

**Government of Montenegro**

**Ministry of Labour and Social Welfare**

## **Questionnaire**

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

### **02 Freedom of movement for workers**

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**Podgorica, December 2009**



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**CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE  
OBLIGATIONS OF MEMBERSHIP**

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## Chapter 2: Freedom of movement for workers

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Freedom of movement for workers is one of the fundamental freedoms guaranteed by Community law. Pursuant to Article 39 ECT, every EU citizen has the right to move freely, to stay and to work, with some exceptions in the public sector, in another Member State without being discriminated against on grounds of nationality. Community rules on free movement of workers also apply to the European Economic Area (Iceland, Liechtenstein and Norway).

As regards the general principles related to access to the labour market, the *acquis* under this chapter provides for non-discriminatory treatment (on the basis of nationality, residence and language) of workers who are legally employed in a country other than their country of origin. On the basis of the Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>3</sup>, the right of residence goes hand in hand with the right to work in another Member State. Furthermore, certain rights are also extended to family members of the worker. The concept and implications of the freedom of movement for workers have been interpreted and developed by the case-law of the ECJ, including the term `worker` itself. 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 Community.

Candidate countries also need to prepare to participate in the EURES system (European Employment Services) aimed at promoting the freedom of movement for workers within the Community notably by close cooperation between national employment services to exchange information on employment opportunities. At the 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 of workers is complemented by a system for the co-ordination 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 Regulations that do not harmonise but co-ordinate the social security systems of Member States, and thus requires administrative cooperation between Member States. 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.

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<sup>3</sup> The provisions of this Directive are closely related to Chapter 23 “Judiciary and Fundamental Rights”. Only provisions of this Directive related to free movement of workers are addressed under Chapter 2. Citizens’ rights are covered by Chapter 23.

## ***I. ACCESS TO LABOUR MARKET (GENERAL PRINCIPLES)***

### **A. General**

#### **1. Do work permit requirements or similar restrictions for EU migrant workers exist, and if so, what are they?**

The Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08) stipulates that the foreigner may be employed or work in Montenegro pursuant to the conditions defined by this law, collective agreement, ratified and published international treaties and general rules of international law. Pursuant to this Law, the foreigner means the person who is not of Montenegrin nationality, either the citizen of another state or without citizenship, and it does not differentiate between a foreigner – a citizen of the EU or citizens of third countries.

The above mentioned law stipulates that the foreigner may be employed, or work in Montenegro in cases when having the following: work permit, permanent residence permit, or temporary residence permit, concluded labour contract, or civil legal contract and that the tributary have made application for the employment of a foreigner in accordance with this law.

A work permit is issued by the Employment Office of Montenegro. A work permit is a necessary document on which basis the foreigner may obtain the a permit for temporary residence for the purposes of employment, or work, in the state administration body in charge for movement and residence of foreigners, in accordance with the Law on Foreigners (Official Gazette of Montenegro 82/08). After obtaining the temporary residence permit for a foreigner, the employer concludes the contract with the foreigner, i.e. legal entity or organisational unit of foreign business organisation registered in Montenegro, conclude civil-legal contract and make application for starting of his/her work to the Employment Bureau within 15 days of the foreigner starting work.

Three types of work permits are envisaged for the purposes of employment and the work of foreigners in the labour market of Montenegro, which are as follows: personal work permit, employment permit and work permit.

The personal work permit provides the foreigner with free access to the labour market, not depending on the status or condition of the market. A foreigner with a personal working permit is equal to Montenegrin citizens regarding unemployment rights and employment benefits. This work permit may be issued to a foreigner: who has a permanent residence permit, according to the Law on Foreigners, and to refugees or people granted additional protection, in accordance with the Law on Asylum (Official Gazette of Montenegro 45/06).

An employment permit is a permit on which basis the employer concludes the labour contract with a foreigner and is issued at the request of the employer.

A work permit is a permit of time limited duration, on which basis the employer concludes the labour contract with the foreigner, i.e. a foreigner working for a legal entity registered in Montenegro or an organisational unit of a foreign business, registered in Montenegro, performs services or other forms of work, on the basis of a civil-legal contract. This permit is divided into the following:

- Seasonal work of foreigners;
- Work with foreigners posted to another country (crossborder services, additional training and improvement, movement of persons within a foreign business organisation);
- Training and improvement of foreigners
- Providing contracted services.

A personal work permit is issued at the request of a foreigner for an indefinite time. Additionally, it can be issued up to a year to a person provided with additional protection, an asylum seeker, and it can be extended, in accordance with the Law on Asylum.

An employment and work permit for a foreigner is issued at the request of an employer, legal entity, or an organisational unit of a foreign business registered in Montenegro. The request for issuance of a work permit shall be refused to the employer in the following cases:

- If he/she informed the Employment Office of Montenegro about dismissal of employees, in accordance with the Labour Law before submitting the request for issuance of a work permit for a foreigner;
- If he/she dismissed employees who worked for an indefinite time, six months before submitting the request for issuance of a work permit for a foreigner;
- If he/she refused to employ an unemployed person who is registered in the record of the Employment Office of Montenegro and who fulfilled the working conditions;
- If he/she was sentenced for an offence according to this law in the last three years, before submitting the request for issuance of a work permit;
- If he/she showed negative results of business in the previous year, or paid employees a salary below the level determined by collective agreement at the level of activity or didn't fulfil obligations on the basis of taxes and contributions.

The employer, who submits the request for issuance of a work permit for an agent of business organisation, or entrepreneur, shall not be refused for the first three above mentioned reasons.

In particular, the employer will not be refused for the request for issuance of a work permit for a foreigner if he/she is:

- Qualified to a degree level and holding a management position;
- Member of the family of a Montenegrin citizen (spouse and children up to 21 years old);
- Member of the family of an employer (spouse and children up to 21 years old);
- Professionally qualified in a specialised area of work for which education and/or training is not available in Montenegro.

Permits are issued in definite time, from three months until one year period, with possibility of extension for two years, depending on the type of a permit.

The Government of Montenegro, upon the proposal of the Ministry for Labour, which has previously obtained opinions of ministries responsible for certain activities for which a quota is determined and has obtained the Social Council's opinion, establishes the annual work permit quota, taking into account conditions of the labour market, and in line with the migration policy.

This quota does not include work permits issued to a foreigner:

- with a personal work permit;
- employed in Montenegro on the basis of an international treaty, subject to reciprocity;
- who teaches in educational institutions, in the language and alphabet of national minorities and other minority national communities;
- professional sportsmen/women who work in Montenegro on the basis of a valid labour contract;
- a Montenegrin citizen family member (spouse and children up to 21 years old);
- a foreigner's family member who has been granted permanent residence in Montenegro (spouse and children up to 21 years old);
- a member of the family of a refugee (spouse and children up to 21 years old);
- an agent of a business organisation, or an entrepreneur;
- a foreigner who is transferred for additional training and improvement in Montenegro;
- a transferee (manager, specialist);
- someone who is providing a prior agreed service in Montenegro.

