

Comparative Study on the Employment of Foreign Nationals in France, Slovenia, Bosnia and Herzegovina (BiH) and Montenegro

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This comparative study is being carried out on behalf of the International Organization for Migration (IOM) in Belgrade/Serbia under the MDG Achievement Funded Programme National Efforts for the Promotion of Youth Employment and Management of Migration. It is based on the legislation of the countries surveyed in so far as they were available to the international legal consultant carrying out the survey. The laws reviewed include: the Employment and Work of Aliens Act (Slovenia), the Law on Employment of Foreign Nationals (BiH 1999) and the Law on Employment and Work of Foreign Citizens (Montenegro 2009). The study also surveyed legislation and practice in France on the basis of the French Labour Code as well as the French Law on the Entry and Residence of Foreign Nationals and the Right to Asylum. However, as an English translation of the French legislation was not available, the author has had to rely on secondary literature for the assessment of the French provisions regarding the employment of foreign nationals.

1. PERMISSION TO WORK WITHOUT WORK PERMIT

In some of the countries surveyed for this study permission to work without the need for a work permit is granted to certain foreign nationals. In the EU Member States, EU/EEA nationals (with the exception of Romanian and Bulgarian nationals) are automatically exempt. Furthermore, the following additional categories of foreign nationals are exempt from the requirement to obtain a work permit prior to engaging in paid employment in some of the countries surveyed:

1.1. Foreign nationals admitted on grounds which are not work related

This includes those who reside in FRANCE on the basis of a permanent residence permit issued by the French authorities and those who reside in FRANCE on the basis of a temporary residence permit issued by the French authorities due to family and personal ties to the country.

This reflects the provisions of Article 14 of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification which provides that: “(1) The sponsor's family members shall be entitled, in the same way as the sponsor, to: (a) access to education; (b) access to employment and self-employed activity; (c) access to vocational guidance, initial and further training and retraining. (2) Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity. (3) Member States may restrict access to

employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies”.

This further reflects the provisions of Article 11(1)(a) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents which requires that “long-term residents shall enjoy equal treatment with nationals as regards access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration”.

Similar exemptions for legally resident foreign nationals do not form part of the SLOVENIAN, MONTENEGRIN or BiH legislation with the exception of the MONTENEGRIN law which provides that refugees are exempt from the work permit requirement on condition that they either have been residing in Montenegro for minimum of three years or are married to a Montenegrin citizen or have a child who holds Montenegrin citizenship.

1.2. Foreign National Students

In FRANCE, full-time students who are registered with a school or university recognised by the French authorities are allowed to work 964 hours per year. Any hours exceeding this limit will be subject to the normal work permit requirements.

This reflects the provisions of Article 17 of 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, which requires that “(1) Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity. The situation of the labour market in the host Member State may be taken into account. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation. (2) Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 10 hours per week, or the equivalent in days or months per year. (3) Access to economic activities for the first year of residence may be restricted by the host Member State. (4) Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation, in advance or otherwise”.

1.3. Diplomats and Domestic Staff of Diplomats

Representatives of foreign governments or international bodies on assignment in FRANCE, and their domestic staff, are not required to hold a work permit to carry out their assignment.

Similarly, SLOVENIAN law provides that foreign nationals who, in accordance with international law, are entitled to privileges and immunity and are in possession of a special document issued by or registered with the Ministry responsible for foreign affairs (Article 3(2) of the Employment and Work of Aliens Act).

A similar exemption can also be found in the law of MONTENEGRO which exempts foreign nationals who are members of the diplomatic, that is, consular missions in the territory of Montenegro as well as foreign nationals enjoying immunity on the basis of the international law from the application of the Law on Employment and Work of Foreign Citizens.

1.4. Trainees

Certain trainees are also exempt from the work permit requirement in FRANCE. This includes (1.) those who participate in a course provided within a business established in FRANCE where this training programme is organised in their home country and (2.) those who are employees of a business located abroad and who are placed in a recognised French training organisation. Following their arrival in FRANCE, trainees are issued with a temporary residence permit. Trainees who are not coming to FRANCE on the basis of a tri-partite agreement involving themselves, their employer or training organization abroad and a French host business or recognised training organisation, will be subject to the work permit requirement. Furthermore, in order to be exempt from the work permit requirement, trainees have to demonstrate that they have adequate financial resources for the duration of their training.

Trainees exempt from the work permit requirement in SLOVENIA are only those who, on the basis of a contract concluded with the Ministry responsible for defence or the ministry responsible for internal affairs, provide services for the needs of national defence and security, and persons who are undertaking advanced professional training in these areas.

Similarly, those exempt in MONTENEGRO include civil and military officers of the Governments of other countries coming to Montenegro on the basis of the agreement on cooperation with the Government.

2. WORK PERMITS

There are different means by which government policy-makers, often in consultation with other interested stakeholders such as employers, workers' organisations and regional authorities, can assess the need for the employment of foreign nationals. Generally, this is done either by way of a quota system (SLOVENIA and MONTENEGRO) or through the operation of a labour market needs test (FRANCE and BiH).

