

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

– ADDITIONAL QUESTIONS –

02 Freedom of movement for workers

Minister:

Suad Numanovic

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

2: Freedom of movement for workers

I. ACCESS TO LABOUR MARKET (GENERAL PRINCIPLES)

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)

1. (Ref to Q. 18a-c): Please clarify what "on other grounds defined by this law" means?

Law on Foreigners (Official Gazette of Montenegro, 82/08) stipulates the cases in which the foreigner may be approved temporary residence in Montenegro. Those cases, i.e. reasons for approval of temporary residence are given in the Article 35 of the Law on Foreigners. Each of the cases represent the legal base to approve a foreigner temporary residence. "On grounds envisaged by this Law" means that the reason for the submission of the request for approval of temporary residence in Montenegro is stipulated by the Law and represents the legal base for a foreigner to be approved the temporary residence in Montenegro.

According to the Article 35 of the Law on Foreigners, the temporary residence may be approved to a foreigner who intends to reside in Montenegro more than 90 days, for the following purposes:

- 1) Employment and labour, doing business or entrepreneurship activity;
- 2) Season work;
- 3) High school education and studying;
- 4) Participation in programs of international exchange of pupils and students or other youth programs;
- 5) Specialisation, vocational training and practical training;
- 6) Scientific – research work;
- 7) Medical treatment;
- 8) Reunion of the family;
- 9) Humanitarian reasons;
- 10) Other justified reasons, determined by the law or international treaty

A foreigner who has been approved the temporary residence from above mentioned reasons may reside in Montenegro in line with the purpose for which the temporary residence has been approved for.

According to the Article 54 of the Law on Foreigners, the permanent residence may be approved to a foreigner who resided in Montenegro continuously for the period of five years up to the date of submission of request, based on the approval for the temporary residence.

In exceptional cases, a permanent residence may be approved to a foreigner who has had a temporary permit approved in Montenegro less than five years in continuous, if the reasons of humanity allow for or it would be of the interest for Montenegro.

The uninterrupted residence means the temporary residence during which a foreigner left Montenegro few time in the total duration of 10 months or continuously 6 months.

A foreigner who has been approved a temporary residence in Montenegro for the purposes of high school education or university studies the half of the time spent in Montenegro is counted as the time spent.

The time needed for the approval of a permanent residence does not count the time that a foreigner spent in Montenegro for the following purposes:

- 1) Temporary residence approved for the purposes of season work;

2) Execution of a prison sentence.

The nationals of states arisen at the territory of SFRJ, who have had a residence in Montenegro before June 3, 2006, have the right to permanent residence, without the need of request submission and without special approval, with the obligation of application submission for the purposes of registration.

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

2. (Ref to Q. 21): Please clarify when the Law on Amendments of the Law on Voluntary Pension Funds is due to be adopted. Is there already a draft existing?

The regulatory framework of voluntary retirement funds has been established by the Law on Voluntary Pension Funds, which regulates the third pillar of the retirement system. The Law regulates the establishment of two kinds of funds – open and closed. Closed funds are characterised as institutions for voluntary retirement insurance with setting up the employer as the sponsor and which are regulated by the European Directive and Council 2003/41/EC as of June 3, 2003 on activities and supervision of institutions for „occupational retirement provision”, as for example legal separation of a employer acting as a sponsor of retirement fund. In addition, the following principles are applied to those retirement funds for the purposes of retirement insurance: some of requests for custody and investment manager fund; some of requests for publishing the information and reporting by the funds.

Aimed at compliance with above mentioned Directive it is necessary to amend the Law on Voluntary Pension Funds, in the following:

- Definitions: there are no clear definitions of terms used in the law in line with the Article 6 of Directive, for example the definition of institutions for “occupational retirement provision”, a sponsor of voluntary pension fund, retirement schemes, retirement systems, biometric risks, members and beneficiaries of scheme rights;
- Cross border activities – conditions for implementation of retirement insurance activities should be supported by the requests related to cross border activities;
- There are no requests for minimum content of a collective agreement between employees and employer which regulate the retirement scheme payment;
- Certain requests for annual reports and annual accounts demand further harmonisation with the Article 10 of the Directive;
- Requests for submitting information to the members of and beneficiaries retirement schemes should be changed and harmonised, especially those related to the information on benefits in cases of retirement, forms of benefits, risk exposure and costs, in line with the Article 11 of Directive;
- Submission of information to the competent authorities, measures from the competences of the competent authority and obligations of the competent authority should be harmonised with the articles 13 and 14 of Directive;
- Requests for actuarial services of closed retirement funds and persons who may perform these services should be envisaged by the law;
- Forms of retirement benefits offered by the close retirement fund are not regulated;
- Provisions of the Directive related to the financing of technical reserves, methods of calculation, biometric bases, special accountancy as well as maintenance of the level of

own funds above the level of technical requests (Articles 15, 16, 17 of Directive) should be implemented;

- Investment rules and limitations should be further harmonised with those mentioned in the Article 18 of Directive and to prescribe the prudent person rule;
- Currently there is no possibility of the management companies located in Montenegro to operate the pension schemes of a foreign retirement fund, or foreign institutions to operate the close investment fund in Montenegro (Article 20 of Directive);
- Introduction of freedom of cross border business of pension schemes of employers and obligation of cooperation between competent authorities;
- Providing cross border contributions pays aimed at ensuring the ease usage of freedom of movement of workers and self employed persons within member states, stipulating the status of workers sent out to work in the other member state, as well as the methods of informing members of voluntary closed retirement fund and potential members on the rights and obligations arising from the membership, as well as ensuring cross border payments of additional retirement systems of another member states;
- Erase of minimum number of retirement fund members and sanctions in cases when the retirement fund does not have at least 200 members, in order not to limit the freedom of entrepreneurship, because retirement funds represent the property of their members and it is not appropriate to introduce any restrictions related to the limitation of the freedom of choice of certain members and freedom of entrepreneurship.

Amendments to the Law on Voluntary Pension Funds are not envisaged by the Government Agenda for 2010, but it is envisaged in the National Program of Integration of Montenegro into the EU, as the activity to be performed by the end of 2012.

III. CO-ORDINATION OF SOCIAL SECURITY SYSTEMS

D. Administrative capacity

3. (Ref to Q. 33): Please specify which administrative structures will be responsible for the coordination of which chapters of the Regulation (sickness and maternity, invalidity, old age and death, unemployment, family benefits, etc).

The following institutions will be in charge for applying the rules of coordination of the Regulation 1408/71:

The Montenegrin Fund for Pension and Disability Insurance:

- old age and death benefits
- disability benefits
- marital status benefits
- professional diseases and injuries at work benefits

The Health Insurance Fund:

- sickness and maternity benefits
- professional diseases and injuries at work benefits

The Employment Office:

- benefits in cases of unemployment