Foreigners who have a priority in issuance of new work permits are as follows:

- A foreigner's family member with a residence permit in Montenegro (spouse and children up to 21 years old);
- Foreigners holding vocational qualifications in deficit professions;
- Migrant workers.



The provisions of Law mentioned above relating to the work of foreigners do not apply to the following:

- A member of a diplomatic mission or consular office in the territory of Montenegro;
- A person who has immunity on the basis of international law;
- A person who provides activities on the basis of international agreements concluded between Montenegro and another country, international organisation or the European Union regarding expert and technical assistance or on the basis of ratified treaties;
- Refugees who fulfil one of the following conditions: reside at least three years in Montenegro, are married to a Montenegrin citizen, have one child with Montenegrin citizenship;
- Founders, procurators, members of managing bodies and auditors of a business organisation, who do not have employment rights;
- Academic personnel invited as professors, teachers or scientific workers participating in scientific-research projects important to Montenegro;
- Members of international missions who perform a research activity in Montenegro, approved by the Government of Montenegro;
- Foreign correspondents accredited in the Republic of Montenegro or reporters of foreign media;
- Artists and technical staff for opera, ballet, theatre, concerts, visual arts and other cultural events, if they do not stay in Montenegro longer than 30 days, or three months a year with breaks;
- Persons who come to Montenegro to participate in sporting events;
- People who perform activities related to delivery and service of machines or equipment, if their activities do not last longer than 30 days without break, or three months a year with breaks;
- Persons who participate in fairs or exhibitions at which their employer participates;
- Persons who participate in organised expert events and conferences;
- Business visitors;
- Pupils and students, who perform practical work in Montenegro in line with international regulations on pupils and students exchange;
- Crew members of boats and aircraft or employees of road and rail companies registered abroad;
- Religious officials performing their religious duties;
- People who work for registered humanitarian organisations;
- Employees in circuses or amusement parks, if they do not stay in Montenegro longer than three months without a break;
- Civil and military officers of other governments, who come to Montenegro on the basis of a contract of cooperation with the Government of Montenegro.

**2. Do provisions exist to prevent discrimination on grounds of nationality (direct or indirect) against EU migrant workers as well as their family members (regardless of nationality) in employment, pay and working conditions and if so, what are they?**

EU migrant workers and their family members, who legally reside and are legally employed in Montenegro, enjoy equal treatment with employed citizens of Montenegro with regard to employment, pay and working conditions.

The Constitution of Montenegro provides that everyone has the right to work, to freely choose their profession and employment, to fair working conditions and protection during unemployment.

The Labour Law (Official Gazette of Montenegro 49/08) prohibits any direct or indirect discrimination of persons seeking employment as well as of employed people with regard to their sex, place of birth, language, race, religion, skin colour, age, pregnancy, health conditions, disability, nationality, marital status, family obligations, sexual orientation, political or other

affiliation, social background, property, etc.

### **3. What nationality conditions (if any) apply to employment in the public sector?**

Pursuant to the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08), foreign citizen or a stateless person may enter into employment in the state body, under conditions envisaged by the Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08) and international conventions.

Conditions for employment of foreigners or stateless persons are mentioned in the response to the question 1 of this Chapter.

## **B. Freedom of movement for workers within the Community (Regulation (EEC) 1612/68)**

### **4. Do EU migrant workers have access to available employment under the same conditions as Montenegro nationals?**

If EU migrant workers are legally employed and work in the territory of Montenegro, pursuant to the provisions of the Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08), mentioned in the response to question 1 of this Chapter, they have in this respect equal access to the labour market or employment, and thus they are on a par with the citizens of Montenegro.

### **5. Are there any language requirements for specific jobs and if yes which ones?**

The Rulebook on issuing, renewing or revoking a licence stipulates that a doctor – foreign citizen, who intends to practice permanently or temporarily in Montenegro, shall provide documentation proving their fluency in Montenegrin language, together with an official request and any other needed documentation.

Even though the Law does not state that Montenegrin language is required for performing certain jobs, in practice the knowledge of the official language is necessary for all positions for which Montenegrin citizenship is required.

### **6. Do EU migrant workers receive assistance from employment offices?**

Unemployed people have rights stipulated by the Law on Employment (Official Gazette of Montenegro 21/08), the Statute and secondary legislation.

Unemployed people in Montenegro according to Article 10 of the Law on Employment receive the following rights from the Employment Office:

1. information about opportunities and conditions for employment;
2. employment mediation;
3. involvement in the programs of active employment policies;
4. preparation for employment;

5. insurance in cases of unemployment (unemployment benefits);
6. financial assistance;
7. health insurance;
8. other rights in line with the Law on Employment.

A foreigner who has been granted permanent residence in Montenegro and a personal work permit, according to the provisions of the Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08), enjoys the above rights from the Employment Office under the same conditions as citizens of Montenegro.

Under bilateral international agreements a foreigner who has been approved for temporary residence in Montenegro and a work permit, after termination of his/her employment, is entitled to health, pension and invalidity rights, as an unemployed person.

On the basis of international law provisions on the succession of a state with regard to international treaties, the Decision on promulgation of independence of Montenegro as of 3 June 2006 (Official Gazette of Montenegro 36/06), Montenegro is obliged to implement all international contracts and agreements on social insurance ratified when it was a part of the State Union of Serbia and Montenegro.

Agreements on social insurance establish the legal link between the systems of social insurance of the agreement member states and they enable insured people from the member states the usage of rights from social insurance.

Agreements are based on generally accepted rules on adoption of such bilateral agreements.

However, the above mentioned agreements stipulate exceptions of the principle of the equalisation of the member state territories, thus the general rule which stipulates that the social insurance benefits which are achieved according to the laws of one member state are paid to the user with residence in other state, do not apply to unemployment benefits.

Regarding the rights to unemployment benefits, the principle of adding up the insurance periods shall be applied. Agreements stipulate that insurance periods defined by the laws of one member state will be taken into account in the other member state in the case of unemployment and according to that member state's laws, if an unemployed person was insured against unemployment for as long as the laws of the original member state prescribe.

Minimum employment period provision does not apply to unemployed people who were employed on a permanent basis and whose employment was terminated through no fault of their own, and to people who have a state permit for the member state in which they have the right to claim benefits.

## **7. What rights to "tax and social advantages" and vocational training do EU workers have?**

When it comes to »tax and social advantages«, and the right to vocational training, EU workers are in the same position as citizens of Montenegro, provided that they legally work and reside in Montenegro.

For instance, provisions of the Law on Personal Income Tax (Official Gazette of the Republic of Montenegro 65/01, 37/04, 78/06) concerning personal income tax relief, are equally applied to EU workers. Social advantages, in terms of the right on social insurance are calculated in the same manner as for Montenegrin citizens.

The Labour Law (Official Gazette of Montenegro 49/08) stipulates that the employer is obliged to provide employees with education, vocational training and improvement, in cases when necessary for the working process, introduction of the new organisation of work, and in particular when it comes to the adoption and implementation of new methods in the organisation and technology of work.

Vocational training of employees is performed by the employers, for the purposes of gaining internal qualifications and by licensed professional adult education companies.

The cost of vocational training of EU workers shall be provided by the employer or employees themselves and in cases of deficit professions by the Employment Office of Montenegro, from the Budget of Montenegro.