2.1. Quota Systems

When policy-makers and administrators consider whether to adopt a quota system as an instrument of labour migration management, they need to take into account the following advantages and disadvantages that have been identified concerning the utility of such a system. For example, quotas provide a clear reference framework on the admission of foreign labour for politicians, administrators, employers, civil society and the general public. Furthermore, quotas can serve important political objectives regarding the need for migrant labour and to calm public concerns regarding the influx of migrants. However, the disadvantages of introducing a quota system probably outweigh the advantages as they involve a high level of regulation and bureaucracy and are therefore frequently criticized by employers for their lack of flexibility and inability to respond to fluctuating labour demands. Often, by the time quotas were adopted for certain employment sectors, labour market conditions in those sectors had already changed. Consequently, quotas frequently remain unfilled. Moreover, even if jobs are readily available in quota-specified sectors, it is often difficult to match potential migrant workers with employers, thus creating ripe conditions for unscrupulous foreign labour intermediaries or agents who take advantage of vulnerable workers.

In SLOVENIA, quotas are set in accordance with migration policy decisions and taking into account the conditions and fluctuations in the labour market. The Government determines quota of work permits on an annual basis. The annual quota is proposed to the Government by the Minister responsible for labour, in agreement with other Ministers responsible for individual areas of activity, and subject to prior acquisition of opinions from the competent chambers and representative trade unions at the national level (Article 5 of the Slovenian Employment and Work of Aliens Act).

Under Slovenian law, the quota of work permits to be issued on an annual basis must be divided into the following categories of permits: (1.) the employment of foreign nationals in SLOVENIA, (2.) foreign nationals seconded to SLOVENIA, (3.) training and advanced training, (4.) seasonal labour, and (5.) individual services provided by foreign nationals.

Additionally, the overall annual quota of work permits issued to foreign nationals must not exceed five per cent of the active working population.

Similarly, in MONTENEGRO, the Government determines on an annual basis the number of work permits for foreign nationals in accordance with the Government's migration policy, the state of the labour market as well as labour market trends. The quota is determined by the Government based on proposals from the Ministry responsible for labor affairs following consultations with ministries responsible for specific areas of activity for which quotas are set as well as the submission of an opinion by the Social Council.

Montenegrin law further provides that the employment of the following categories of foreign nationals shall be exempt from the application of the quota system: (1.) foreign nationals in possession of a 'personal work permit', (2.) foreign nationals employed in Montenegro on the basis of an international agreement, based on reciprocity, (3.) foreign

nationals engaged in literacy teaching to persons belonging to minority nations and other minority national communities, (4.) professional sportsperson or sports worker, engaged in MONTENEGRO on the basis of a specific contract, (5.) foreign national family members of Montenegrin citizens (spouse and children up to 21 years of age), (6.) family members of foreign nationals who hold a permanent residence in MONTENEGRO (spouse and children up to 21 years of age); (7.) family members of refugees (spouse and children up to 21 years of age), (8.) foreign national entrepreneurs, (9.) foreign national trainees attending additional training and development in MONTENEGRO, (10.) intra-corporate transferees (managers and specialists), as well as (11.) foreign national providers of contracted services.

2.2. Labour Market Test

The labour market test usually requires employers to advertise the post with the national labour authorities for a specified period or demonstrate that they have taken active steps to recruit for a specified period of time. Furthermore, EU Member States are required to apply the EU preference principle and governments must ensure that employers do not hire non-EU or third country national workers before satisfying the authorities that no suitable EU workers can be found, including third-country nationals lawfully resident in their territories.

In FRANCE, a general requirement to satisfy a labour market test applies. However, in an effort to attract high skilled labour as well as to address labour market shortages, many categories of foreign workers are exempt from this requirement. These include: intra-corporate transferees (*see below 2.4.*), workers seconded within the framework of an international service agreement, high level executives, highly skilled workers (*see below 2.3.*), foreign nationals with exceptional skills and talents, scientists, graduates (*see below 3.*), and foreign nationals on short-term assignments of less than 90 days. Additionally, those on the ‘skills shortages occupation list’ are automatically exempt from the labour market test. The list can be accessed at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000017937372>

In BiH any application for a work permit to be issued to a foreign national who has already been granted a temporary or permanent residence permit, must be made by the employer to the employment service in the employer’s place of business, accompanied by a “justification of the need to hire a foreign national” and the terms of the employment contract or the contract for performance of temporary and occasional work, the number of employees needed, the type of the work and duration thereof (Article 9 of the Law on Employment of Foreign Nationals 1999).

2.3. ‘Personal Work Permits’

In addition to the work permits that are subject to either the quota system or the labour market test, MONTENEGRIN as well as SLOVENIAN and BiH law provides for the issuing of ‘personal work permits’ to certain categories of foreign nationals.

In MONTENEGRO, the following categories of foreign nationals may be issued with a ‘personal work permit’ which grants free access to the labor market, irrespective of the state of the labour market: (1.) foreign nationals with permanent residence status, (2.) foreign nationals who are refugees and do not meet the requirements for a work permit exemption, and (3.) foreign nationals who have been granted ‘additional protection’.

In SLOVENIA, personal work permits may be applied for by the following categories of foreign nationals: (1.) immediate family members of a Slovenian citizen who has been in possession of a valid permit for temporary residence for the period of at least two years if, prior to submitting an application, he had resided in the Republic of Slovenia on the basis of a permit for temporary residence for at least three years, (2.) immediate family members of a foreign national who is in possession of a personal work permit valid for an indefinite period of time and who has been in possession of a permit for temporary residence for at least two years if, prior to submitting an application, he had resided in the Republic of Slovenia on the basis of a permit for temporary residence for at least three years, (3.) a Slovenian emigrant, or his direct descendant up to three times removed, who is not in possession of Slovenian citizenship, and (4.) a self-employed foreign national who has been self-employed in the Republic of Slovenia without interruption for three years and who, during that time, has not had a penalty imposed on him/her for committing an offence specified in the provisions of the Employment and Work of Aliens Act.

