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# Screening report

## Serbia

### Chapter 2 – Freedom of movement for workers

**Date of screening meetings:**

Explanatory meeting: 23 January 2014

Bilateral meeting: 25 March 2014

## 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 Serbia and the discussion at the screening meetings. Serbia 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 Law on Employment of Foreigners adopted in November 2014, the 2005 Labour law (last amended in 2014) and the 2008 Law on Foreign Citizens prescribe conditions under which a foreigner can work in Serbia.

Serbia stated that currently foreign citizens may be employed if they have temporary (up to one year) or permanent residence in Serbia, issued by the Ministry of the Interior, and if they obtain work permits which are issued by the National Employment Service (NES). They are issued for the period for which the temporary or permanent residence permit is valid. The NES may refuse to issue a work permit to a foreign citizen if there are unemployed Serbian nationals in the NES unemployment registry who meet the requirements set by the employer in question. There is no quota system for employment of foreigners in Serbia. Certain categories of foreign citizens, such as key staff in a company or staff employed with short-term contracts, may work in Serbia without work permits. Also foreign citizens posted in Serbia by an employer not having its seat in Serbia may work without work permits under certain conditions. Work permits have been mostly issued to citizens from the neighbouring countries (Romania, the former Yugoslav

Republic of Macedonia, Montenegro, Bosnia and Herzegovina), as well as from the Russian Federation.

The new Law on Employment of Foreigners aims at regulating employment of non-nationals and issuance of work permits according to the *acquis*. Free access to the Serbian labour market will be provided for EU citizens, as well as their family members, including non-EU citizens. These provisions will enter into force on the date of accession. The Law also provides for the possibility of establishing a quota system in the case of disturbance on the labour market in line with migration policy and the situation and trends on the labour market. The Labour Law prohibits direct and indirect discrimination of persons seeking employment and employees in respect of sex, origin, language, race, colour of skin, age, pregnancy, health status or disability, nationality, religion, marital status, family commitments, sexual orientation, political or other belief, social background, financial status, membership in political organisations, trade unions or any other personal quality. Legally employed foreigners have equal employment rights with Serbian nationals: right to adequate remuneration/wages, safety and health at work, health care; right to education, training and vocational training when required by working processes; right to association, participation in bargaining to conclude collective agreements; other rights arising from the work and on the basis of work.

As regards access to public sector posts, a foreign national may work in public bodies as a State employee. However, for civil servant posts, Serbian citizenship/nationality is required, except for the health sector. The same applies for employment with autonomous province authorities and local government administration authorities.

As regards language requirements, Serbia indicated that Serbian citizenship and ability to speak the language in which education is carried out are requirements for entering employment relation in pre-school facilities, primary and secondary schools, whereas there is no such requirement in higher education institutions. A non-national needs also to speak Serbian as well as other language in official use when working in a healthcare facility. However, amendments to the legislation are under preparation to bring the situation in line with the *acquis*.

Foreign nationals with a permanent or temporary residence permit and a valid work permit may register with the National Employment Service. They are entitled to the same unemployment-based rights as unemployed Serbian citizens as well as to receiving information about the possibilities and conditions for employment.

As regards family members (spouses and children up to 18 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 with a possibility of extension. Family members of EU migrant workers also need a work permit to work in Serbia. National law does not explicitly provide for non-nationals to have their residence permit withdrawn in case of unemployment or temporary incapacity for work. Serbia indicated that this situation will be brought in line with the *acquis* through the new Law on Employment of Foreigners.

Serbia indicated that in the area of supplementary pension rights of employed and self-employed persons moving within the Union there are four companies for management of voluntary pension funds which manage six funds. An open pension fund may be accessed by all natural persons. The 2005 Law on Voluntary Pension Funds and Pension Plans allows for a member of a voluntary pension fund to maintain the rights as provided for under this Law in case of his or her moving abroad.

## **II.b. EURES**

The National Employment Service (NES) of Serbia is organised through a Central Office and 24 branch offices. It has 2,000 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 NES). Currently, seven Migrant Service Centres operate within the NES (in Belgrade, Niš, Novi Pazar, Novi Sad, Kraljevo, Krusevac and Bor). They provide information about work and living conditions abroad, working requirements, recognition of diplomas, etc.

Serbia indicated that the NES does not expect difficulties in setting up and future functioning of the infrastructure necessary for EURES. Development of a national database/portal on job vacancies and job seekers started in January 2013. Serbia stated that currently a NES portal for online job mediation is in place. However, there is no obligation for employers to register all vacancies centrally. Further enhancement of the NES portal is planned in 2015, enabling cooperation and cross-linking of the portal with private employment agencies. Serbia estimates that implementation of the EURES portal, with appropriate technical support for capacity-building, could be completed within 6–15 months.

