Towards New Policy of Employment of Foreigners in Serbia

Peer Review on “Renewed procedures for employing migrant workers with the emphasis on favouring highly-qualified labour”

Estonia, 11-12 June

A paper prepared by Tanja Pavlov
and submitted by GHK in consortium with CERGE-EI

Date: 18/05/09
This publication is supported under the European Community Programme for Employment and Social Solidarity (2007-2013). This programme is managed by the Directorate-General for Employment, social affairs and equal opportunities of the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries.

PROGRESS mission is to strengthen the EU contribution in support of Member States’ commitments and efforts to create more and better jobs and to build a more cohesive society. To that effect, PROGRESS will be instrumental in:

- providing analysis and policy advice on PROGRESS policy areas;
- monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;
- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- relaying the views of the stakeholders and society at large

For more information see:
http://ec.europa.eu/employment_social/progress/index_en.htm

The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.
CONTENTS

1 LABOUR MARKET SITUATION IN THE PEER COUNTRY ................................................................. 4
2 ASSESSMENT OF THE POLICY MEASURE ............................................................................. 7
3 ASSESSMENT OF THE SUCCESS FACTORS AND TRANSFERABILITY ................................. 9
4 QUESTIONS .............................................................................................................................. 100
ANNEX 1: SUMMARY TABLE ..................................................................................................... 111
1 LABOUR MARKET SITUATION IN THE PEER COUNTRY

This paper has been prepared for a Peer Review within the framework of the Mutual Learning Programme. It provides information on Serbia’s comments on the policy example of the Host Country for the Peer Review. For information on the policy example, please refer to the Host Country Discussion Paper.

1.1 Short-term indicators – employment and unemployment rates

Labour market indicators (Table 1) show that the labour force participation rate in Serbia continuously decreased from 2004, when the rate was 66.4% to 2008 when it was 62.6%. The employment rate dropped, from 53.4% in 2004 to 49.8% in 2006, to be increased again in 2007 and 2008 to 53.3%, which is still far below the Lisbon objective of the European Union – 70%. The unemployment rate was highest in 2005 (21.8%) and 2006 (21.6%), and the lowest in 2008 – 14.7%, which is lower than the rate in 2004, when it was 19.5%. The Statistical Office of the Republic of Serbia explains the latest improvements in the labour market by changes in the methodology of data collection.

Table 1: Labour market indicators, adult population aged 15-64

<table>
<thead>
<tr>
<th>Rates</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation rate</td>
<td>66.4</td>
<td>65.2</td>
<td>63.6</td>
<td>63.4</td>
<td>62.6</td>
</tr>
<tr>
<td>Employment rate</td>
<td>53.4</td>
<td>51.0</td>
<td>49.8</td>
<td>51.5</td>
<td>53.3</td>
</tr>
<tr>
<td>Unemployment rate</td>
<td>19.5</td>
<td>21.8</td>
<td>21.6</td>
<td>18.8</td>
<td>14.7</td>
</tr>
</tbody>
</table>


These indicators are, along with wars from the previous period and an unstable political situation, more prerequisites for development of the emigrational potential of the country rather than one for immigration.

1.2 Long term developments

However, since every year the number of unfilled vacancies rises in Serbia in spite of the in-crease in fulfilled demands at the market – on average around 60.000-65.000 a year, the instigation of labour immigration should be considered. Very often in practice, employers cannot find appropriate workers because they need skills which do not exist in the labour market, or there is only theoretical knowledge and poor or outdated skills related to the given occupation. According to the data of the Department for Analysis and Statistics of the National Employment Service, skill shortages in 2008 were mainly found in the following areas requiring higher education: 1) education (teachers of Mathematics, Physics, Chemistry, History, Geography, English, German and Serbian language, Music and Art, Technical Education, and teachers in lower primary schools); 2) social and humanistic areas (defectologist, psychologist, pedagogue); 3) electronics and particularly computer engineering (computer engineer, electro mechanic engineer, energy engineer); 4) computer science (IT programmer, statistics and information science engineer, 5) certified accountant; 6) civil engineer; 7) agricultural engineer, department for herb protection and food technology engineer; 8) pharmacist; 9) social worker; and 10) veterinary sciences.

Vladimir Petronijevic has contributed to the preparation of this paper.


Projections on the decrease in working age population in Serbia also favour labour immigrants. Demographic trends in Serbia\(^4\) reveal a constant decrease of the population size. There are 96% of municipalities with a negative natural increase. The average age of the population is 40.6 years, with 45% share of active population. The projection of future developments shows a constant depopulation and ageing trends. Projections for 2052 estimate 27% participation of people aged 65 and over and 12% participation of people up to 15 years of age.