Additionally, an application for a personal work permit valid for an indefinite period of time may be submitted by a foreign national who is in possession of a permit for permanent residence in SLOVENIA and by a foreign national who is a refugee. And furthermore, an application for a personal work permit may be submitted by an asylum seeker and a person enjoying temporary protection. An asylum seeker shall be issued with a personal work permit one year after he has submitted an application for asylum and for no longer than three months with the possibility of extension. A person enjoying temporary protection shall be issued with a personal work permit for the period of validity of the status of a person enjoying temporary protection.

In accordance with Slovenian legislation, “a personal work permit shall be a renewable or permanent form of work permit, which, during its period of validity, provides the alien with free access to the labour market, except in cases where the personal work permit has been issued for a period of validity of one year or less.

In BiH, a legal exception exists for foreign nationals who are the holders of a permanent residence permit with regard to the validity of the work permit issued to them. In accordance with BiH legislation, “a foreign national in possession of a permanent residence permit (...) may be issued a work permit valid for an indefinite period of time”.

2.4. Highly Skilled Workers – EU Blue Card

Neither FRANCE nor SLOVENIA have yet implemented the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country

nationals for the purposes of highly qualified employment (Blue Card Directive). This will have to be done by 19th June 2011.

It is not apparent from the legislation currently applicable in SLOVENIA, MONTENEGRO and BiH, that particular efforts have been made to attract high skilled labour. In FRANCE, a ‘Skills and Talents’ category exists in the Law on the Entry and Residence of Foreign Nationals and the Right to Asylum. Foreign nationals who are considered capable of making a lasting and significant contribution to the economic development and influence of both FRANCE and the foreign national’s home country and who will engage in a specific project that benefits both FRANCE and the home country, may be issued with a combined residence and work permit that is not subject to the labour market test. Such permits may be issued for a range of discipline, including scientific, cultural, intellectual, humanitarian and athletic fields. Permits under this category will be granted for an initial period of 3 years and are renewable.

2.5. Intra-Corporate Transferees

With the exception of BiH, all countries surveyed for this comparative study make provisions for the intra-corporate transfer of workers.

In FRANCE, this matter is subject to the Labour Code (R.5221-30) which provides that foreign national workers may be transferred for a temporary period by a foreign affiliate of a French host company on the basis of the following conditions: (1.) the employment must meet the minimum gross annual salary threshold of 1,5 times the national minimum wage, (2.) the employee being transferred must have been in employment with an entity of the corporation for at least 3 months prior to the application for transfer being made, (3.) the corporation must have ‘real and significant’ business activity outside FRANCE, and (4.) the employee’s assignment must be ‘temporary’ (but not less than 3 months) for the purpose of either providing expertise to the French host company, or of receiving training needed for a corporate project in the home country.

The permit issued to intra-corporate transferees in FRANCE may be valid for up to 3 years. Furthermore, the spouse of the transferee will be permitted to enter employment in FRANCE without the need to apply for a work permit.

Prior to the introduction of intra-corporate transfers, FRANCE had already made provisions for the temporary or permanent transfer of high level executives from a foreign affiliate of a French company to the French host company. The advantage of this permit is that those seeking permanent transfer may apply for a 10-year residence permit after five years of residence in FRANCE. The conditions for the transfer of a high level executive on the basis of the old law is that (1.) the employee must have worked for the corporation outside of FRANCE for at least 6 months prior to the application being made and (2.) the minimum salary payable to the high level executive is €60k per annum. Spouses of high level executives transferred on this basis will need a work permit. However, the spouse’s application for a work permit will not be subject to the labour

market test provided that the salary due for the employment of the spouse is at least €2k per month.

Under the heading of ‘Appointment of Foreign National Workers’, SLOVENIAN law makes provision for the transfer of workers from the location of their permanent employment abroad to a subsidiary or other organizational business unit through which it has market presence in SLOVENIA for the purpose of carrying out specific tasks or for the purpose of providing contractual services in SLOVENIA.

A work permit is required for this type of employment. However, it will not be subject to the work permit quota system. A further condition for the transfer will be that the transferee has been previously employed with the corporation for at least one year. The duration of a work permit issued for an intra-corporate transferee in SLOVENIA will be for a maximum of 12 months. Furthermore, the transferee must have suitable health insurance in accordance with the relevant national regulations.

The following categories of foreign nationals may be transferred to SLOVENIA on a temporary basis: (1.) persons who occupy leading positions, including those in charge of (a.) the management of an organizational unit, division or sub-department of an organizational unit, (b.) the supervision and control of other officials engaged in supervisory, expert or operational work, or (c.) the authorized recruitment and dismissal of workers or other staff members, and (2.) employees with specialist knowledge of vital importance for the company’s provision of services, research equipment, methods or management.

The work permit for intra-corporate transferees remains subject to the quota system in SLOVENIA.

Similarly, in MONTENEGRO, the law provides transfer of persons within foreign companies. Accordingly, a foreign company a registered organisational unit in Montenegro may temporarily move an employee to work in that organisational unit, on condition that the foreign citizen has already been employed in the foreign company for minimum one year.

The categories of foreign nationals who may be transferred on this basis include: (1.) leaders, (2.) managers, and (3.) special experts.

In accordance with Montenegrin law, a work permit for an intra-corporate transferee shall be issued at the request of the organisational unit of the foreign company, registered in Montenegro, for a period of up to one year. Exceptionally, if the activities to be carried out by the transferee have not been completed within the period for which the permit was issued, the work permit may be extended for a maximum period of two years.

