

National Guidelines on Ethical Recruitment in Albania for Labour Recruiters, Employers and Migrants

Acronyms

CoMD	Decision of the Council of Ministers
CDPRI	Commissioner for the Data Protection and the Right to Information
CPD	Commissioner for the Protection against Discrimination
ILO	International Labour Organization
IOM	International Organization for Migration
MfEFA	Ministry of Europe and Foreign Affairs
MoFE	Ministry of Finance and Economy
MoHSP	Ministry of Health and Social Protection
MoI	Ministry of Interior
NAES	National Agency of Employment and Skills (formerly known as NES – National Employment Service)
NAPM	National Action Plan on Migration
NBC	National Business Centre
NSM	National Strategy on Migration
SLI	State Labour Inspectorate
PA	People’s Advocate
PEA	Private Employment Agencies

The National Strategy on Migration (NSM)¹ of the Republic of Albania requires the adoption of a set of ethical recruitment standards for migrant workers. The following set of professional and ethical recruitment standards is prepared on the bases of the Albanian legal framework in force, the ILO Convention No. 181 "On private employment agencies", IOM’s IRIS Standard (2019)², and the 2020 Montreal Recommendations on Recruitment.³

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<https://albania.iom.int/sites/default/files/publication/THE%20NATIONAL%20STRATEGY.pdf>

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<https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/IRIS%20Standard%20Report%20.pdf>

³ <https://publications.iom.int/system/files/pdf/the-montreal-recommendation.pdf>

The following set of standards aims to serve as a guide for Private Employment Agencies (businesses that offer mediation service in the labour market); Private Business (business that have employed migrant workers through PEA) and Albanian emigrants employed abroad and foreign migrant workers employed in Albania using PEA. It follows the structure of the 2020 Montreal Recommendations on Recruitment, presenting relevant Albanian legal norms and international principles as guidance on definitions, mechanisms and obligations of labour recruiters and employers to protect the rights of migrant workers.

OBJECTIVE 1 Protecting migrant workers

Albanian Legislation

1. Migrant workers' rights are stipulated in a robust range of legal framework, including the Labour Code, Law 'On foreigners', Criminal Code, Law on the Protection from discrimination, Law on data protection, or even dedicated sublegal acts. Article 18/5 of the **Labour Code** mandates equal protection to migrant workers insofar as *"the basic working conditions and employment of the employees of the Agency, during the time when they work in the host enterprise, are at least those that apply in case the employees would have been recruited directly by the host enterprise for the same job."*
2. Furthermore, the **Law No. 79/2021 "On Aliens"** explicitly guarantees working rights to agency workers by requiring that the Agency for Employment and Skills approve recruitment as long as *"foreign workers have not been recruited to work under less favourable working conditions than the Albanian workers in the same position. From the review of information concerning wages, working hours and the other working conditions, it results that they comply with the Albanian labour laws"*.
3. Temporary Employment Agencies are prohibited to substitute employers that are on strike with temporary recruited persons. In line with Art. 18/1 of the **Labour Code** *"it is prohibited the use of temporary work of the Agency in certain cases, sectors or certain categories of employees, if the general interest is affected, in particular related with the protection of the temporary staff of the Agency, health and safety conditions at work, or when this is required to ensure the proper functioning of the labor market or to prevent abuses."*
4. The **CoMD no. 101, dated 23.2.2018 "On the manner of organization and functioning of private employment agencies"** requires the following:
 - a. PEAs ensure equal treatment for all jobseekers
 - b. jobseeker mediated by the agency enjoys the right to collective bargaining, the minimum wage, working time and conditions, social security benefits, protection of property and health at work
 - c. PEAs notify the jobseeker of the working conditions and employment, before starting the employment relationship
 - d. PEAs staff have the necessary qualification and training for the services they provide

International Principles

1. **Equality of treatment** for all categories of workers, including migrant workers, is enshrined in Objective 6 of the **Global Compact** for Safe, Orderly and Regular Migration, which calls for facilitating *"fair and ethical recruitment"*.
2. Article 25.3 of the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** does not allow for any *"derogation from this principle [of equal treatment] by reason of any irregularity in their stay or employment"*.
3. **ILO Convention 181** in Article 11 defines the essential elements of a **mediation contract**, which should provide for equality of rights for agency workers: (a) *freedom of association*; (b) *collective bargaining*; (c) *minimum wages*; (d) *working time and other working conditions*; (e) *statutory social security benefits*; (f) *access to training*; (g) *occupational safety and health*; (h) *compensation in case of occupational accidents or diseases*; (i)

compensation in case of insolvency and protection of workers claims; (j) maternity protection and benefits, and parental protection and benefits.