Aware of these facts, the Serbian National Employment Service has already become a member of the Centre of Public Employment Services of Southeast European Countries (CPESSEC)\(^5\). It is a regional non-profit organisation with the aim to promote cooperation in the field of labour market and employment and strengthen the relations among respective countries. The Partnership Protocol was signed in 2006 (Sofia conference) by Bosnia & Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania, Serbia, Slovenia and Turkey.

1.3 Labour migration

1.3.1. Immigrants

According to data from the Ministry of Interior\(^6\), in 2008, there were 959,515 temporary stays registered while 5,753 were granted temporary residence. The total number of aliens with temporary residence in Serbia was 16,779. The majority of them were Chinese (5,043), Romanians (1,953), and Macedonians (1,575). The reasons for issuing these permits were mainly related to employment (6,329), marriage (5,099) and family reunion (3,285). However, in all three cases, these aliens could also be labour migrants.

In the period 2006-2008, there were 5,646 work permits issued to aliens, showing an increasing trend (1,699 in 2006, 1,721 in 2007 and 2,226 in 2008). The aliens who were issued work permits are mainly male – over 70%, mainly professional workers employed in foreign branch offices, banks, construction industry, trade, etc. The largest number of issued work permits is in Belgrade (73%) and by countries, the following are the most represented: Chinese, Macedonians, citizens of BiH and Russians. There have been an increased number of work permits issued for seasonal jobs – in the field of construction industry, agriculture and catering.

According to the existing law, the request for granting work permits is filed only in cases of employment contracts concluded, and thus it is estimated that the number of aliens working in Serbia is much higher than the number of issued work permits, since it is not related to engagement of aliens without concluded employment contracts, membership in management boards, etc.

Unemployed aliens registered at the National Employment Service are aliens looking for jobs in the Republic of Serbia, with temporary or permanent residence (approved by the Ministry of Interior) and registered at the National Employment Service (NES). Their number is less than 1,000. Out of the total number of registered aliens, 63% have temporary residence and 27% permanent residence. In regard to citizenship, individuals from Romania, Macedonia, Russia and Ukraine are most represented. Representation of women is considerable, as high as 85%. They are mainly women who are married to Serbian nationals. The educational structure of aliens registered at the National Employment Service is extremely unfavourable; around 60% of the people are registered without any qualifications, but mainly due to the fact that they have not validated their diplomas.

\(^4\) CEC, *Social protection and social inclusion in the Republic of Serbia*, Brussels: European Commission, Directorate–General for Employment, Social Affairs and Equal Opportunities, 2008b

\(^5\) http://www.cpessec.org/

According to the data from the Annual Report on Labour for 2007, of the Labour Inspectorate, there were 58 registered cases of unreported aliens or stateless individuals. In the period January – October 2008, there were no such cases registered.

1.3.2. Forced migrants

Serbia is still housing 7 96,948 refugees from Croatia and Bosnia and Herzegovina and 205,940 internally displaced persons (IDPs) from Kosovo and Metohia. Serbia was in the 13th place in the world according to the ratio of refugee population to the total population in 2007. According to the number of IDPs, Serbia was among the first 20 countries. That is why UNHCR included Serbia among the five countries in the world with protracted refugee situations8 in 2008, within the initiative to reinvigorate possibilities for durable solutions for refugees in those countries and to improve the quality of life of the population that live in exile for such a long periods of time.

The position of refugees and IDPs in the labour market is extremely unfavourable.

Group’s 484 research9 on the position of refugees in the labour market and their inclusion in active labour market policies, conducted in 2007, shows that the refugee population has been extremely proactive – they have more entrepreneurs and the self-employed and have been more engaged in informal and additional jobs than the general population in Serbia. In spite of their activities, the unemployment rate with refugee population has been considerably higher (30.6%) than with the general population in Serbia (20.6%).

It is a similar situation with internally displaced persons. Living Standards Measurement Survey (LSMS)10 show that the position of IDPs in the labour market is particularly unfavourable – employment rates of IDPs (34.4%), are significantly lower and unemployment rates much higher (36%) than in general population of Serbia (employment rate - 51.5%; unemployment rate - 18.8%), although they have better educational structure than the general population of Serbia. They work more in the informal sector and with more short-term contracts, and seasonal occasional jobs.

These findings have revealed that the refugee and IDPs population has great potential and with appropriate support from the state and community that population would not be a burden but a resource to the society.

1.4 Wages

According to the data of the Republic Statistical Office (2004-2008)11, the average gross salaries grew from 182 euro in 2004 to 560 euro in 2008. The average gross salaries paid in March 2009 in the Republic of Serbia amounted to 445 euro (net wage: 320 euro). The average salaries and wages paid in the period January - March 2009 in the Republic of Serbia, compared to the average salaries and wages paid in the period January – March 2008, were increased by 12.5% in nominal terms and increased by 2.6% in real terms.