The work permit for intra-corporate transferees remains subject to the quota system in MONTENEGRO

2.6. Trainees

As set out above, in FRANCE, trainees are generally exempt from the work permit requirement unless they are not foreign nationals who participate in a course provided within a business established in FRANCE where this training programme is organised in their home country or who are employees of a business located abroad and who are placed in a recognised French training organisation. Other trainees are subject to the normal work permit requirements.

In SLOVENIA, trainees are considered ‘seconded workers’ who require a special type work permit. A distinction is made between ‘seconded foreign national workers undergoing further training courses in Slovenian companies’ – trainees – and ‘seconded foreign national workers performing further training courses for Slovenian workers in Slovenian companies’ – trainers.

Work permits are issued to trainees on condition that: (1.) the Slovenian company has an equity relationship with a foreign company or the purpose of the transfer is for business-technical cooperation or the transfer of technology, (2.) a contract has been agreed containing provisions relating to the trainee’s payment, accommodation and subsistence, (3.) an agreement on the training programme approved by the Chamber of Commerce and Industry or the Chamber of Crafts, and (4.) suitable health insurance is being provided to the transferee for the duration of his/her stay.

Trainee work permits are issued for a period of three months in any two-year period and are subject to the quota system.

Work permits for trainers are issued for the purpose of a seconded trainer delivering training courses for Slovenian workers on condition that (1.) the Slovenian company has an equity relationship with the foreign company seconding the trainer or the training is being carried out for the purpose of business-technical cooperation or the transfer of technology, (2.) the company is established in SLOVENIA and the contract for the delivery of the training has been agreed between the Slovenian and the foreign company, (3.) the training contract includes provisions regarding the trainer’s payment, accommodation and subsistence, (4.) the training programme has been approved by the Chamber of Commerce and Industry or by the Chamber of Crafts, and (5.) suitable health insurance is being provided to the trainer for the duration of his/her stay.

Trainer work permits are issued for a period of three months in any two-year period and are subject to the quota system.

In MONTENEGRO training and capacity building may be provided to foreign nationals on the basis of a work permit for training and development. The conditions for the issuing of such permits are (1.) an agreement on training and development signed by the Government of Montenegro and the home State of the foreign national concerned (exceptionally, training and development for foreign nationals may be carried out in advance of the signing of such agreement where such training and development is

deemed to be in the interest of Montenegro), (2.) the agreement of a labor contract concluded between the employer in Montenegro and the foreign national for a temporary period of up to one year.

The work permit for training and development may be extended to a maximum duration of two years. However, the issuing of training permits is subject to the quota determined for training and development.

In BiH, no specific provisions exist in the Law on Employment of Foreign Nationals in relation to intra-corporate transfers of foreign national workers.

2.7. Seasonal Workers

In SLOVENIA, seasonal workers form a particular category of workers in respect of whom work permits have to be obtained prior to the commencement of the employment relationship. Seasonal work is also covered by the quota system with special quota being set every year for the number and categories of seasonal workers that will be admitted into the labour market.

The general provisions on seasonal work by foreign nationals in SLOVENIA are as follows: (1.) seasonal labour of foreign nationals shall be permitted within the framework of activities of a seasonal nature only in cases where demand on the labour market temporarily exceeds supply. This demand then serves as the basis for determining an annual quota for these purposes; (2.) the foreign national concerned must have permanent residence in another country and shall be issued with a permit for work on the basis of an application submitted by the prospective employer. There is an obligation on the employer to register the commencement and termination of work performed by the foreign national.

A permit for seasonal labour will be refused if, in the last two years prior to submitting the application, the foreign national concerned did have a penalty imposed on him for committing an offence in breach of the Employment and Work of Aliens Act.

The maximum validity of a seasonal work permit will be up to 3 months per year.

Slovenian law contains specific rules regarding seasonal employment in agriculture and forestry and in construction. For example, a seasonal permit for work in agriculture and forestry may be extended or re-issued to the same employer or another employer, for up to 3 times a year totaling a maximum of 6 months in one calendar year. And the validity of a permit for seasonal labour in the construction industry may be up to a maximum of nine months in any twelve-month period.

In MONTENEGRO, work permits for seasonal work performed by foreign nationals are issued at the request of the employer, within the quota determined for seasonal work. Seasonal work permits are issued for a period of up to 8 months within one calendar year.

FRANCE and BiH do not have specific rules on the employment of foreign national seasonal workers.

3. Graduates

In FRANCE, after successful completion of the studies, foreign students theoretically have the right to apply for a work permit. In order to change status from student to employee, applicants have to present a work contract or a job offer from a French company. The administration takes into account the numbers of years studied, the applicant's profile or the motivation of the company to hire him/her. Work permits are not granted automatically and the procedure is lengthy (up to six months) and expensive for the employer (up to € 1,500).

The French Law on Immigration and Integration provides for a six-month, non-renewable residence permit that allow graduates at master's level and above to seek and take up employment that fits his/her qualifications. The aim is to allow foreign graduates to gain first professional work experience, and by that to contribute to the development of both FRANCE and the country of origin. If the permit holder gets a long-term job offer after six months, he/she can change to a regular work permit. The same law also includes a special provision for the "skilled and talented" that allows the highly skilled to reside and work in FRANCE for three years.

Graduate schemes such as the above are not included in the laws of SLOVENIA, MONTENEGRO and BiH.