## **8. What trade union rights do EU workers have?**

The right of employees to freely form trade unions and associations, without approval, after registering with the competent body, is guaranteed by the Constitution of Montenegro.

Following the above mentioned Constitutional provision, the Labour Law stipulates that the workers have the right, according to their own free choice and without preliminary approval, to establish a trade union and to become its members, under the conditions envisaged by the statute and rules of the particular organisations.

The trade union independently decides on representation before the employer.

A trade union may appoint or elect one representative. The employer is obliged to allow the trade union representative to exercise his/her rights within an appropriate timeframe, and to provide access to data needed for the achievement of those rights.

A trade union representative is entitled to the right to participate in discussions with relevant employer's body.

A trade union is entitled to collective negotiation and the conclusion of collective agreements.

Employees achieve trade union rights on the basis of General Collective Agreement. According to the General Collective Agreement the employer is obliged to provide conditions for effective performing of trade union activities that protect interests and rights of employees. Likewise, signatories of a General Collective Agreement are obliged to provide the minimum following conditions for work and actions: right to participation in national and international trade union activities; right to sanctity of trade union premises, trade union mail and telephone conversations; right to protection of trade union funds and property from the intervention of a public authority; right to media access; right to voluntary acceptance of the mediation and arbitration process; right of employees to education and training.

The employer should allow the trade union to initiate activities, make suggestions, submit requests and express their opinions, and to be informed about the issues of significant importance for professional and economic interest of employees. Following the above mentioned Collective Agreement, the employer shall take into consideration opinions and suggestions made by the trade union before making a decision of significant importance for professional and economic interest of employees, in particular regarding the issues of collective dismissal of workers due to technical-economic, restructuring and other changes, etc.

Likewise, General Collective Agreement stipulates that a trade union has the right to represent an employee in a disciplinary procedure.

The Labour Law and General Collective Agreement shall be applied on employees working in Montenegro, and employees working abroad for the employer residing in Montenegro, if not defined differently by a particular law. For this reason, provisions of the Labour Law and General Collective Agreement regarding the trade union rights are applied to the EU workers who legally reside and work in Montenegro.

## **9. What housing rights do EU workers have?**

The Law on Foreigners (Official Gazette of Montenegro 82/08), stipulates that a foreigner is

obliged to submit the proof of provided accommodation when submitting the application for the temporary residence, for the purposes of employment and work, performing economic or entrepreneurship activity, or seasonal work.

EU workers do not have special rights in comparison to the citizens of Montenegro. If they hold necessary work permit EU workers may, just as Montenegrin citizens, rent a flat, or use a housing space on the basis of a flat lease contract concluded in line with the Law on Obligatory Relations (Official Gazette of Montenegro 47/08), subject to freely agreed rent. In addition, there is a possibility that the employer, or the legal person who employs the foreigner, secures adequate accommodation.

#### **10. What rights to education do the children of EU migrant workers have?**

Foreign citizens may be educated as citizens of Montenegro under the conditions of reciprocity.

Foreign citizens having temporary or permanent residence in Montenegro have the same rights to education as citizens of Montenegro, in accordance with the special law. (Article 9(2) and (3) of the General Law on Education – Official Gazette of the Republic of Montenegro 64/02, 31/05, 49/07).

Hence, migrants` children may be educated as citizens of Montenegro in schools where the teaching is performed in the official language of the country. Those schools are obliged to provide those children with adequate assistance in language learning. (Article 11 of the General Law on Education – Official Gazette of the Republic of Montenegro 64/02, 31/05, 49/07).

Besides the state schools, migrant workers` children can be educated in private elementary schools, founded by a foreign legal or natural person, and thus gain an education in their native language. (Article 43 of the General Law on Education – Official Gazette of the Republic of Montenegro 64/02, 31/05, 49/07).

Foreign citizens may have the right to enrolment to study programs in public institutions of higher education under the same conditions as citizens of Montenegro. (Article 89 of the Law on Higher Education – Official Gazette of the Republic of Montenegro 60/03 and Official Gazette of Montenegro 04/08).

### **C. Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC)**

#### **11. What documents do EU migrant workers and their family members (including those who are not EU nationals) need in order to enter Montenegro?**

Conditions for entry, movement and residence of foreigners in Montenegro are regulated by the Law on Foreigners (Official Gazette of Montenegro 82/08) and by the Decree on Visa Regime (Official Gazette of Montenegro 80/08).

Pursuant to the Article 1 of the Decree, EU member states` citizens may enter, transit through the territory and reside in Montenegro up to 90 days with a valid travel document, without obtaining a visa. Pursuant to the Article 2 of the Decree, EU member states citizens may transit through the territory and reside in Montenegro up to 30 days with a valid identity card, or other document on which basis their identity and citizenship may be confirmed.

Family members, who are not EU member states citizens, achieve the right to enter Montenegro in accordance with the Decree on Visa Regime, and depending on the citizenship they have.

**12. What are the residence formalities for EU citizens exercising an economic activity as salaried workers?**

A foreigner, who wishes to exercise an economic activity as a salaried worker and intends to reside longer than 90 days, may be granted a temporary stay permit for the purposes of employment and work, or for exercising other economic or entrepreneur activity, in accordance with the Law on Foreigners (Official Gazette of Montenegro 82/08).

Temporary residence for the purposes of employment and work, exercising of economic or entrepreneur activity shall be approved for a foreigner if he/she has means of subsistence; accommodation; health insurance; fulfils conditions for entry and movement across the territory of Montenegro; has submitted a proof on justification of the request for temporary residence. Besides general conditions for the above mentioned approval, a foreigner must possess a work permit issued in accordance with the Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08). The work permit is a document allowing the foreigner to be employed, or work in Montenegro. Temporary residence for the purposes of employment shall be issued to a foreigner for a determined period, or for up to a one year period.

A temporary residence permit in Montenegro is issued by the Ministry of the Interior and Public Administration with previous approval by the Police Directorate. The request for issuance of the first temporary residence permit shall be submitted to the diplomatic or consular office of Montenegro, while a foreigner who does not need a visa for entry into Montenegro may submit the request for the first temporary residence permit to the organisational unit of the Ministry of the Interior and Public Administration in the place of residence. If the request for temporary residence is refused, a foreigner may submit a complaint to the Ministry of the Interior and Public Administration within eight days from the date of the decision receipt. Temporary residence is issued up to one year. Temporary permit approval is documented in the valid travel document of a foreigner. Temporary residence may be extended up to two years at the most. The request for extension of temporary residence is submitted to the Ministry of the Interior and Public Administration, in the place of residence, at least 30 days before termination of the time of valid temporary residence.

In addition, The Law on Foreigners stipulates that permanent residence may be approved to a foreigner if he/she resided in Montenegro five years continuously before the date of the request submission, on the basis of temporary residence approval. Exceptionally, permanent residence may be approved to a foreigner if he/she resided in Montenegro less than five years continuously before the date of the request submission, for humanitarian reasons or if it is of interest for Montenegro. The time a foreigner has spent in Montenegro as a temporary resident for the purposes of seasonal work or for serving a prison sentence, will not be calculated in the time needed for the permanent permit approval. Permanent permit approval is issued by the Ministry for the Interior and Public Administration. Permanent permit approval is submitted to the organisational unit of the Ministry in the place of residence. The approval is documented in the travel document of a foreigner.

