of Azerbaijan. The legislative documents mentioned below should provide a basis for the analysis conducted within the Component 2 **Legal Migration from and to Azerbaijan** of the MOBILAZE project on gaps, needs and priorities with regard to national legislation in these areas. The recommendations made as a result of the thorough analysis (of both national legislation and international practices) will be a) included in the Baseline report; b) provide framework for the activities under the Component 2.

Legal & labour migration legislation

The system of migration-related legislation in the Republic of Azerbaijan includes **the Constitution**, national laws and by-laws, and international treaties concluded.

The Migration Code, adopted on 1 August 2013 (last amended on 1 February 2016), comprises the main regulations in the areas of migration, including legal migration. With the adoption of the Migration Code, the following laws in the area of legal migration ceased to be in force:

- Law of the Republic of Azerbaijan ‘On legal status of foreigners and stateless persons’ of 13 March, 1996;
- Law of the Republic of Azerbaijan ‘On immigration’ of 22 December, 1998;
- Law of the Republic of Azerbaijan ‘On labour migration’ of 28 October, 1999;
- Law of the Republic of Azerbaijan ‘On approval of the Regulation on rules of transit of foreigners and stateless persons through the territory of the Republic of Azerbaijan’ of 27 December, 2002.

In addition to the Constitution and the Migration Code, the following legislation is relevant for the area of legal migration:

- **Law ‘On Passports’** of 14 June, 1994 (amended in 2015);
- **Law ‘On Citizenship’** of 30 September, 1998 (amended in 2015);
- **Law ‘On State Policy Concerning Citizens Residing Abroad’** of 27 December, 2002.

When it comes to **labour migration** there is a set of legislation regulating this area of migration specifically, with the main legislation being **the Labour Code** (adopted in 1999). The labour migration is also regulated by relevant decrees and orders of the President of the Republic of Azerbaijan, decisions of the Cabinet of Ministers, as well as international conventions (to which Azerbaijan is a party), other bilateral and multilateral agreements. In particular, **the Regulation ‘On Determination of Quotas for Labour Migration’** stipulates labour migration quotas. The number of quotas is decided upon by the Cabinet of Ministers.

The labour mobility of Azerbaijani citizens also falls under the provisions [of the Visa Facilitation Agreement with the EU](#)⁴³, as well as the general principles of [the Mobility Partnership](#).⁴⁴

The Republic of Azerbaijan is a party to the following international conventions relevant to the area of labour migration:

- [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#) (ratified in 1999);
- [CIS Convention on the legal status of migrant workers and members of their families, coming from the CIS participating states](#) (in force since 2010);
- [Agreement on cooperation in the field of labour migration and social protection for migrant workers, adopted by the CIS Member States](#) (in force since 1996);
- Protocol on amendments to the Agreement on cooperation in the field of labour migration and social protection for migrant workers, adopted by the CIS Member States (signed in 2005);
- [Agreement between EU, its member states and the Republic of Azerbaijan on Partnership and Co-operation](#);
- [ILO Conventions and Protocols ratified by Azerbaijan](#).

⁴³ Visas are required by all foreign and stateless nationals except for [9 countries covered by bilateral agreements](#). Moreover, currently a visa-free regime is allowed unilaterally for citizens of the Republic of Azerbaijan, holders of ordinary passports for a specified period of time by following countries – Iran for 15 days and Turkey for 1 month. In accordance with current bilateral inter-governmental agreements a visa-free regime is applied reciprocally to citizens of the Republic of Azerbaijan and citizens of [states as confirmed by the Ministry of Foreign Affairs](#).

⁴⁴ There are also certain bilateral agreements in the area of legal and labour migration that need to be taken into account. In 2004 Republic of Azerbaijan signed an agreement with Ukraine on the Employment and Social Security of the Ukrainian citizens working temporarily in the territory of Azerbaijan and Azeri citizens temporarily working in Ukraine. The agreement regulates recognition of professional experience, social security, pension rights and health insurance. Azerbaijan signed similar bilateral agreements on cooperation in the field of migration with Moldova, Kazakhstan, Kyrgyzstan, and Belarus. In addition, the Republic of Azerbaijan signed an agreement on mutual activities of workforce between the governments of Azerbaijan and Turkey.