4. Researchers

In FRANCE, scientists fulfilling certain conditions are exempt from the work permit requirement. In order to perform research work or teaching work in FRANCE, the scientist concerned must hold a Masters degree or equivalent diploma. Furthermore, to qualify for a scientist's permit, the foreign national concerned must have concluded an agreement with a French university, research organisation or research team recognised by the French authorities as a research institution.

A scientist's permit issued by the French authorities will be valid for an initial period of one year. However, it will be possible to renew the permit up to a total of 4 years.

Additionally, the spouse of a scientist permitted to work in FRANCE on the above conditions will also be permitted to enter the labour market without the need for a work permit.

In MONTENEGRO, scientific researchers are exempt from the work permit requirement. The law provides that academic staff invited as professors or lecturers and scientific workers participating in a scientific-research project important for Montenegro are exempt from the application of the Law on Employment and Work of Aliens. The same

applies to members of international missions who perform research activities in Montenegro, approved by the Government.

The legislation of SLOVENIA and BiH does not specifically provide for the admission of foreign nationals for the purposes of scientific research. However, for EU Member States this is a requirement flowing from Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research and it is therefore possible that SLOVENIA has equivalent regulations in legislation other than the Employment and Work of Aliens Act which is the subject of this comparative study.

5. Self-Employment

Not all of the laws surveyed in this comparative study do include provisions on the self-employment of foreign nationals. However, in so far as they do exist, they will be described in the following section.

5.1. General Provisions

In SLOVENIA, the Government may also adopt special measures to restrict the number of self-employed foreign nationals by individual area of activity if an increase in the number of self-employed foreign nationals results in domestic unemployment growth within the particular area of activity.

In accordance with Slovenian legislation, a foreign national who (1.) intends to establish or co-establish a private commercial company in accordance with the law governing commercial companies and represent the company on the basis of freedom of establishment, (2.) who intends to perform his/her activity as a sole proprietor or (3.) a foreign national who intends to perform a professional activity independently, must obtain a personal work permit for self-employment which shall be issued for representing the company, performing the activity as a sole proprietor or for performing a professional business activity independently in accordance with this Act. The permit shall be valid one year as from the date of its acquisition.

Alternatively, a personal work permit valid for a period of one year issued for representing a private company or for performing an activity as a sole proprietor, may be obtained by a foreign national who represents a private company or a sole proprietor who fulfils one of the following conditions: (1.) if the foreign national or his/her direct descendants up to three times removed are Slovenian emigrants, (2.) if the foreign national is a migrant worker on a daily basis from a neighbouring country, (3.) if the foreign national is in possession of a residence permit and if, prior to submitting an application for a personal work permit, the foreign national has resided in SLOVENIA for at least one year, without interruption, on the basis of a residence permit. In this regard, the one-year residency requirement will not be deemed fulfilled if the residence permit had originally been issued for the purpose of the foreign national carrying out

seasonal labour, for the provision of cross-border services by seconded workers or appointed workers or for training and advanced training.

5.2. Chief Executive Officers

French law contains specific provisions exempting certain self-employed foreign nationals from the requirement to obtain a work permit. Accordingly, foreign national chief executive officers may carry out their duties without being subject to the work permit requirement, provided that they are registered with the company registry in FRANCE. However, these duties must be restricted to: (1.) global supervision of the company and (2.) ascertaining that the management is being carried out in accordance with the wishes of the shareholders and the board of directors. In so far as the chief executive officer also performs day to day management tasks, his/her activity would become subject to the work permit requirement.

5.3. Exceptional Investors

Further provisions regarding self-employed persons contained in French law allow exceptional investors to carry out business activities in FRANCE without the requirement to obtain a work permit. In order to attract foreign capital, the French government will issue a 10-year permanent residence permit to foreign national investors who (1.) invest, or undertake to invest, €10 million or (2.) create or save at least 50 jobs.

5.4. Artists

An exemption from the work permit requirement for artists is contained in several of the laws surveyed for this study.

In FRANCE, performing artists and authors of literature or artistic production will be issued a residence permit allowing them to carry out their activity under a contract the duration of which exceeds 3 months. Additionally, the contract will have to be approved by the labour and cultural authorities.

In SLOVENIA, contractual services provided by foreign national artists and professional authors are also exempt from the work permit requirement in so far as they are performing artists or professional authors who provide an entertainment programme independently or as part of a group at events in Slovenia. However, in general, the overall duration of the provision of such contractual services must not exceed 7 days. Exceptionally, the work of artists in circus performances and amusement parks may be permitted for the total duration of the artist's permitted stay in Slovenia.

The provision of contractual services by artists and professional authors without the need for a work permit as set out above are conditional on the foreign national artist or author being registering with the Employment Service by the organisers or clients receiving the contractual service.

For the provision of contractual services for a duration longer than 7 days, the foreign national artist concerned require a work permit.

Similarly, in MONTENEGRO, artists and technical staff for opera, ballet, theatre, concerts, art exhibitions and other cultural events are exempt from the work permit requirement provided that they do not stay in MONTENEGRO for longer than a total of 30 days per year.

BiH law does not make specific provisions for foreign national artists and/or authors seeking to provide contractual services in BiH.

6. Business Visits

In FRANCE, business visitors are usually permitted to perform a range of activities on condition that they do not produce ‘immediate economic value’, for example (1.) attending business meetings and contract negotiations, (2.) attending conferences and seminars, and (3.) making sales calls to potential clients. A further conditions of these activities being permitted without the need to apply for a work permit is that the business visitor is representing a commercial entity based outside of FRANCE and that the activities are being carried out on the account of the foreign employer or on account of the foreign national business visitor himself/herself. In order to qualify as a business visitor, the foreign national must maintain a residence and employment outside of FRANCE and compensation must not be paid from a French source (with the exception of payment for meals, travel and accommodation). In order to be admitted as a business visitor, the foreign national must have sufficient funds for the duration of the visit as well as health insurance provided by his/her employer outside of France.