**13. Do EU migrant workers in Montenegro have the right to bring their family members with them?**

The foreigner who has a permanent or temporary residence in Montenegro, pursuant to the provisions of the Law on Foreigners (Official Gazette of Montenegro 82/08), may bring the family members with him/her. The term "close family" under this law means: spouses, minors born in or out of marriage, minors of one of spouses and adopted children.

Exceptionally, a relative could be considered a member of close family, if there are special, personal and/or humanitarian reasons for a family reunion in Montenegro.

Temporary residence for the purposes of family reunion is approved for up to one year period, or until the termination of the temporary residence status of a foreigner with whom the reunion is

requested. Temporary residence may be extended in the case when a Montenegrin citizen dies, and in the case of termination of a marriage that lasted at least three years in Montenegro. A foreigner, who is a close family member of a Montenegrin citizen or of a foreigner with approved permanent residence in Montenegro, is provided with extension of a temporary residence until he/she fulfils conditions for obtaining the right on permanent residence.

**14. Are non-EU national family members of an EU migrant worker in Montenegro granted a residence permit of the same length of validity as the EU citizen?**

In terms of achievement of rights to temporary residence on the basis of a family reunion, the Law on Foreigners (Official Gazette of Montenegro 82/08) does not make a distinction between EU member states citizens and third states citizens. Conditions for the achievement of above mentioned rights are given in the response to the question 13 of this Chapter.

**15. Do work permit requirements or similar restrictions exist for the family members (including those who are not EU nationals) of an EU migrant worker in Montenegro, and if so what are they?**

Family members of a foreigner (spouse and children up to 21 years of age) may be employed, or work in Montenegro under the same conditions as a foreigner (conditions are mentioned in the response to question1 of this Chapter).

The issuance of work permits to foreigners` family members who have permanent residence approval in Montenegro and refugee family members is not limited to an annual quota, which means that they are issued regardless of the status of the labour market in Montenegro.

In addition, the priority for issuance of new work permits is given to foreigners` family members with a residence permit in Montenegro.

**16. Can an EU migrant worker's right to reside be revoked on grounds of involuntary unemployment, illness or accident?**

The Law on Foreigners (Official Gazette of Montenegro 82/08) determines the conditions under which a residence permit of a foreigner who has been granted a temporary permit for the purposes of employment and work, exercising of economic or entrepreneur activity may be revoked, and conditions under which the temporary permit of a foreigner is terminated as well.

Pursuant to Article 52(1) point (3) of this Law, the temporary permit may be revoked if it is concluded that the residence is not used in accordance with the purpose for which the approval has been issued.

Paragraph 2 of the same Article stipulates that while deciding whether the temporary permit is going to be revoked or not, the following must be taken into consideration: duration of stay, personal, family, economic and other circumstances.

A temporary permit for a foreigner will not be automatically revoked if the termination of work happened without his/her fault, or in the case of illness or accident, thus a foreigner may continue residing in Montenegro until the termination of his/her residence permit, in compliance with the Law on Foreigners, or change the reason for temporary stay, in compliance with the same Law.

**17. Do the spouse and children under 21 (regardless of nationality) of an EU migrant worker have the right to employment in your country without a work permit?**

A work permit is a necessary document on which basis a foreigner may be employed, or work in Montenegro. Spouse and children under 21 of a foreigner who is employed in Montenegro have the right to employment in line with provisions of the Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08), which is given in detail in the response to question 1 of this Chapter.

The Law on Employment and Work of Foreigners stipulates that the annual quota of work permits does not include work permits for foreign workers who are: family members of a foreigner who has a permanent residence permit and family members of a foreigner who has refugee status (spouse and children under 21).

Accordingly, a spouse and children under 21 of mentioned foreigners may be employed in Montenegro if having a work permit, whose issuance is not limited by an annual quota, regardless to the present status of the labour market in Montenegro.

The Stabilisation and Association Agreement prescribes that the spouse and children of workers, who are legally employed in the territory of a Member State, have access to the labour market of that Member State during the period of that worker's authorised employment.

The spouse and children under 21 years of age of an EU migrant worker will be able to work without a work permit if they belong to the following categories of foreign citizens: members of diplomatic or consular office, founders and members of managing boards and business organisations, academic personnel, artists, business visitors, etc.

Persons who do not need to have a work permit are listed in the answer to question 1 of this Chapter.

**18. Are there rules providing for a right to remain for an EU citizen**

**a) who has worked in your country and then reaches retirement age;**

In compliance with the Law on Foreigners (Official Gazette of Montenegro 82/08), a foreigner who worked in Montenegro and was granted temporary residence on the basis of employment and work, for exercising economic or entrepreneur activity, after meeting the conditions for retirement, may remain in Montenegro, but needs to submit a request for approval of temporary residence in Montenegro on other grounds defined by this Law, or to submit a request for permanent residence if meeting conditions defined by this Law.

**b) who has worked in your country, who has resided continuously for at least 2 years in your country and then becomes permanently incapable of work;**

In accordance with the Law on Foreigners (Official Gazette of Montenegro 82/08), a foreigner who resided continuously for at least two years in Montenegro and became permanently incapable of work, may remain in Montenegro, but needs to submit a request for approval of temporary residence in Montenegro on other grounds defined by this Law, or to submit a request for permanent residence if meeting conditions defined by this Law.



**c) who has worked in your country and then becomes incapable of work because of an accident at work or an occupational disease?**

In accordance with the Law on Foreigners (Official Gazette of Montenegro 82/08), a foreigner who worked in Montenegro and became incapable of work because of an accident at work or an occupational disease, may remain in Montenegro, but needs to submit a request for approval of temporary residence in Montenegro on other grounds envisaged by this Law, or to submit a request for permanent residence if meeting conditions envisaged by this Law.

**19. What are the residence rights of the family members of EU citizens in the above categories?**

Reunion of a family is regulated by the Law on Foreigners (Official Gazette of Montenegro 82/08). Article 48 of this Law stipulates that the temporary residence for the purposes of family reunion may be approved to a foreigner, close family member of Montenegrin citizen or a foreigner who has been granted permanent or temporary residence in Montenegro.

Accordingly, family members of a foreigner who has been granted permanent or temporary residence may achieve the right to temporary residence for the purposes of the family reunion, under the conditions mentioned in the answer to question 13 of this Chapter.

**D. Safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (Directive 98/49/EC)**

**20. Does your country have any supplementary (or private) pension schemes?**

Law on Voluntary Pension Funds (Official Gazette of Montenegro 78/06, 14/07) stipulates the following: "This law regulates the conditions for establishment of companies for management of pension funds (hereinafter: management company) and organization of voluntary pension funds on the basis of individual capitalised savings, as well as their operations." (Article 1) The main principles upon which the voluntary pension funds can be established are following: 1) voluntary membership; 2) risk investment distribution; 3) members` equality; 4) work transparency; 5) accumulation of funds (Article 2).