The average gross salaries by sections of activities in 2008 in the Republic of Serbia were different. The highest gross salaries were in: financial intermediation (1,116 euro), electricity, gas and water production (710 euro), mining and quarrying (685 euro), public administration and social insurance (666 euro), and real estate activities and renting (639

8 According to the UNHCR statistics there are more than 30 protracted refugee situations throughout the world. All of these protracted refugee situations are located in African and Asian countries, except Serbia, which is actually located in the very heart of Europe.
11 http://webrzs.stat.gov.rs/
The lowest salaries were in fishing (357 euro), hotels and restaurants (371 euro), manufacturing (448 euro); and agriculture, forestry and water works supply (456 euro).

Regarding the regions, salaries were highest in Belgrade (687 euro) and the South Bačka district (605 euro). The lowest salaries were in Toplice district (383 euro) and Pirot district (404 euro).

Compared to the neighbouring countries, wages in Serbia are not a pull factor for immigrants from neighbouring countries. In February 2009, the average monthly gross earning per person in the Republic of Serbia amounted to 459 euro (net wage: 329 euro), in Croatia it was 1035 euro (net wage: 713 euro), in the Federation B&H it came to 596 euro (net wage: 392 euro), and in Macedonia it was 488 (net wage: 325 euro). Average wage in 2008 in Montenegro was 609 euro and average wage without fees and contributions in 2008 was 416 euro.

2 ASSESSMENT OF THE POLICY MEASURE

2.1 Policy measures in Serbia

The right to employment is one of the general rights in our country and thus an alien with permanent or temporary residence has the right to work in private and public sector if he/she meets requirements stipulated by the law, general act or collective contract of a legal entity. Therefore, an alien exercises the freedom and rights proclaimed by the law and the Constitution.

Law on the Conditions for Employment of Aliens (Official Gazette of SFRY No.11/78, 64/89, and Official Gazette of FRY No. 42/92, 24/94, 28/96 and 101/05), undertaken by the Republic of Serbia as its own law, foresees two conditions that an alien has to fulfil in order to be employed: 1) he/she should have approval for permanent residence or temporary stay, and 2) he/she should have approval for employment (work permit).

An alien can be employed without approval for working under conditions foreseen by: 1) the contract on business-technical cooperation, 2) the contract on long-term production cooperation, 3) the contract on technology transfer, and 4) the contract on foreign investment.

The Law on Employment and Insurance in case of Unemployment (Official Gazette No.71/2003) foresees the National Employment Service to issue work permit to an alien or stateless person. A work permit is an approval for employment in regard to the Law on the Conditions for Employment of Aliens. Aliens with permanent residence in Serbia are equal to Serbian nationals in regard to employment. An alien with permanent residence personally files the request for a work permit to the relevant branch of the National Employment Service.

The necessary documents for obtaining work permit for an alien with permanent residence are: 1) request form (available at the National Employment Service), and 2) certified copy of the approval for permanent residence in the Republic of Serbia or a photocopy of personal ID.

All aliens with temporary stay permits (proved by the MoI certificate on stay or a photocopy of passport with approved temporary stay) can obtain a work permit on grounds of employer request. The employer files the request with the relevant branch of the National Employment Service (the form is available at NES). Along with the request, the employer

12 http://www.dzs.hr/
13 http://www.fzs.ba/
14 http://www.stat.gov.mk/
submits explanation for the need for that person and validated diploma as a proof of the level of education or other document showing that the alien meets the conditions for the activities and duties related to the work permit.

The provisions of Article 48 of the Rulebook on the Conditions and Ways of Realisation of Rights and Obligations of Individuals Seeking Employment fore-see the following:

- In case a branch of the National Employment Service has in its records a person who is a citizen of the Republic of Serbia who equally meet the criteria established by the employer as an alien with a temporary stay, the branch will refuse the request for issuing a work permit to the alien and offer the employer the person from the record of the NES branch.

- The applicant can file a complaint against the decision of the National Employment Service within 15 days period from the date the decision was submitted to the body foreseen by the Statutes of the National Employment Service, which has to decide upon the complaint within 30 days period.

Employment is terminated for an alien when: 1) his stay in the country expires; 2) the approval is annulled; 3) his stay is cancelled; and 4) his contract expires.

This Law unfortunately gives an opportunity to foreigners to work in Serbia legally without work permits. Companies in Serbia very often use the contracts on business-technical cooperation to employ foreigners. For these workers, the employer is not obliged to pay a pension and social contributions to relevant state agencies.

This unusual solution has been confirmed by the Law on Society-Companies and Law on Company Registers. According to these laws, a foreigner can register his own company without a work permit. Members of his/her family can also work in that company without work permits.