Annex II

Expert mission agenda

5 – 9 September 2016

Baku, Azerbaijan

Time	Meetings
Day 1 – Monday- 5 September	
	Arrival to Baku
Day 2 – Tuesday – 6 September	
09:30 – 11:00	Coordination meeting at ICMPD Baku office
11:30 – 12:30	Azerbaijan Trade Unions’ Confederation
14:00 – 16:00	Ministry of Labour and Social Protection of the Population <ul style="list-style-type: none"> - <i>Employment Policy and Demography Department</i> - <i>International Relations Department</i>
16:30 – 17:30	‘Hyatt’ Humanitarian Support Public Union
17:00 – 18:00	Scientific-Research and Training Centre at the Ministry of Labour and Social Protection of the Population <i>Labour Market and Employment Department</i>
Day 3 – Wednesday - 7 September	
10:00 – 11:00	Ministry of Foreign Affairs <i>Visa Section, Consular Department</i>
11:30 – 12:30	The National Confederation of Entrepreneurs (Employers’) Organisation <i>International Relations and Business Development Department</i>
15:00 – 17:00	State Migration Service <ul style="list-style-type: none"> - <i>Migration Policy and Legal Provision Head Department</i> - <i>Migration Processes Regulation Head Department</i> - <i>International Cooperation Department</i>
Day 4 – Thursday – 8 September	
09:30 – 10:30	State Committee on Work with Diaspora <ul style="list-style-type: none"> - <i>Legal Provision, General and HR Department</i> - <i>Department on European Affairs</i>
11:30 - 12:00	Ministry of Education <ul style="list-style-type: none"> - <i>International Cooperation Department</i> - <i>General Education Department</i>

	– <i>Nostrification and Accreditation Department</i>
14:00 – 15:00	International Labour Organisation
15:00 – 17:00	Debriefing meeting at ICMPD Baku office
Day 5 – Friday – 9 September	
	Departure from Baku

Annex III

Data and figures

The below data and figures were obtained at the meetings with the Azerbaijani stakeholders during the expert mission to Baku in September 2016. The information is not intended to be used or quoted for research and analysis purposes (the official statistics is available at the State Statistical Committee of the Republic of Azerbaijan), but is provided to give a general understanding on the scope of migration (and legal migration) related phenomena in the country.

Population

The Republic of Azerbaijan has been experiencing the largest birth rate at about 1.5 %. The population has been growing and has reached almost 9.5 million people. The gender balance is as follows: 100 newborn girls to 114 newborn boys. The average life duration is 75 years.

Labour market

The Azerbaijan's working populations is 5 million people. Annually about 100.000 people enter the labour market. The official overall unemployment rate is 5 %. For the young people between 15 and 29 years the unemployment rate is 9 %. Some national and international actors believe that the official statistics is understated. For instance, those who have their own farm households are not included in the unemployment statistics.

The minimum wage is AZN 105 and the average wage for 2015 was AZN 466. However, it has to be taken into account that the national currency underwent several stages of devaluation due to the collapse of oil revenues in 2015.

Diaspora

The State Committee on Work with Diaspora estimates that there are 50 million ethnic Azerbaijanis worldwide. 36 million live in the territory of modern Azerbaijan and the neighbouring countries in the region. The most numerous Azerbaijani is in the Russian Federation, whereas Ukraine has 500 thousand Azerbaijanis, Belarus – 10 thousand, Moldova – 7 thousand, and Georgia – 500 thousand.

Assessment Report

Review of legal and labour migration mechanisms in the Republic of Azerbaijan

International Centre for Migration Policy Development, 2016

This report is one of the first outcomes of the EU-funded 'Support to the Implementation of the Mobility Partnership with Azerbaijan' (MOBILAZE) project. The report aims to streamline the activities that will be carried out under the Component 2 on legal and labour migration. To this end, it analyses the existing provisions of the national legislation of the Republic of Azerbaijan in the area of legal and labour migration and the expressed needs of the Azerbaijani stakeholders in their cooperation with the EU Member States.

The report is based on the desk research and initial review of the aforementioned legislation, information gathered during the expert mission to Baku and meetings with the national stakeholders, as well as subsequent analysis.