In accordance with the Law on Voluntary Pension Funds in Montenegro the following companies have been created and licensed to work with the management of voluntary pension funds: ATLAS PENZIJA A.D. Podgorica, MARKET INVEST A.D. Bijelo Polje and NLB PENZIJA A.D. Podgorica. ATLAS PENZIJA A.D. established the voluntary pension fund named PENZIJA PLUS, while MARKET INVEST A.D. established the open voluntary pension fund named MARKET PENZIJA. Company for management of a voluntary pension fund NLB PENZIJA A.D has been licensed to work with management of voluntary pension funds, but it has not formed the voluntary pension fund jet.

**21. What happens if a member of a supplementary pension scheme moves to an EU Member State?**

The open pension fund is a fund to which all natural persons may accede (Article 26(5) Law on Voluntary Pension Funds – Official Gazette of Montenegro 78/06, 14/07). The company for management which controls an open pension fund may not refuse the application for membership of any person (Article 31 (4) Law on Voluntary Pension Funds).

Law on Voluntary Pension Funds does not regulate this issue. Considering the fact that there are no prohibitions or limitations, if a member of an open pension fund moves to an EU Member State, he/she may continue to pay contributions as the Law prescribes that anyone can become a member of an open pension fund.

What happens when a member of a supplementary pension fund moves to an EU Member State, when it comes to a closed pension fund, is stipulated by the Decision of an employer of the established pension fund. The Law, taking into consideration that it does not contain restrictions towards payment of contributions, allows cross border payments of contributions with the aim to ensure the freedom of movement of employees and self employed people within member states.

Law on Amendments of the Law on Voluntary Pension Funds, which is planned by the National Program for Integration of Montenegro into the EU for the period 2008 - 2012, will be harmonised with the Directive 32003L0041 on activities and supervision of institutions for occupational retirement provision and Council Directive 31998L0049 on safeguarding the supplementary pension rights of employed and self employed persons moving within the Community.

## **22. Can payments from a supplementary pension scheme be made to a scheme member residing in an EU Member State?**

The member of a pension fund may leave the fund by withdrawal of financial means from the personal account, reduced by the amount of allowance from the Article 36 of the Law on Voluntary Pension Funds when he/she reaches the age of 50. Financial means from Paragraph 1 of this Article can be withdrawn in two following ways: 1) 30% at the most is paid in cash at the day of fulfilment of conditions determined by the Rule on management and contract on membership, and the rest in monthly or periodically, within a time framework not longer than three years from the day of exiting the pension fund, or 2) the total amount of money is transferred to the company dealing with the pension payments, in accordance with regulations. (Article 33 of the Law) The amount at the account of the fund member is the property of that person. (Article 34 of the Law)

The Law on Voluntary Pension Funds regulates payments pursuant to the Article 33 of the Law. The right to payment is stipulated by reaching conditions for exiting a pension fund, or reaching 50 years of age. After 50 years of age, a member of a voluntary pension fund gains the right to payment of financial means from a personal account, which is his/her property, (Article 34 of the Law), and has full control over the use of that money.

## **23. Can workers who are temporarily posted from your country to an EU Member State continue to make contributions to their supplementary pension scheme?**

A closed pension fund is a pension fund which is organized for the needs of certain employers, trade unions and other organizations (Article 26(6) of the Law on Voluntary Pension Funds). The management company which manages the closed pension fund may accept the application for membership only from employed persons, members of trade unions and members of other organizations for whose needs the closed pension fund is organised.

The contract on membership in a closed pension fund must be offered to all employees, or members of trade unions or other organisations for whose need the pension funds is organised, in order to meet equal conditions for membership in a pension fund and equal conditions for transfer to another pension fund, or leaving the pension fund. (Article 5(2) of the Rulebook on content of contract for the membership in voluntary pension fund (Official Gazette of Montenegro 57/07).

Status of workers, members of a closed voluntary pension fund who are posted to another member state, as well as cross border payments in supplementary pension schemes of another member state are not subject to our laws. Secondary legislation – the Rulebook of Securities Commission of Montenegro - on content of contract for the membership in voluntary pension fund (Official

Gazette of Montenegro 57/07) stipulates the obligation of employers to provide equal conditions for membership and transfer to another pension fund, or for leaving a pension fund. Equal conditions mean that the member of a closed voluntary pension fund who is temporarily employed outside Montenegro in the EU member state may resume payment of contributions in the supplement pension fund with the same employer.

**24. Do supplementary pension schemes provide adequate information to members about their pension rights if they move to an EU Member State?**

The management company adopts the rules on management for each pension fund, which regulates the following: 1) the name of the pension fund; 2) main principles and limitations of investments; 3) main principles of obtaining and termination of membership in a pension fund; 4) reporting on business and portfolio of a pension fund, as well as a place and way of publishing that information; 5) rights and obligations of a member of a pension fund and the company in the case of terminating of membership contracts; 6) amount and way of remuneration of expenses for management of a pension fund; 7) other issues important for a pension fund.

Information for members about their pension rights if they move to an EU Member State are not explicitly regulated in the laws and secondary regulations. Information on the rights of members in a case of moving would be subject to regulation by the Rule on management of pension funds, having the obligation to provide adequate information about all other issues.

Law on Amendments to the Law on Voluntary Pension Funds, which is stipulated by the National Program for Integration of Montenegro into the EU for the period 2008 - 2012, will be in compliance with the Directive 32003L0041 on the activities and supervision of institutions for occupational retirement provision and Council Directive 31998L0049 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, when this issue will be explicitly regulated.

## II. EURES

### 25. Is there a national vacancy database? Is there a National website for those vacancies? How are vacancies displayed on this website?

The Employment Office of Montenegro, as the state institution, possesses and updates the data base on vacancies at the national level. This data base is unique and it is kept in the Central Office; it contains and processes all data gained from local branches. The base does not contain vacancies that are not published, which is a small percent in relation to the total number of vacancies.

Data base update is performed in a real time frame, at the time the information on the need for a worker appears. The main entry document is the Vacancy Application (form E1), which is submitted to the appropriate service by the employer, at the beginning of the process of employment of workers. Pursuant to the Employment Law, the employer does not have to advertise a vacancy, and to submit the application E1, even though it is recommended by the Employment Office.

Data base on advertised vacancies represents the main precondition for analytic and research observation of the processes in the field of employment and unemployment, and their monitoring at the level of state as well. Besides, its „online” update provides simple distribution of qualitative and timely information on current demands of the labour market, to all interested users, by the application of modern technologies, such as the Internet and mobile telephony (SMS).

The electronic version of the labour market in Montenegro is available at the internet portal of the Employment Office of Montenegro (<http://www.zzzcg.org>). The procedure of advertising vacancies on the Internet is totally automatic, the information about current working positions are available immediately after the submission of the application E1. The employer has complete control over applications and may change them or add new ones.

