

19 January 2007

Screening report

Croatia

Chapter 2 – Freedom of movement for workers

Date of screening meetings:

Explanatory meeting: 19 July 2006

Bilateral meeting: 8 September 2006

I. CHAPTER CONTENT

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 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 States¹, 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 notion of 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.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Croatia and the discussion at screening meetings. Croatia indicated that it can accept the *acquis* regarding freedom of movement for workers. Croatia indicated that it does not expect any difficulties to implement the *acquis* by accession.

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

Legal status of foreigners in Croatia is regulated by the Act on Foreigners which has been in force since 1 January 2004. On the basis of this legislation, foreigners may work if they hold a work permit or a business permit. Issuing such a permit falls under the competence of the

¹ 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.

Ministry of the Interior. However, certain categories of foreigners, such as key staff in a company, as defined under the Stabilisation and Association Agreement (SAA), may work in Croatia without work permits.

A work permit is issued for a limited time period, not exceeding two years. Foreigners who have been issued a work permit must have a temporary residence permit for the purpose of work in Croatia. It is possible to apply for the extension of the work and temporary residence permits. There are annual quotas of work permits for foreigners defined numerically and territorially.

In principle, conditions for work permits for EU migrant workers are the same as those applying to nationals of third countries. However, according to Croatian authorities, EU nationals and their family members (regardless of the nationality of the family member) are in a more favourable position when compared to citizens of third countries, considering that they may work without a work permit if they hold key positions in a company as defined by the SAA and that work permits are granted to them outside the annual work permit quota.

In April 2005 the Minister of the Interior adopted a decision establishing a working group to analyse the application of the Act on Foreigners, and Croatia is in the process of preparing amendments to this Act to ensure that work permits and business permits will be abolished as a condition for EU nationals and their family members to undertake work in Croatia.

As regards access to public sector posts, a work permit is currently necessary, as described above. According to the planned amendments of the Act on Foreigners, foreigners will be able to be employed as government employees without any limitations (when these posts do not involve the exercise of State power or the safeguarding of the general interests of the State), while they will be able to be employed as civil servants only with the prior approval by the central State administration body competent for civil servants' affairs.

Croatian language requirement applies to certain activities, for example in the health care and primary education field. Furthermore, permanent residence in Croatia is required in order to allow an unemployed foreign person to register with the Croatian Employment Service and to benefit from employment mediation. In order to ensure equal treatment of EU migrant workers and Croatian citizens as regards assistance by the national employment office, it is foreseen to amend the Act on Employment Mediation and Unemployment Rights before end 2007.

As regards family members of EU migrant workers, they have the right to temporary residence for the purpose of family reunion regardless whether they are citizens of EU Member States or third countries. This is approved for the same time period as for the EU migrant worker. However, a residence permit of an EU migrant worker may be revoked in case his work or business permit expires with the same effect on family members. Family members of EU migrant workers also need a work permit to work in Croatia. However, they are not regulated by the annual work permit quotas. The foreseen amendments to the Act on Foreigners will aim at regulating the independent stay of family members of the EU migrant worker in the case of worker's death, divorce, etc. as well as the approval of permanent residence to EU migrant workers and their family members.

Supplementary pension rights of employed and self-employed persons moving within the Community will cover only the third pillar of insurance – the voluntary pension insurance scheme in Croatia which is regulated by the Act on Compulsory and Voluntary Pension Funds and the Act on Pension Insurance Companies and Payment of Pensions based on Individual Capitalised Savings. Any interested person who has residence in Croatia may become a member of a pension fund. If the person would leave Croatia and become a

member of a voluntary fund in some other country, there are no obstacles that he/she could get his/her pension both in Croatia and in the other country. As required by the *acquis*, a member of the fund may therefore maintain his/her right arising from the contributions he/she paid while a member of the voluntary fund in Croatia. This does not apply, however, in the case of a member of the fund who leaves the fund to work in some other country. The condition of residence is required only for acceding to the fund, while any subsequent change of residence of the member of the fund, and especially of the beneficiary of the pension, does not influence the payment of pensions. As the voluntary pension insurance was introduced in 2002 in Croatia and as so far very few such pensions have been paid out, payments are currently done only in Croatia. Necessary amendments to the Croatian legislation are foreseen by mid-2007 to ensure, among others, the protection of rights of persons who have found a job in another country, so that they would benefit from the same treatment as those who remain employed in Croatia.

II.b. EURES

The EURES network requires the existence of public employment services on a national and local level which are sufficiently developed, particularly with respect to human resources and technical information capacity.

The Croatian Employment Service (CES) is organised through the Central Office, 22 regional offices and 94 field offices. It provides employment mediation services free of charge. 60 % of the CES offices are modernised in terms of IT equipment, and all the regional and field offices of the CES are connected to a common database of the Central Office of the CES. In all regional offices and larger local offices of the CES, computers are available to the unemployed persons and persons seeking employment. The CES has a centralised database on job vacancies and unemployed persons in Croatia, which is updated daily. A Department for Employee Development and Training has been established in the CES with the goal to upgrade the knowledge and skills of CES employees and to allow them to provide better and more effective services.