In Slovenian law, a business visitor is defined as follows: a business visitor is a foreign national who resides in SLOVENIA without generating income in SLOVENIA and who does not perform public sales or provide services but who participates in business meetings, establishes business contacts, carries out negotiations regarding the provision of services or similar activities, including those services and activities which relate to a foreign company’s preparation for establishing a market presence in the SLOVENIA. These types of activities may be carried out without the need for a work permit for a limited period of 90 days within six months.

The Law on the Employment and Work of Foreign Citizens of MONTENEGRO defines business visitors as follows: a foreign national staying in MONTENEGRO in order to establish business connections, for maximum 90 days in one calendar year, starting from the date of first entry into Montenegro. As in Slovenia, business visitors to MONTENEGRO are exempt from the work permit requirement provided they fulfill the above conditions.

The Law on Employment of Foreign Nationals of BiH makes no specific reference to business visitors.

7. Application Process

In FRANCE, applications for work permits are made to the French labour authorities and, once issued, are generally valid for 12 months. The renewal of work permits is discretionary.

In SLOVENIA, the employment of all foreign nationals who are subject to the work permit requirement must be registered with the Employment Service. Procedures relating to the issuing of work permits, the termination of validity and the seizure of work permits and procedures relating to the issuing of certificates prescribed by this Act shall be carried out by the Employment Service in accordance with the General Administrative Procedure Act.

In MONTENEGRO, a foreign national may only be employed on condition that he/she has obtained (1.) a work permit as well as (2.) permanent residence or temporary residence and (3.) a signed labor contract. Furthermore, the employer has the obligation to register the employment in accordance with the provisions of the Law on the Employment and Work of Foreign Citizens.

In BiH, an application for a work permit must be made by the prospective employer in respect of a foreign national who already has temporary or permanent residence in BiH. Applications must be submitted in the locality of the employer's business and must be accompanied by the following: (1.) justification of the need to hire a foreign national, (2.) the terms of the employment contract or the contract for performance of temporary and occasional work, (3.) the number of employees needed, (4.) the type of the work, and (5.) the duration thereof. Following approval from the Federal Office, the work permit shall be issued by the Employment Office.

7.1. Refusal of Applications and Withdrawal of Permits

In FRANCE, the refusal of work permits is often as a result of a mistake in the application or a misinterpretation of the factual basis of the application by the administration. On that basis, the administrative authorities are often prepared to reconsider decisions informally.

In SLOVENIA, work permits will be refused if: (1.) an employer has notified the Employment Service that a larger number of workers were no longer required prior to submitting an application for a work permit for a foreign national, (2.) six months prior to submitting an application for a work permit for a foreign national an employer dismissed workers employed on a permanent basis, (3.) an employer refused to employ an unemployed person who fulfilled the job requirements published through the Employment Service, (4.) in the three years prior to submitting an application for a work permit, a penalty was imposed on an employer for committing an offence specified in the Employment and Work of Aliens Act or for committing an offence specified in the regulations governing the prevention of illegal work and illegal employment, (5.) an employer disclosed negative business results for the previous year, wages received by

existing workers were below the level determined by the collective agreement for the relevant sector, the employer violated labour law legislation in another manner, or the employer failed to settle the company's liabilities in the form of taxes and contributions, (6.) an employer, as a newly established company or sole proprietor, cannot disclose positive results for the previous year, (7.) an employer, as a company or sole proprietor, has – within a period of one year prior to the submission of an application for a work permit – received state funding in order to preserve existing jobs.

With the exception of the rules regarding previous penalties imposed on the employer for committing an offence specified in the Employment and Work of Aliens Act or an offence specified in the regulations governing the prevention of illegal work and illegal employment, the above restrictions do not apply to the employment of experts who (1.) have at least college education, (2.) are immediate family members of the employer or (3.) workers who have specific professions and knowledge, which are not currently available within SLOVENIA.

Furthermore, Slovenian legislation makes provision for the withdrawal of work permits in certain situations: (1.) expiry of the foreign national's temporary or permanent residence in SLOVENIA, (2.) absence from SLOVENIAN territory for an uninterrupted period exceeding six months, unless seconded by order of the employer or absent due to education, illness, maternity leave, or childcare leave, (3.) the foreign national performs work other than that for which the work permit was issued.

In MONTENEGRO, work permits will be refused if any of the following situations apply: (1.) prior to the submission of application for the issuance of work permit to a foreign national, the employer has informed the Employment Agency that existing employees will be dismissed on the basis of 'special regulations', (2.) six months prior to submission of the application for a work permit, the employer has dismissed employees on permanent contracts in accordance with 'special regulations', (3.) the employer has refused to hire an unemployed person from the record of unemployed persons maintained by the Employment Agency, who satisfied the requirements for the employment, (4.) during the 3 years immediately preceding the application, the employer has committed an offence in breach of the Law on the Employment and Work of Foreign Citizens, (5.) the employer has presented negative business results in previous year or paid salaries to existing employees below the level stipulated in the collective agreement for that sector or the employer did not comply with the company's tax obligations and/or the duty to make contributions.