Uploading application to the Employment Office web site is free of charge, and available to all seeking or offering a job, no matter if they are registered or not with a local employment office. The only condition is having access to the Internet and registering in order to use this service. The main level of this service provides the search of advertised vacancies and/or offers of the work force in the data base and it's available to all users, without registration. The search may be performed in three ways:

- According to the area of work – provides the search on pre-defined groups of professions (area of work), with the possibility of “fine” (customized) search for the purposes of finding specific professions.
- According to a key word – provides the selection of one or more words of professions, qualifications and education, which are key for the working position profile. The search is performed according to on any specific word or all key words.
- According to criteria – provides the selection of one or more criteria, from the set of pre-defined criteria (type of working engagement, working time, working place, minimum salary, preferable qualifications etc). The search is performed on all selected criteria.
- »My SMS Job« is a service of the Employment Office of Montenegro, based on „SMS - Short Message Service“, as a fast and relatively cheap exchange of information.

By sending the appropriate SMS to one of the numbers at our SMS Centre (067 33 91 11 or 069 33 91 11), all users may, immediately, gain full information on current vacancies or information on the structure of certain professions in the register of the Office. The SMS centre is completely automatic and it provides information from the area of employment to everyone interested 24 hours a day. The SMS Centre functions within the information system of the Office and with support of mobile operators of the following networks: 067, 068, 069, 063 and 064.

Further steps:

- The connection of the information system of the Employment Office with the systems of other state bodies is planned, with the aim to harmonize general information on employers and those who seek employment at the national level.
- Usage of digital certificates in the system of the Office to identify an employer who files applications electronically or checks the status of filed data.
- Encouraging employers to use the Internet in the process of advertising vacancies and finding an adequate work force.

#### **Current problems - obstacles**

- There is no authority in charge of issuing certificates (CA - Certificate Authority) at the national level.

#### **26. Is mobility of workers promoted by the Public Employment Service?**

One of the characteristics of the labour market in Montenegro is the increase of demand for a seasonal work force. It is especially noticeable in the area of tourism, engineering and agriculture. The increase in demand in those areas can not be satisfied with the available domicile work force.

The Employment Office insists on promotion of workers mobility through the Program for seasonal employment. The Office encourages a great number of unemployed people to become employed in areas in which the increased demand for work is noticed, especially during the tourist, construction and agricultural seasons. This is realised through providing timely information to the unemployed on the opportunities and conditions for seasonal employment.

In addition, regular contacts have been established with employers who have an increased seasonal need for workers, with the aim to increase seasonal employment and to provide decent working conditions for seasonal employees with regard to their salary and accommodation. The program for seasonal employment, in recent years, includes on average 25% of the unemployed who are registered with the Office. Out of that number around 45% of seasonal employees change their residence during their seasonal work.

### **III. CO-ORDINATION OF SOCIAL SECURITY SYSTEMS**

#### **A. Scope of co-ordination**

##### **27. Material scope:**

##### **a) Regulation 883/2004 will apply to the social security branches mentioned in Article 43: are all these branches covered by your legislation?**

The Montenegrin social security legislation covers all of the social security branches referred to in Article 3 of the Regulation 883/2004.

##### **b) As regards Article 9, please list the legislation and social security schemes covered by the Regulation?**

Montenegrin social security legislation, includes pension and invalidity, health security, security in cases of unemployment and the right to family allowances (child allowance), hence it includes all fields of social security stipulated by the Decree 31971R1408, of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, which represents the main regulation of the European Social Legislative, as well as all fields stipulated by the Decree 31972R0574, of 21 March 1972, containing the provisions for implementation of the Decree 31971R1408 and the Decree 32003R0859, of 14 March 2003, which extends the application of mentioned decrees.

Concerning Article 9 of the Regulation 883/2004, we are giving below the following Montenegrin social security legislation covered by this Regulation:

- For sickness and maternity: Law on Health Insurance (Official Gazette of the Republic of Montenegro 39/04) with secondary legislation for its implementation;
- For disability benefits: Law on Pension and Disability Insurance (Official Gazette of the Republic of Montenegro 54/03, 34/04, 79/04, 81/04, 47/07 and Official Gazette of Montenegro 79/08), with secondary legislation for its implementation;
- For old age benefits: Law on Pension and Disability Insurance (Official Gazette of the Republic of Montenegro 54/03, 34/04, 79/04, 81/04, 47/07 and Official Gazette of Montenegro 79/08) and Law on Voluntary Pension Funds (Official Gazette of Montenegro 78/06 and 14/07) with secondary legislation for its implementation;
- For family members` benefits: Law on Pension and Disability Insurance (Official Gazette of the Republic of Montenegro 54/03, 34/04, 79/04, 81/04, 47/07 and Official Gazette of Montenegro 79/08) with secondary legislation for its implementation;
- For benefits in case of accidents at work and/or occupational diseases: Law on Health Insurance (Official Gazette of the Republic of Montenegro 39/04) and Law on Pension and Disability Insurance (Official Gazette of the Republic of Montenegro 54/03, 34/04, 79/04, 81/04, 47/07 and Official Gazette of Montenegro 79/08) with secondary legislation for its implementation;
- For unemployment benefits: Law on Employment (Official Gazette of the Republic of Montenegro 29/05) with secondary legislation for its implementation;
- For one off benefits and child allowances: Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05) with secondary legislation for its implementation;

**c) Please explain the distinction between social security benefits and social assistance as provided for by the Regulation?**

Social security benefits in Montenegro are regulated by the Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05). Those benefits are related to persons who are not included in the legal provisions under b).

Hence we believe that legal provisions of Montenegro make a clear distinction between social security benefits and social assistance.

**d) Are there special schemes for war victims? Please explain.**

The protection of the armed forces, disabled war veterans, family members of killed soldiers and disabled civilian war victims in Montenegro is regulated by the Law on Protection of War Veterans (Official Gazette of Montenegro 21/08). The Law covers the soldiers from the period 1912-1918 war, soldiers from the Second World War and soldiers that took part in military actions in the territory of ex Yugoslavia after the 1990s. This Law stipulates the rights of disabled war veterans, regardless as to whether they were disabled during a war or in time of peace, rights of civilian war victims (and civilians victims of mislaid munitions), rights of families of soldiers killed in actions covering close family members and parents, as well as family members of ex Yugoslav Army soldiers who disappeared and are registered as disappeared persons in Montenegro.

Pursuant to the Law, disabled war veterans and disabled civilian war victims are entitled to the following rights: personal disability benefit as a permanent monthly payment, unemployment benefits (disabled war veteran 80% - 100% of a minimum salary), material benefits in the form of permanent monthly payments if disability benefits are their only source of monthly income, health insurance except for non obligatory immunisation, and all other rights in accordance with provisions from the area of health, and a right to free and subsidized transport within the country. Rights are achieved depending on the level of body impairment caused by the injury, wound or illness. Likewise, the Law stipulates the right to funeral costs in the case of death. People who need care and assistance and adequate orthopedic aid are provided with a monthly payment for the care and assistance of another person, with orthopedic aid benefits and with a permanent monthly payment for the repair of orthopedic aid. They are also provided with the right to orthopedic aid.