Serbia stated that it is foreseen to proceed to pre-selection of 15 future EURES counsellors in the near future. It is foreseen that 10–12 EURES counsellors will be engaged at regional level (Vojvodina, Western Serbia, Southeast Serbia and the City of Belgrade), whereas 3–5 counsellors would work in the NES Head Office. Serbia indicated that future EURES counsellors will need training and detailed information about the organisational and technical aspects of the functioning of the EURES network. Therefore, IPA assistance is foreseen in this respect. A Taix workshop on EURES was held in Serbia in July 2014 as well.

## **II.c. Coordination of Social Security Systems**

Serbia'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. Parental and child allowances are based on the principle of residence (*lex loci domicilii*) and are subject to nationality. As regards the material scope, all traditional branches of social security are covered by the Serbian legislation. Serbia also has a number of special benefits for war victims. The personal scope of the legislation covers employed/self-employed persons and members of the family. Non-Serbian nationals are not discriminated against in the compulsory insurance scheme.

Serbia stated that it has a long tradition regarding conclusion and implementation of international social insurance/security agreements. The first agreement was concluded in 1950 with France. Currently, Serbia has bilateral social security agreements with 28 countries of which 19 are EU Member States. These latter agreements cover all branches of social security and include administrative cooperation of authorities responsible for their implementation. Serbia stated that export of benefits is carried out with no limits regarding the type of benefit and without deductions.

The institutions in Serbia responsible for the future coordination of social security systems are the Ministry of Labour, Employment, Veterans and Social Affairs for pension and disability insurance, unemployment insurance, family benefits and social welfare, and the Ministry of Health for health insurance. The Institute for Social Insurance is a liaison body for all branches of social security. In addition, the Republic Fund for Pension and Disability Insurance, the Republic Fund for Health Insurance and the National Employment Service exercise competences in these specific fields.

Serbia indicated that given its long tradition of implementation of different international social insurance/security agreements it does not expect any difficulties in aligning with the *acquis* in this area. It stated that the NES has sufficient capacity (technical, organisational, human resources) in this respect. However, it also stated that it will be necessary to strengthen the 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. A pilot project on electronic exchange of data is already ongoing with the relevant institutions of other countries in the Republic Pension and Disability Fund.

#### **II.d. European Health Insurance Card (EHIC)**

Preparations for the introduction of the EHIC in Serbia are yet to be launched. However, Serbia indicated that it does not expect major difficulties in this respect.

Serbia has concluded agreements with the following EU Member States whose nationals may use EHIC in Serbia: Austria, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, Slovakia and Slovenia.

### **III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY**

Overall, Serbia has reached a satisfactory level of alignment in the field of freedom of movement for workers. A new Law on Employment of Foreigners was adopted in November 2014, aiming at further aligning with the *acquis*. However, a number of important adjustments to the Serbian 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 Serbia's 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 at a later stage of the accession negotiations.

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

Existing legislation in this area in Serbia is not yet in line with the *acquis*. Serbian legislation needs to be amended in order to abolish procedures and practices that impair the freedom of movement for workers. Serbia 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 Serbia. EU mobile workers may not be subject to any quotas for foreign workers. 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 Serbian nationals. The status of civil servant *per se* is not sufficient for reserving posts for Serbian nationals. Therefore, Serbia needs to examine carefully which civil servant posts could be reserved for Serbian nationals only. Under the *acquis*, mandatory requirements for language proficiency can only be applied in limited circumstances, where reasonable and necessary for the particular job. The link between Serbian citizenship and knowledge of the language therefore needs to be removed and requirements for knowledge of the Serbian language for accessing employment will need to be examined carefully. EU citizens must also have the right to bring their family members to Serbia; the spouse and children must be allowed to work without a work permit.

As regards supplementary pensions, upon accession, Serbia will need to implement measures in line with EU legislation to guarantee equal treatment between EU migrants and nationals regarding preservation of vested second-pillar supplementary pension rights and payment thereof in another Member State. Moreover, posted workers must preserve the possibility to continue to pay contributions to an occupational supplementary pension scheme in their country of origin for the duration of their posting, in which case they may choose to be exempt from contributing to such a scheme in the host Member State.

### **III.b. EURES**

All the basic elements as regards the EURES network are in place in Serbia. Concerning Serbia's future participation in the EURES network, along with 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.

### **III.c. Coordination of Social Security Systems**

As Regulations (EC) No 883/2004 and 987/2009 in the field of co-ordination of social security systems will be directly applicable in Serbia after accession, there is no need for Serbia to modify its social security legislation. However, as regards the entitlement to parental and child allowances, Serbia will have 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 Serbian social security system. Serbia 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, Serbia 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, adequate 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, Serbia needs to carry out a feasibility study on the impact of introduction of the EHIC on the public finances.