Exceptionally, the application for a work permit for a foreign national will not be rejected if he/she (1.) has obtained university education and will be employed to perform managerial duties, (2.) is an immediate family member of a Montenegrin citizen (spouse and children up to 21 years of age), (3.) is an immediate family member of the employer (spouse and children up to 21 years of age), or (4.) has a professional qualification that cannot be obtained in MONTENEGRO. However, these exceptions do not apply in cases where during the 3 years immediately preceding the application, the employer has

committed an offence in breach of the Law on the Employment and Work of Foreign Citizens.

Furthermore, applications for work permits made by self-employed persons will only be rejected if during the 3 years immediately preceding the application, the employer has committed an offence in breach of the Law on the Employment and Work of Foreign Citizens or the employer has presented negative business results in previous year or paid salaries to existing employees below the level stipulated in the collective agreement for that sector or the employer did not comply with the company's tax obligations and/or the duty to make contributions.

In accordance with the law of MONTENEGRO, work permits may be withdrawn if (1.) it was issued on the basis of incorrect information on the foreign national or the employer, (2.) the employer fails to inform the Employment Agency within 15 days from the commencement of the foreign national's employment, (3.) the foreign national performs the duties for which the work permit has not been issued, (4.) the foreign national has not been granted temporary residence in MONTENEGRO, or (5.) the foreign national's permanent or temporary residence has expired or has been cancelled, in accordance with 'special regulations'.

In BiH, an application for a work permit will be refused if the conditions for granting such permit, namely possession of temporary or permanent residence, justification of the need to hire a foreign national, submission of the terms of the employment contract or the contract for performance of temporary and occasional work, the number of employees needed, the type of the work and duration thereof are not fulfilled. Furthermore, a work permit will not be issued to a foreign national who has a tourist visa.

Additionally, the BiH Law on Employment of Foreign Nationals makes specific provisions for the withdrawal of work permits on the following grounds: (1.) perpetration of a crime or a serious violation of public order punishable by imprisonment and in other cases prescribed by the law. The withdrawal of a work permit shall be decided upon by the employment service that issued the permit.

7.2. Legal Remedies

Where decisions are not reconsidered informally by the FRENCH authorities, the employer can appeal the decision to refuse a work permit to the Ministry of Immigration and/or the Administrative Court within two months of receipt of the negative decision.

In SLOVENIA, appeals against decisions and measures issued in the first instance by the Employment Service shall be decided on by the Ministry responsible for labour.

In MONTENEGRO, the procedures regarding the issuing, refusal and withdrawal of work permits are carried out by the Employment Agency in accordance with the Law on General Administrative Procedure, unless otherwise provided for in the Law on the Employment and Work of Foreign Citizens.

In case of refusal or withdrawal of a work permit, an appeal lies with the Ministry. However, if an application for a work permit is refused on the basis that the quota for the particular job category has already been reached, an administrative appeal is not provided. However, the decision may be challenged by way of appeal to the responsible court.

In BiH, the decision of the Employment Service to refuse the issuing of a work permit may be appealed to the Cantonal Ministry in charge of labor and employment within 8 days from the date of receipt of the decision. The decision of the Cantonal Ministry in charge of labor and employment shall be final and without recourse to an administrative appeal. It is unclear from the Law on Employment of Foreign Nationals if the decision to withdraw an existing work permit may be appealed in the same manner.

8. Inspections and Reporting Requirements

In FRANCE, employers are required to ensure that any foreign national they employ is permitted to work. A copy of the relevant document authorising the foreign national to work must be submitted to the local Prefecture at least 2 working days in advance of commencement of the employment. This obligation does not apply in respect of foreign nationals who are exempt from the work permit requirements.

Additionally, the employment of posted workers must be reported to the labour inspectorate – this obligation also applies to the employment of posted EU/EEA workers in FRANCE.

At the time of renewal of permits, the labour inspectorate will verify employers' compliance with immigration, labour and social security laws. Furthermore, inspections may be carried out at any time.

In SLOVENIA, the supervision of compliance with the Employment and Work of Aliens Act is carried out by the Labour Inspectorate which submits regular reports to the Employment Service on procedures initiated and penalties imposed.

Foreign nationals and their employers are obliged to cooperate with the competent supervisory bodies, and to act in compliance with the requests made by these bodies. In particular, all details regarding the issuing of work permits must be made available and furthermore, a foreign national worker is obliged to keep his/her work permit at the place of work and to provide it at the request of a competent control body. Similarly, if a work permit has been issued on the basis of an application submitted by an employer, the employer is obliged to cooperate in the supervisory procedure by producing all documentation required. Additionally, employers are obliged to keep all documentation relating to the employment and remuneration of foreign national for a period of five years after the termination of the employment.

In MONTENEGRO, reporting requirements exist with regard to the commencement as well as the cessation of the employment of a foreign national. Depending on the type of

permit issued, the entity obliged to report the employment/cessation of employment may be the employer, the employer or the organisational unit of the foreign company registered in Montenegro.

The commencement as well as the cessation of the employment of a foreign national must be reported within 15 days from the date of the commencement or cessation of the employment. Following the report to the Employment Agency, the Agency will issue a certificate of work of a foreign national. Furthermore, the Employment Agency must inform the administrative authority responsible for matters regarding the movement and stay of foreign nationals of the invalidation or cessation of a work permit within eight days from the date of invalidation or cessation. In turn, the administrative authority responsible for matters regarding the movement and stay of foreign nationals is obliged to inform the Employment Agency of any cessation or cancellation of permanent residence or temporary residence permits issued to a foreign national within eight days from the date of cessation or cancellation of the residence permit.