Family members of the war victims are provided with permanent monthly payments in the form of family disability benefits for each family member, with increased benefits for each child while he/she is studying, and parents who have lost the only child they had have the right to this kind of benefit. The Law also provides family members with health protection and insurance without participation in expenses for treatment, as well as with free and subsidized transport. Accommodation is provided for all families of war victims as well as other forms of assistance that can have an impact on adequate material-social and housing status, and this program includes disabled war veterans.

Children of those who died in military actions after 1990 are provided with scholarships, with paid expenses for textbooks and school accessories and any other financial help that is important for adequate studying.

**e) Please provide a list of your bilateral social security conventions.**

After gaining independence on 03 June 2006 Montenegro concluded the following bilateral agreements on social insurance:

- Agreement on Social Insurance between Montenegro and Republic of Serbia of 17 December 2006 (Official Gazette of Montenegro 17/07);

- Agreement on Social Insurance between Montenegro and the Grand Duchy of Luxembourg of 19 February 2008 (Official Gazette of Montenegro-International treaties, No 6/08);
- Agreement on Social Insurance between Montenegro and Republic of Hungary, of 20 May 2008 (Official Gazette of Montenegro-International treaties No 6/08).

Beside the above mentioned Treaties, new bilateral agreements on social insurance between Montenegro and the Confederation of Switzerland, and between Montenegro and the Republic of Macedonia are harmonised and initialled, and are awaiting ratification.

In accordance with the Decision of the Republic of Montenegro on proclamation of independence on 03 June 2006 (Official Gazette of Montenegro 36/06), on the basis of succession from the former SFR Yugoslavia, SR Yugoslavia and State Union of Serbia and Montenegro, Montenegro applied the following agreements on social insurance:

- Agreement on Social Insurance between SRJ and Republic of Austria of 05 June 1998 (Official Gazette of Socialist Republic of Yugoslavia -International treaties No 7/98);
- Convention on Social Insurance between FNRJ and Kingdom of Belgium of 1 November 1954 (Official Gazette of Federal Peoples Republic of Yugoslavia -International treaties No. 7/56);
- Convention on Social Insurance between FNRJ and Republic of Bulgaria of 18 December 1957 (Official Gazette of Federal Peoples Republic of Yugoslavia -International treaties No 8/58);
- Convention on Social Insurance between FNRJ and Czechoslovakia of 29 May 1957, applied from 1 December 1957 with Republic of Slovakia (Official Gazette of Federal Peoples Republic of Yugoslavia -International treaties No 1/58);
- General Convention on Social Insurance between FNRJ and Republic of France of 5 January 1950, (Official Gazette of Federal Peoples Republic of Yugoslavia -International treaties No 4/51);
- Convention on Social Insurance between FNRJ and Italian Republic of 14 November 1957 (Official Gazette of Federal Peoples Republic of Yugoslavia -International treaties No 1/ 59);
- Convention on Social Insurance between SFRJ and Kingdom of Netherlands of 1 June 1977 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 11/80)
- Convention on Social Insurance between SFRJ and Kingdom of Norway of 8 May 1975 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 22/75)
- Agreement on Social Security between SFRJ and Federal Republic of Germany of 12 October 1958 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 9/69)
- Convention on Social Insurance between Government of FNRJ and Government of Poland of 16 January 1958 (Official Gazette of Federal Peoples Republic of Yugoslavia - International treaties No 9/58)
- Convention on Social Insurance between SFRJ and Kingdom of Sweden of 30 March 1979 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 12/79)
- Convention on Social Insurance between FNRJ and Confederation of Switzerland of 8 June 1962 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 8/ 63)
- Convention on Social Insurance between FNRJ and United Kingdom of Great Britain and Northern Ireland of 24 May 1958 (Official Gazette of Federal Peoples Republic of Yugoslavia -International treaties No 7/58)
- Convention on Social Insurance between SFRJ and Kingdom Denmark of 1 February 1979, (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 5/80)
- Agreement on Social Insurance between SFRJ and Libyan Republic of Arabic Jamahiriya of 6 April 1989 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 1/ 90)
- Agreement between the Government of SFRJ and Government of SR Romania on cooperation in the area of health insurance from 1976 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No13/ 77)



- Agreement on social insurance cooperation between SFRJ Republic of Panama of 26 November 1975 (Official Gazette of Socialist Federal Republic of Yugoslavia-International treaties No 11/ 77)
- Agreement on Social Insurance between SRJ and Republic of Macedonia of 29 December 2000 (Official Gazette of Socialist Republic of Yugoslavia - International treaties No 1/2001)
- Agreement on Social Insurance between SRJ and Republic of Croatia of 15 September 1997 (Official Gazette of Socialist Republic of Yugoslavia - International treaties No 1/2001)
- Agreement on Social Insurance between SRJ and Bosnia and Herzegovina of 29 October 2002 (Official Gazette of Socialist Republic of Yugoslavia - International treaties No 7/2003)
- Agreement on Social Insurance between SCG and Republic of Turkey of 12 October 2006 (Official gazette of Serbia and Montenegro - International treaties No 4/2006).

## **B. The main principles of co-ordination**

### **28. Equal treatment:**

#### **a) Are there any examples in your social security legislation where non-nationals are treated less favourable than nationals?**

In Montenegrin social security legislation there are no examples of less favourable treatment of non Montenegrin nationals than Montenegrin nationals.

Employed foreigners, who have a work permit issued in accordance with provisions of the Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08) are provided with pension, disability and health insurance, and they have the same rights and obligations as employed Montenegrin nationals, in line with the Labour Law (Official Gazette of Montenegro 49/08), and payment of pension benefits to foreigners living outside Montenegro is performed in accordance with the above mentioned international agreements and on the reciprocity principle.

One of the main principles observed when signing an international bilateral agreement on social security is the principle of equal treatment, which guarantees equal status of insurants and nationals of agreeing member states, in obtaining and achieving social insurance rights.

Likewise, foreigners exercise the right to insurance against unemployment with the Montenegrin Employment Office under the same conditions as nationals of Montenegro, if they have been granted a personal work permit, in accordance with the Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/07).

An employed foreigner in Montenegro who has been granted a personal work permit, and whose employment ended pursuant to the Labour Law, without his/her request, approval or fault, if he/she was employed by one or more employers on a full time basis at least nine months continuously or 12 months with breaks within last the 18 months, and if he/she registers with the Employment Office in 30 days from the date when the work ended, has the right to unemployment benefits, proportional to the time spent at work, the same as a Montenegrin national, pursuant to the Law on Employment (Official Gazette of Montenegro 5/02, 79/04 and 21/08).

**29. Determination of the applicable legislation:**

**a) Are your social security schemes based on the principle of *lex loci laboris* or are they based on residence?**

The Montenegrin social security system is based on the principle of obligatory insurance in the country of work (*lex loci laboris*). An exception to this principle, in accordance with Montenegrin legal provisions, is the possibility of establishing pension and disability insurance for Montenegrin nationals working abroad with foreign employers and international organisations or those on board ships flying foreign flags, unless they are covered by obligatory insurance under foreign regulations relating to them, and unless otherwise stipulated by an international agreement.