Only unemployed foreigners who have a permanent resident status in Croatia and unemployed foreigners who have the right to cash benefits after the termination of their employment in Croatia may register with the CES. The CES does not carry out employment mediation activities for foreigners who have a status of a person seeking employment, unless they are permanent residents of Croatia. The CES does not provide free counselling services for foreigners in general who come to Croatia for work purposes. In order to ensure equal treatment of EU migrant workers and Croatian citizens as regards assistance by the national employment office, it is foreseen to amend the Act on Employment Mediation and Unemployment Rights before end 2007.

II.c. Co-ordination of Social Security Systems

The Croatian social security system applies the principle of compulsory insurance in the country of work (*lex loci laboris*) with regard to pension insurance, while insurance for family and sickness benefits is based on the residence principle (*lex loci domicilii*), and in certain situations linked to Croatian nationality (in particular the right to family benefits). As regards the personal scope of the legislation, it covers employed/self-employed persons and members of the family, except for the unemployment benefits which do not cover self-employed or their family members. As regards the material scope, all branches of social security, i.e. pension insurance, health insurance, unemployment insurance and family benefits (child allowances), as requested by the *acquis*, are covered by the Croatian legislation.

Migrant workers who have obtained a permanent residence and a work or a business permit in Croatia must register in the pension insurance scheme when they start working. They enjoy the same rights and obligations as Croatian nationals. Residence in Croatia is not a prerequisite for the payment of benefits or pensions. Pensions are paid directly to beneficiaries in their country of residence, in accordance with international agreements on social security, but also in countries with which Croatia has not concluded such an agreement. There are no limitations to the payment of the amount of the benefit. Foreigners with temporary or permanent residence and work or business permit in Croatia enjoy the same rights and have the same obligations as Croatian nationals with regard to access to health insurance. However, health insurance benefits are only paid to insured persons into their accounts opened with banks in Croatia (except in the case of Slovenia). Foreigners with temporary or permanent residence whose employment relationship in Croatia is terminated have the right to unemployment insurance benefits. Export of unemployment benefits is only possible on the basis of the bilateral agreements with Germany and Italy.

Currently, Croatia has concluded bilateral social security agreements with 24 countries, of which 15 are EU Member States. Under these agreements, Croatia already applies the principle of aggregation of insurance periods and export of benefits.

The institutions responsible in Croatia for the future co-ordination of social security systems will be the Croatian Pension Insurance Institute (3 397 employees), the Croatian Institute for Compulsory Health Insurance (2 261 employees) and the Croatian Employment Service (1 193 employees). As Croatia has a long tradition and experience of competent institutions in application of international agreements on social security, it claims it is able to perform the requested tasks under the co-ordination of social security systems, though taking into consideration that the administrative capacity should be strengthened.

II.d. European Health Insurance Card

So far, Croatia has concluded arrangements on the use of the European Health Insurance Card with Slovenia (June 2004), the Czech Republic (September 2005) and Hungary (March 2006).

Preparations for the introduction of the European Health Insurance Card in Croatia are ongoing. Croatia does not intend to make it possible for the Croatian insured persons to use healthcare services abroad on the basis of the European Health Insurance Card prior to accession.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

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

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

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

In order to be in line with the *acquis*, a series of amendments to the Croatian legislation need to be undertaken, namely to abolish procedures and practices that form obstacles to freedom of movement for workers. This includes, *inter alia*, that EU citizens would not need a work permit, and in relation to access to employment, may not be discriminated against on the basis of nationality, even if they are not yet residing in Croatia. 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 Croatian nationals. Under the *acquis*, mandatory requirements for language proficiency can only be applied in very exceptional circumstances, on a case-by-case basis. EU citizens must also have the right to bring their family members to Croatia; the spouse and children must be allowed to work without a work permit.

Furthermore, Croatia will have to adopt measures in line with the *acquis*, in particular on supplementary pension rights, in order to cover all supplementary pension schemes, compulsory or voluntary, linked to the employment activity of a person as employed or self-employed.

III.b. EURES

Concerning the future participation in the EURES network, along with increased efforts to improve the language skills of potential EURES advisers, preparations need to continue for connection to the European Job Mobility Portal to ensure that all job vacancies displayed on the Public Employment Services website will be available for publication on the Portal upon accession.

III.c. Co-ordination of Social Security Systems

As the EU Regulations in the field of co-ordination of social security systems will be directly applicable in Croatia after accession, there is no need for Croatia to change its social security legislation. Only technical modifications will be necessary, in order to take into account the particularities of the Croatian social security system. Measures need 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. Furthermore, Croatia is encouraged to continue to conclude bilateral social security agreements.

While there appears to be adequate knowledge of the mechanisms involved in social security co-ordination, sufficient administrative capacity needs to be developed to apply the *acquis* in this field, especially in view of the expected growing number of requests for benefits.

III.d. European Health Insurance Card

Preparations (preparation, distribution and electronic phase) need to continue for the introduction of the European Health Insurance Card as from accession.