In MONTENEGRO, labour inspections are carried out by the Ministry, through the labor inspectorate. The duties and powers of the labour inspectorate are stipulated by 'special regulation'. For the purpose of inspections, the employer or organisational unit of the foreign company registered in Montenegro is obliged to keep work permits issued in respect of foreign national employees on the business premises or place of work of the foreign national.

In BiH, the enforcement of the Law on Employment of Foreign Nationals is supervised by the Cantonal labor inspection. Certain matters of interest to the Federation of BiH shall be performed by the Federal labor inspection, if not otherwise prescribed by another law.

An appeal may be filed against the labor inspection to the Federal ministry in charge of labor and employment. However, in the event that a labour inspection is carried out resulting in the finding that (1.) a foreign national employed by the company concerned does not have a work permit issued in accordance with the Law on Employment of Foreign Nationals, or that (2.) he/she does not meet other prescribed employment requirements, the foreign national will be prohibited to work. Furthermore, inspectorate will notify the employment service and the Cantonal ministry of internal affairs of the prohibition.

9. Sanctions

Neither FRANCE nor SLOVENIA have yet implemented Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

In FRANCE, the Ministries of Labour and Justice have issued joint guidelines on the cooperation of the various enforcement agencies involved in the fight against illegal

employment can and should cooperate. These guidelines also identify the areas of employment that are affected by fraudulent activities as well as the measures that may be taken to prevent and punish the illegal employment of foreign nationals, stressing the role of the labour inspectorate in this regard.

The French government has identified the following issues in relation to the illegal employment of foreign nationals: (1.) fraud related to transnational provision of services, (2.) mis-employment of certain categories of persons in the workplace, in particular interns and trainees, (3.) failure to declare and pay employers' social contributions, and (4.) employment of undocumented foreign nationals.

The ministerial guidelines also address the punitive measures that may be taken against employers in the fight against illegal employment, namely: (1.) an amount which equals six times the minimum monthly salary at the date the fraud is discovered will be used as a basis for calculating the arrears in employer contributions due in cases of undeclared work, (2.) mandatory verification of the foreign national's work permit at the time of the commencement of employment, and (3.) joint responsibility of client companies and contractors for the payment of unpaid wages to foreign national employees.

The SLOVENIAN Employment and Work of Aliens Act contains several provisions on penalties that may be imposed on both the employer and the foreign national employee. A fine of 100,000 SIT may be imposed on foreign nationals who work without a permit issued by the Slovenian authorities. A fine between 500,000 SIT and 5,000,000 SIT shall be imposed on an employer who concludes an employment contract with a foreign national who does not hold a work permit. The person responsible for the recruitment of the foreign national concerned may be held personally liable and will be subject to a fine of 100,000 SIT. Furthermore, an individual who concludes a contract of employment with a foreign national not holding a work permit may be held personally liable and will be subject to a fine of 100,000 SIT.

Other penalties are provided for employers who submit false information regarding criminal records or a false statement regarding the receipt of state funding from the state budget for the preservation of jobs, (2.) a foreign national who provides a false statement regarding his/her criminal record, (3.) an employer who fails to return the work permit of a foreign national in cases of non-commencement or termination of employment, (4.) an employer failing to provide labour law conditions in accordance with the Employment and Work of Aliens Act, (5.) a responsible person failing to register the commencement and termination of work of a foreign national, (6.) an employer who fails to provide access to all available evidence on the basis of which documents permitting the employment or work of a foreign national have been issued, (7.) a foreign national who fails to produce a work permit at the request of a supervisory body, (8.) an employer who fails to keep the work permit at the company's head office or at the work place of the foreign national concerned, and (9.) an employer who fails to store documentation on the work and wages of a foreign national in accordance with the provisions of the Employment and Work of Aliens Act.

In MONTENEGRO, penalties are provided for both employers and employees. Employers will be fined between twenty to thirty times the minimum wage in Montenegro, for (1.) the employment of a foreign national contrary to the work permit requirements, (2.) assigning a foreign national to perform work which is not authorised under the work permit issued, (3.) the failure to report the commencement and/or termination of the employment of a foreign national within the legally prescribed deadline, (4.) the failure to submit an application for extension of a work permit no later than 30 days prior to expiry of the current permit, (5.) the failure to keep the work permit of a foreign national employee on the business premises or the place of work of the foreign national.

Like in Slovenia, the responsible person within the employer's organization will be personally liable and may be fined between ten and twenty times the minimum wage in Montenegro. The owner of the business will be personally liable and may be fined between ten and twenty times the minimum wage in Montenegro.

Additionally, foreign nationals may be fined between one half and twenty times the minimum wage in Montenegro if (1.) the foreign national is employed in breach of the work permit requirement, (2.) the foreign national is performing the duties which are not covered by the employment contract signed by him/her, (3.) the foreign national, upon approval of additional protection, fails to submit an application for the extension of his/her personal work permit within the deadline prescribed in the Law on the Employment and Work of Foreign Citizens.

Furthermore, an 'on-the-spot' fine may be imposed on the organisational unit of a foreign company registered in Montenegro, for the offence of not keeping the work permit of a foreign national on the business or at the place of work of the foreign national concerned.

In BiH, an employer who has entered into an employment contract or a contract for performance of temporary or occasional work in violation of the Law on Employment of Foreign Nationals, in particular the work permit requirement, will subject to a fine of between 1,000 KM and 5,000 KM. The person responsible for the employment of the foreign national concerned shall be personally liable to a fine of between 500 KM and 2,000 KM. Furthermore, for repeated violations of the provisions of the Law on Employment of Foreign Nationals, the operation of the business may be suspended for three to six months.