OBJECTIVE 2 Recruitment fees

Albanian Legislation

1. **CoMD nr. 286/2018** "On temporary employment", point 2. provides that "*temporary employee does not pay a tariff to the PEA*". Under Art. 18/3 of the Labour Code, a contract between the agency, which "*provides the obligation of the employee to pay to the Agency a fee for hiring in the receiving agency or establishing a legal relation with the receiving enterprise*" shall be rendered invalid.
2. **CoMD 101/2018** on PEAs, point 13, c) states: "*If it is proved that PEA requested a tariff from the employee for the offered services, directly or indirectly, or accepted payments, goods, or services from the employee, the ministry responsible for the employment, notifies the Business Center for the revocation of the license.*"

International Principles

1. **Convention No. 181** on Private Employment Agencies states in **Art. 7.1.** "*Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers*".
2. In line with Art. 6.3 of **EU's Directive on Temporary Agency Work** (2008/104/EC), the ban applies to fees from workers "*in exchange for arranging for them to be recruited by a user undertaking, or for concluding a contract of employment or an employment relationship with a user undertaking after carrying out an assignment in that undertaking*".

OBJECTIVE 3 Registration and licensing

Albanian Legislation

1. A **Decision of the Council of Ministers no. 101**, dated 23.2.2018 "On the manner of organization and functioning of private employment agencies", stipulates that private employment mediation activity will be exercised only by licensed private employment agencies (PEAs). Such agencies must be provided with the license of category X.2.A, "Mediation in the labour market", pursuant to **law no. 10081, dated 23.2.2009, "On licenses, authorizations and permits in the Republic of Albania"**. The Law determines the criteria to be met and documentation to be submitted by a private entity to exercise such type of activity in the territory of Albania.
2. As per the **National Migration Strategy 2019-2022**, adopted with the Council of Minister's Decision no. 400, dated 19.6.2019 "On the adoption of the National Strategy on Migration and the Action Plan 2019-2022", MoFE is responsible on developing ethical recruitment guidelines for private employment agencies based on applicable legislation, including the preparation of reporting formats to be used regularly by recruitment agencies, and publishing this act cat on the website of the MoFE, NES, Labour Inspectorate, NBC as well as the availability at the employment offices.

International Principles

1. **Montreal Recommendations** mandate that *all actors that engage in recruitment, whether individuals or enterprises, should be registered either through licensing or a registration scheme.*
2. Moreover, the Recommendations state that the *Governments should require recruiters to comply with a globally recognized **ethical code of conduct** for recruitment consistent with*

established international guidance, such as the IRIS Standard and ILO General Principles and Operational Guidelines for Fair Recruitment.

3. In accordance with guidance 13.6 of the **ILO Multilateral Framework on Labour Migration**, a national government “*shall consider establishing a system of protection, such as insurance or bond, to be paid by the recruitment agencies, to compensate migrant workers for any monetary losses resulting from the failure of a recruitment or contracting agency to meet its obligations to them*”.

OBJECTIVES 4 & 5 Administration, inspections and enforcement; and Ratings, rewards and rankings

Albanian Legislation

1. Item 18 of **CoMD no. 101, dated 23.2.2018** “On the manner of organization and functioning of private employment agencies”, requires that State Inspectorate of Labour monitors periodically the activity of PEAs.
2. In line with item 13 of the above Decision, whenever PEAs or PEAs partners, shareholders or members of its governing bodies are found to have: been convicted of criminal offenses committed intentionally; violated the principle of equality, discriminating against the jobseeker; requested fees from the jobseeker offering services to minors, the ministry responsible for employment issues notifies the National Business Centre for the revocation of the license.

International Principles

1. **Montreal Recommendations** encourage the governments to *consider, develop and implement meaningful, globally recognized and evidence-based ratings, rankings and reward schemes for labour recruiters targeted at incentivizing compliance with applicable national laws and policies and ethical recruitment standards.*
2. IOM has established a *voluntary, multi-stakeholder initiative to promote ethical recruitment*: the International Recruitment Integrity System (**IRIS**). As part of certification, labour recruiters undergo an online self-assessment and, if it is positive, submit an application. This is followed by a desk review of recruiters’ practice through reference to documents (policies, advertisements or contracts), which need to be submitted upon request. Next, a dedicated auditor performs an “on site” verification of how the policies are implemented by carrying out interviews with the recruiter, corporate partners and works.

