

15 November 2013

Screening report

Montenegro

Chapter 2 – Freedom of movement for workers

Date of screening meetings:

Explanatory meeting: 13 May 2013

Bilateral meeting: 7 June 2013

I. CHAPTER CONTENT

As regards the **general principles related to access to labour market**, the *acquis* under this chapter provides that EU citizens of one Member State have the right to work in another EU Member State, to reside there for that purpose with their family members and to be treated in the same way as national workers in relation to working conditions and social and tax advantages. In addition, the general principles of freedom of movement for workers include provisions related to supplementary pension rights of employed and self-employed persons moving within the Union.

The **EURES** network (European Employment Services) is aimed at promoting the freedom of movement for workers within the Union, notably by close cooperation between national employment services to exchange information on employment opportunities. At an operational level, relevant databases of job vacancies need to be integrated with the EURES vacancy exchange mechanism, and general information on the labour market and on living and working conditions needs to be exchanged.

The right to free movement for workers is complemented by a system for the **coordination of social security systems**, i.e. the right for migrant workers and their dependents to acquire, cumulate or transfer social security benefits as well as to obtain payment of these benefits. This is based on EU regulations that do not harmonise but coordinate the social security systems of Member States, requiring administrative cooperation between them. Moreover, in the health care field, medical expenses will need to be reimbursed for all necessary treatment of nationals falling ill or having an accident during a temporary stay in another Member State, e.g. as tourists. To this end, a **European Health Insurance Card** has to be issued to all nationals.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises both the information provided by Montenegro and the expert discussions facilitated by the screening meetings. Montenegro indicated that it can accept the *acquis* regarding freedom of movement for workers and that it does not expect any difficulties to implement the *acquis* by the time of accession.

II.a. Access to labour market (general principles)

The 2009 Law on Employment and Work on Foreigners prescribes conditions under which a foreigner can work in Montenegro. It does not distinguish between EU nationals and nationals of third countries as regards conditions for employment.

Montenegro stated that its legislation requires EU citizens to obtain a work permit which is issued by the Employment Agency of Montenegro. There are three different types of work permits in Montenegro: 1) a personal work permit, valid for an indefinite period, which provides a foreign national with free access to the labour market, independently from the situation on the labour market; 2) a seasonal employment permit, valid for up to one year with a possibility of extension for up to two years, on the basis of which the employment contract is concluded; 3) work permits for cross-border services provided by foreigners, valid for up to one year, and for movement of persons within foreign companies, valid for up to one year with a possibility of extension for up to two years. Certain categories of foreign nationals, such as key staff in a company, may work in Montenegro without work permits.

The Government establishes annual work permit quotas for foreign citizens, based on a proposal from the Ministry of Labour and Social Welfare, following consultation of other ministries

concerned and the Social Council. Quotas do not concern certain categories of foreign nationals, such as those employed on the basis of an international agreement or entrepreneurs. In general, work permits have been issued to citizens from the neighbouring countries (Serbia, Bosnia and Herzegovina) as well as from the Russian Federation. They have mostly been of seasonal nature and have been mainly issued in areas such as construction, tourism and trade.

In addition to the work permit, a permanent or temporary residence permit and a valid labour contract are required before a foreigner can access the Montenegrin labour market.

Montenegro indicated that legislation is to be amended by the time of accession to ensure that work permits will be abolished as a condition for EU nationals and their family members to undertake work in Montenegro. This will most probably be done through integration of the Law on Employment and Work on Foreigners into the Law on Foreigners and through establishment of a single procedure for both residence and work permits. In this respect, the Ministry of Interior in cooperation with the Ministry of Labour and Social Welfare and the Ministry of Finance drafted an Analysis of the possibility of introducing a single procedure of issuing work and residence permits for foreigners in the first quarter of 2013.

The Labour Law prohibits direct and indirect discrimination of persons seeking employment or employees in respect of sex, origin (nationality), language, race, religion, colour, age, pregnancy, medical condition, disability, ethnicity, marital status, family commitments, sexual orientation, political or other opinion, social origin, property, membership in political and trade union organisations or other personal characteristics. Legally employed foreigners have equal employment rights with Montenegrin nationals: equal status on the labour market; right to fair remuneration, safety and protection of life and health, vocational training; right of association, participation in the negotiations for the conclusion of collective agreements, peaceful resolution of collective and individual labour disputes and right to severance pay.

As regards access to public sector posts, a foreign national may work in public bodies as a State employee. However, for civil servant posts, Montenegrin citizenship is required.