**b) Do you have rules and administrative structures applicable in the case of posting of workers?**

Posting as well as temporary relocation of workers to another state is performed in line with the agreements on Intra-Company Transfer and an agreement on social insurance concluded with that country. For the achievement of above mentioned rights, beside international agreements provisions, the Law on Protection of Montenegrin Citizens Working Abroad (Official Gazette of Montenegro 11/04) is applied too. Protection of Montenegrin workers with foreign employers, pursuant to this Law, contains the following: equal treatment regarding working conditions, protection at work, same incomes and other benefits earned through work as a national of that country has, work and residence permits, social insurance for the employee and his/her family members, as well as information about possibilities for the achievement of other economic, social, cultural and civil rights.

**30. Aggregation of periods:**

**a) Do you have any experience with applying the principle of aggregation of periods in your relations with other countries? Which administrative structures are responsible for this?**

Montenegro applies the principle of aggregation of periods of insurance (work and residence) completed in countries with which it concluded and has been applying social insurance agreements for more than 50 years (General Convention on Social Security with France has been applied since 1 April 1951, and nowadays it applies this principle in relations to 24 countries).

The responsibility for the application of international social insurance agreements lies with the following institutions: Pension and Disability Insurance Fund of Montenegro, Montenegrin Health Insurance Fund and Employment Office of Montenegro.

**b) What are the waiting periods for entitlement to benefits equivalent to those covered by the scope of the EC Regulation?**

So far experience in the monitoring of the implementation of bilateral agreements on social insurance, duration of procedure for achievement of rights for contributions from pension and disability insurance depends on the state. As the precondition for exercising of rights to benefits on the basis of aggregation of periods of insurance is 12 months of work.

However, the usual duration of this procedure, is the period of 12 months.

### **31. Export of benefits:**

**a) Do you have any experience in applying the principle of export of benefits in your relations with other countries? Which administrative structures are responsible for this? Does your legislation include residence clauses?**

The Montenegrin Pension and Disability Insurance Fund pays pensions directly to the beneficiaries who reside in the territory of another state in line with international agreements on social insurance, or on the reciprocity principle. Namely, Montenegro pays pensions in 24 countries with which social security agreements are applied, as well as with nine countries with which there is reciprocity in payment of pensions. Montenegrin legislation does not have special provisions on residence, but stipulates that pensions are paid abroad on the basis of international bilateral agreements, or subject to the reciprocity with the respective country, i.e. if this country pays pensions into Montenegro. The Pension and Disability Fund of Montenegro is in charge of payment of pensions abroad.

### **C. Co-ordination of different categories of benefits**

**32. Do you expect to encounter any difficulties in applying the provisions of the various chapters of the Regulation (sickness and maternity, invalidity, old age and death, unemployment, family benefits, etc.)?**

In the field of pension and disability insurance no special difficulties in the implementation of provisions of Regulation 1408/71 are expected. A possible increase in the number of pension and disability benefits is expected because of increased number of countries with which Montenegro has not yet concluded social security agreements, and an increase of pension beneficiaries abroad is expected as well. On the other hand, it is expected that pension beneficiaries will enjoy greater security in exercising their rights, as the result of multilateral application of the principle of aggregation of periods, work, and residence in all EU Member States.

### **D. Administrative capacity**

**33. Which administrative structures will be responsible for applying the co-ordination rules for the various chapters of the Regulation (sickness and maternity, invalidity, old-age and death, unemployment, family benefits, etc.)?**

The Montenegrin Fund for Pension and Disability Insurance, the Health Insurance Fund, the Employment Office and centres for social work in municipalities will be responsible for applying the principle of coordination of certain chapters of the Regulation 1408/71.

**34. How do the social security institutions of Montenegro exchange the information internally?**

Social security institutions in Montenegro perform permanent and direct internal communication and in that way provide availability of all necessary information, aimed at a more qualitative and faster exercise of rights in the social insurance field. The exchange of information is performed according to the principles of division of competences, in a way that all information is submitted in

written form directly, by mail and e-mail.

**35. How do the social security institutions of Montenegro exchange the information with the institutions of the countries, with which Montenegro has signed social security agreements?**

In accordance with international bilateral agreements on social insurance, the member states institutions are obliged to communicate with each other and with outside parties also Direct communication, in the aim of the exercising of social insurance rights, is performed by bi-lingual forms that are compiled by member states for each area of social insurance, for which the agreement is concluded.

Beside, relevant institutions of member states are obliged to provide free administrative legal aid.

#### **IV. EUROPEAN HEALTH INSURANCE CARD**

##### **36. Do you have an electronic national health insurance card? If not do you have any plans to introduce it and what is the timeframe? Please provide information.**

There is no electronic national health insurance card in Montenegro.

The Montenegrin Fund for Health Insurance, which provides rights to the obligatory health insurance, has developed and adopted the Strategic Development Plan of the Fund until 2011, in line with the Strategy for Health Development.<sup>1</sup>

This document stipulates the realisation of a whole range of projects and programs in line with the standards and recommendations of EU member states.

One of the very important projects is the introduction of a health insurance card. Implementation of this project is stipulated by the Action Plan during 2011.

So far we have worked on the establishment of preconditions and infrastructure, both in organisational and ICT implementation terms for the introduction of a health insurance card. The integral information system is developed and implemented within the reform of primary health protection to all service providers at primary level. This system is entirely integrated with the information system of the Fund for Health Insurance and pharmacy institutions which are dealing with distribution of medicine from prescriptions, and they have concluded the contract with the Fund.

Considering the fact that the Fund has the base of all beneficiaries in electronic format which is also integrated with all segments of this system, thus the conditions for introduction of a health insurance card at the primary level have already been created.

We will perform activities regarding the implementation of the project for the development of an integral information system on the secondary and tertiary level which will cover the entire system and provide conditions for full implementation of a health care card.

We already have the data that will be available via the card in electronic format, as follows:

- Main data on the beneficiary, including the identification data, name, surname, date of birth, identification number, address etc.;
- Electronic data about prescriptions – in Montenegro there is a system of electronic signature of prescriptions and this data may be an integral part of the card, so that it is possible to provide issuance of prescriptions only with an electronic card;
- Data on medicines taken in the pharmacy – an electronic card will provide access to data on medicines which were prescribed to the beneficiary, in order to enable the practitioner to obtain all information on the use of medicines and possible interactions;
- Data on urgent cases – as the system will record in electronic form all data on allergies, chronic diseases, risk factors, interactions, etc, the card will be a key access to this data in urgent cases;
- Data from the electronic health file – the integral information system on the primary level in Montenegro provides a record of all data necessary for the establishment of an electronic health file. Elements of this file may be placed in the card in line with EU recommendations.

The total country population is covered and the system functions at the national level.

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<sup>1</sup> Strategic Development Plan of Health Insurance of Montenegro until 2011, Health Insurance Fund of Montenegro, 2006.

[http://www.fzocg.me/docs/175/strateaki\\_razvojni\\_plan\\_zdravstvenog\\_osiguranja\\_crne\\_gore\\_do\\_2011.pdf](http://www.fzocg.me/docs/175/strateaki_razvojni_plan_zdravstvenog_osiguranja_crne_gore_do_2011.pdf)