OBJECTIVE 6. Access to grievance mechanisms and dispute resolution

Albanian Legislation

1. **Law no. 9668, dated 18.12, 2006 "On the Emigration of Albanian Citizens for Employment Motives"**: Article 38 stipulates that private employment agencies have the obligation to take care of the persons for whom they have been employment intermediaries, to ensure that the employment contract is respected, the rights are respected and that immigrants are not subject to discrimination. Article 39 provides for the obligation to notify persons who have mediated for employment abroad and if they find that their rights are not respected.
2. As per the Albanian legislation, starting from the Constitution, Labour Code, as well as the Law on Aliens of 2021., access to court as a human right is guaranteed to all, foreign

employees included. **Labour Code** regulates the right to appeal to court in several articles, including for the cases of discrimination (art. 9), presentation of corruption cases (art. 10/1), definition employment contract (Art. 12); termination of the contract (art. 146).

International Principles

1. Art. 10 of the **ILO's Private Employment Agencies Convention (No. 181)** demands that governments should establish "*adequate machinery and procedures (...) for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies*".
2. **Montreal Recommendations** specify that workers ought to access such mechanisms "*without discrimination and fear of retaliation*" and that they should be able to claim "*compensation from their recruiter in countries of origin in cases when they have been exploited by their employer in the country of destination*".

OBJECTIVE 7. Bilateral, regional and multilateral mechanisms

Albanian Legislation

1. **Albanian Constitution**, (Articles 116, 121, 122) proclaims that ratified international agreements are part of the national legislation and have priority versus the national legislation.
2. **Law no. 23/2015 'For the foreign service of Republic of Albania'** foresees that consular posts are required to protect the interests and rights of the Republic of Albania, of its citizens or legal entities, which are located in its consular district, within the limits allowed by international law in the host country (article. 19)
3. The Ministry for Europe and Foreign Affairs is responsible for the development of **standard guidelines for the consular service** for interviewing migrant workers to identify cases of exploitation or discrimination when they are proven.

International Principles

1. ILO's 2022 **guidelines on bilateral labour migration agreements (BLMAs)** recommend that the documents indicate the government institutions responsible for regulating and monitoring labour recruiters. Furthermore, they ought to define the roles and responsibilities of public employment services in both Parties to the agreement as well as the registered/licenced private employment agencies, putting in place transparent selection and placement procedures.
2. Strengthening consular cooperation, protection and assistance to migrant workers at all stages of migration is foreseen in Objective 14 of the **Global Compact for Migration**. "Migrant workers exploited in the process of recruitment" are among the categories of migrants to be assisted by consular services, which ought to be provided training "on human rights-based, gender- responsive and child-sensitive actions".

OBJECTIVES 8 & 9. Migrant welfare and assistance, and Maintaining the momentum on regulation

Albanian Legislation

1. To protect citizens from trafficking, **Law no. 9668, dated 18.12, 2006 "on the Emigration of Albanian Citizens for Employment Motives"** prohibits the propaganda and use of false information by any entity, according to the provisions of the Criminal Code, when the above activity constitutes a criminal offense.
2. According to Article 8 of the above Law, the responsible state authorities or private employment agencies must provide Albanian citizens wishing to emigrate, including returned emigrants, with the right to free information and counselling in the field of vocational training, mediation services for employment, social protection, organization in unions,

opportunities for housing, education and social security, as well as knowledge of living and working conditions in the host country, through media, brochures.

3. Measure C.1.3. of the **National Strategy on Migration** foresees the adoption and implementation of a regulatory and institutional framework for labour migration, and more concretely:
 - a. the development of ethical recruitment guidelines for private employment agencies based on applicable legislation (including the preparation of reporting formats to be used regularly by employment agencies), as well as
 - b. its publication on the website of the Ministry of Finance and Economy, National Labour Inspectorate, National Agency on Labour and Professional Formation, and at the employment offices.

International Principles

1. According to Article 10 of the **Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975**, ILO member states have committed themselves to introduce and enforce national policies, guaranteeing equality of opportunity and treatment of migrant workers. Under Article 9 of the Convention, irregular migrant workers *“enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits”*.
2. National authorities need to take measures to *“ensure that the workers recruited by private employment agencies (...) are not denied the right to freedom of association and the right to bargain collectively”*. (Art. 4 of the **Convention No. 181 on Private Employment Agencies**)
3. As noted in **ILO’s General principles and operational guidelines for fair recruitment** under Principle 9: *“Governments should work to ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely, as appropriate, and are aware of and observe human rights obligations when fulfilling their respective mandates”*.
4. **Montreal Recommendations** oblige governments to *“raise awareness of the need for fair recruitment in both the public and private sectors and ensure workers have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment”*.
5. A 2020 IOM’s guidance for labour recruiters defines **due diligence** as *“an ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts”*. In line with the definition, PEAs are instructed to implement the process in the following four stages: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed. **General Principle B of IRIS** introduces due diligence as a requirement for labour recruiters. Ongoing due diligence should be carried out with regard to migrant workers’ employers as well as recruitment business partners and subcontractors to verify that they *“are abiding by applicable laws and labour standards”*.