As regards language requirements, Montenegro indicated that although its legislation does not state that Montenegrin language skills are required for performing certain jobs, in practice the knowledge of the official language is necessary for all positions for which Montenegrin citizenship is required. However, amendments to the legislation are under preparation to abolish this condition.

Only foreign nationals with a personal work permit may register with the Employment Agency of Montenegro. They are entitled to the same unemployment-based rights as unemployed Montenegrin citizens. Montenegro indicated that legislation is foreseen to be amended by accession in order to ensure equal treatment of EU migrant workers and Montenegrin citizens as regards assistance by the national employment office.

As regards family members (spouses and children up to 21 years of age) of EU migrant workers, they have the right to temporary residence for the purpose of family reunion. This is for up to one year, i.e. until the expiry of approval of temporary residence of the foreigner with whom the reunion is requested. Temporary residence may be extended in the case of termination of marriage which lasted for at least three years in Montenegro. Family members of EU migrant workers also need a work permit to work in Montenegro. However, they have priority when new work permits are issued. Montenegro indicated that it intends that in the future, registered partnerships will be included in the definition of family members, as required by the *acquis*.

Supplementary pension rights of employed and self-employed persons moving within the Union cover the third pillar of the Montenegrin pension system regulated by the 2011 Law on Voluntary Pension Funds. An open pension fund may be accessed by all natural persons. There is no prohibition or restrictions on the payment of contributions if a member of a voluntary pension fund moves to an EU Member State.

II.b. EURES

The Employment Agency of Montenegro (EAM) is organised through a Head Office, seven regional employment centres and 14 employment offices. It has 335 employees in total. Services to the unemployed and employment mediation services are provided free of charge (only foreigners with a personal work permit may register with the EAM). Furthermore, Montenegro indicated that Centres for Information and Professional counselling have been established in eight Montenegrin cities, covering 73 % of Montenegrin citizens. Their main purpose is to provide conditions for career development for school pupils, students, employed and unemployed persons. Finally, there are four Migration Service Centres in Montenegro (in Podgorica, Bar, Herceg Novi and Berane). According to Montenegro, their aim is not to offer job mediation, but to provide information about work and living conditions abroad, working requirements, recognition of diplomas, etc.

The EAM has complete IT coverage, i.e. all the regional employment centres and employment offices are connected to a common database. All employees have computers (except for support staff). A centralised database on job vacancies and job seekers exists. However, only those vacancies that are requested by an employer are published.

Montenegro stated that an EURES manager has been appointed. Establishment of an EURES Service is ongoing in the EAM. One advisor is foreseen at central level, and three advisors in the three regions (northern, central and southern region). A new organisational structure was adopted in June 2013, and recruitments are foreseen to take place by the end of 2013. EURES training was organised in 2012, with a EURES manager from Slovenia. Montenegro indicated that it is aware of the need for linguistic training and training for offering EURES services as well as of the need to develop the necessary software for inclusion in the EURES network.

II.c. Coordination of Social Security Systems

Montenegro's social security system applies the principle of compulsory insurance in the country of work (*lex loci laboris*) with regard to pension and disability insurance, health insurance and unemployment insurance. Only child allowance is based on the principle of residence (*lex loci domicilii*) and is subject to nationality condition. As regards the material scope, all traditional branches of social security are covered by the Montenegrin legislation. The personal scope of the legislation covers employed/self-employed persons and members of the family. Non-Montenegrin nationals are not discriminated against in the compulsory insurance scheme.

Currently, Montenegro has concluded bilateral social security agreements with 25 countries of which 18 are EU Member States. Under these agreements, Montenegro already applies the principle of aggregation of insurance periods and export of benefits. A new bilateral agreement has been signed with Turkey, but it is still not in force. These agreements include provisions on the pension and disability insurance, health insurance, unemployment benefits and, some of them, family benefits. They also include administrative cooperation of authorities responsible for their implementation. Administrative agreements regulating the administrative and legal implementation have therefore been also concluded.

As regards export of benefits payment of benefits from pension and disability insurance may be carried out abroad, in the country of residence, on a reciprocal basis or on the basis of bilateral agreements on social security. Pensions are paid through bank accounts without restrictions on payments. Health insurance benefits are paid to the employer on a bank account opened in Montenegro and to the beneficiaries having their residence in Montenegro. Unemployment benefits are, outside Montenegro, only paid in Bosnia and Herzegovina and in Germany under the bilateral social security agreements with these countries.

The institutions in Montenegro responsible for the future coordination of social security systems are the Pension and Disability Insurance Fund for pension and disability insurance, the Health Insurance for Montenegro for health insurance, the Employment Agency of Montenegro for unemployment insurance and centres for social welfare for child allowances. Monitoring of implementation is carried out by the Ministry of Labour and Social Welfare as well as by the Ministry of Health. Montenegro indicated that it does not expect any difficulties in aligning with the *acquis* in this area taking into account the years of experience in the application of bilateral social security agreements, except for the increase in the number of international cases. It stated that it will certainly be necessary to strengthen administrative capacity of the institutions responsible for social security coordination especially in view of the future electronic exchange of data in the framework of cooperation between the EU social security institutions.

II.d. European Health Insurance Card (EHIC)

So far, Montenegro has concluded arrangements on the use of the EHIC with Slovenia (January 2012) and Germany (January 2013). Montenegro indicated that it is willing to conclude similar bilateral arrangements with all other interested EU Member States.

Montenegro stated that preparations for the introduction of the EHIC in Montenegro are yet to be launched. Montenegro does not intend to make it possible for the insured Montenegrin nationals to use healthcare services abroad on the basis of the EHIC prior to accession.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Montenegro has reached a satisfactory level of alignment in the field of freedom of movement for workers. However, a number of important adjustments to the Montenegrin legislation are necessary to align it with EU rules on access to the labour market, mainly as regards non-discrimination against EU migrant workers. Sustained efforts are required also in particular in terms of developing administrative capacity for the co-ordination of social security systems. Efforts need to continue in view of future participation in the EURES network as well as in view of the introduction of the European Health Insurance Card as from accession.

The Commission will present an impact study regarding specific aspects of this chapter together with the Draft Common Position, so as to be taken into account for negotiations on this chapter.

III.a. Access to labour market (general principles)

Existing legislation in this area in Montenegro is not yet in line with the *acquis*. Montenegrin legislation needs to be amended in order to abolish procedures and practices that impair the freedom of movement for workers. Montenegro needs to, *inter alia*, ensure that, by the time of accession, EU citizens will not need a work permit and will not be discriminated against on the basis of nationality in relation to access to employment, even if they are not yet residing in Montenegro. In relation to access to the public sector, only posts which are directly related to the specific activities of the public service, namely those involving the exercise of public authority and the responsibility for safeguarding the general interest of the State, may be reserved to

Montenegrin nationals. The status of civil servant *per se* is not sufficient for reserving posts for Montenegrin nationals. Therefore, Montenegro needs to examine carefully which categories of civil servants could be reserved for Montenegrin nationals only. Under the *acquis*, mandatory requirements for language proficiency can only be applied in very exceptional circumstances, where reasonable and necessary for the particular job. The link between Montenegrin citizenship and knowledge of the language therefore needs to be removed and requirements for knowledge of the Montenegrin language for accessing employment will need to be examined carefully. EU citizens must also have the right to bring their family members to Montenegro; the spouse and children must be allowed to work without a work permit.

Furthermore, Montenegro will have to adopt measures in line with the *acquis*, in particular on supplementary pension rights, to ensure adequate information is provided to members of Montenegrin supplementary pension schemes who are living in other EU Member States.

III.b. EURES

All the basic elements as regards the EURES network are in place in Montenegro. Training appears to be in line with EU standards. Concerning the future participation in the EURES network, along with increased efforts to improve the language skills of potential EURES advisers, preparations need to continue for connection to the European Job Mobility Portal to ensure that all job vacancies displayed on the Public Employment Services website will be available for publication on the Portal upon accession. Also awareness needs to be raised about the existing EURES service in the Montenegrin administration.

III.c. Coordination of Social Security Systems

As the EU Regulations No 883/2004 and 987/2009 in the field of co-ordination of social security systems will be directly applicable in Montenegro after accession, there is no need for Montenegro to change its social security legislation. However, as regards the entitlement to child allowances, Montenegro will have to make sure to apply the principle of equal treatment and the EU coordination rules. As regards alignment with EU legislation, only technical modifications will be necessary, in order to take into account the particularities of the Montenegrin social security system. Montenegro will also have to prepare for participation in the Electronic Exchange of Social Security Information (EESSI) which will require investment in the IT infrastructure. Furthermore, measures will have to be taken to ensure financial stability in order to meet the additional costs arising from the application of the EU provisions, in particular in the healthcare field. Lastly, Montenegro is encouraged to continue to conclude bilateral social security agreements.

While there appears to be adequate knowledge of the mechanisms involved in social security co-ordination, sufficient administrative capacity needs to be developed to apply the *acquis* in this field.

III.d. European Health Insurance Card (EHIC)

Preparations (preparation, distribution and electronic phase) in accordance with the *acquis* and procedures need to be launched for the introduction of the EHIC from the time of accession. Before accession, Montenegro needs to carry out a feasibility study on the impact of introduction of the EHIC on the public finances.