At this moment, the Ministry of Labour and Social Affairs is preparing the Draft Law on Employment of Foreigners. This draft is not public, but the Ministry announced that the new Law will establish clear procedure and quotas. Quotas will be defined through several criteria, such as: territory (district), labour market demands etc.

2.2 Comparison of policy measures in Serbia and Estonia

The situation in Serbia is very different than in Estonia. An alien in Serbia has the possibility to work even without a work permit and without registration. Work permits do not differ on grounds of occupation, skills, or a wage criterion. There is no value of the coefficient, etc.

Serbia still implements the old Yugoslav Law on the Conditions for Employment of Aliens which does not foresee modern and effective solutions. The most visible gap which produces negative consequences is the legal possibility for employing aliens without a work permit. This legal solution results in the situation, in which foreigners come to Serbia as “tourists”, than register their company without a working permit and work legally. The other gap is when companies use the contracts on business-technical cooperation.

This practice and ineffective legal framework produce incomplete evidence of aliens working in Serbia, an unclear position regarding their access to state services and opportunity for development of a grey zone in Serbian labour market.

The data on labour immigrants are not complete and their reliability is questionable. It seems that these immigration movements especially from neighbouring countries are more illegal than legal and that the dark figures of this phenomenon are certainly much higher than documented cases.

“Serbia loses thousands and thousands of Euros because of an inadequate legislation. Employers do not pay taxes, pension and social contributions and work permits for their
foreign workers. The majority of foreign workers are in this grey zone.\textsuperscript{15} Representatives of the National Employment Service also point to the practice in other countries in the region where money from work permits is used by national employment services for active employment measures.

In Serbia there is neither a salary threshold nor annual immigration quota.

The procedures for hiring a foreign employee are full of gaps and new Law on Employment of Foreigners is necessary. Serbia is also in the process of developing the first national strategy on migration\textsuperscript{16}, more because of the EU accession requirements than because of recognised need in the field. The reason is that the dominant problem in the country consists of forced migrants instead of immigrants as it is in other countries that have started to develop migration policies in order to respond to this challenge.

3 ASSESSMENT OF THE SUCCESS FACTORS AND TRANSFERABILITY

Unfortunately, Serbia is at the very beginning of establishing a modern system of employment of aliens. During that process it is crucial for the Serbian Government to use comparative experiences. The Estonian reform and new solutions in this area can be successfully implemented in Serbian new Law on Employment of Foreigners.

In the current draft of the Strategy for migration management there are three strategic objectives: 1) establishing mechanism for migration management, 2) establishing strategic, legal and institutional framework for migration management, and 3) protection of migrants’ rights. One of the measures, through which the last strategic objective will be realised, is “developing conditions for integration of foreigners”.

Estonia’s experience with the renewed system for admitting non-EU workers could be very useful for Serbia to precise its policy in the Law and the Strategy as well as through the Action plan that will follow the Strategy.

The period of transition in the Serbian economy demands new skills and new knowledge. Serbia is faced with the lack of competent and experienced managers. It is obvious that they should be found abroad and motivated to come and work in Serbia.

The Estonian system provides answers on how legislation should be set up to reduce bureaucracy and accelerate procedures for employment of foreigners.

The role of the Citizenship and Migration Board (CMB) instead of the Ministry of Interior provides a good example, for the Serbian government, on how to reduce bureaucracy and accelerate procedures for employment of foreigners. A migration agency which the Serbian government would like to establish could have a role similar to the CMB.

Registered short-term work is focused on skilled workers, experts, consultants and counsellors, seasonal workers in the agricultural sector and baby-sitters. Illegal immigration in Serbia is highly present in the agricultural sector and seasonal work engagement. Therefore, it could be a way to prevent illegal immigration in Serbia.

Estonian registering short-term work could improve evidence of immigrants in Serbia. In Serbia there are three ways to employ foreigners: through work permits, registrations of company societies, and through technical cooperation contracts. Therefore, neither the Ministry of Interior nor National Employment Service has full evidence of foreigners who work in Serbia. This system provides that the procedure of employment of foreigners is based in one institution, as well as data record.

\textsuperscript{15} Mirjana Ninkovic, National Employment Service, Director, Sector on Insurance in the Case of Unemployment, May 2008

Regarding the wage criterion, in Serbia this criterion should be combined with other factors. The average salary in Serbia is not attractive enough. Therefore there is a need for developing other incentives like cheaper housing, family reunification, better working conditions, job promotions, etc.

Regarding quotas, Serbia first needs to introduce annual immigration quotas according to labour market needs. The problem is that there is no precise data about labour force supply and demand. Due to the discrepancy between qualifications and the labour market needs, there are permanent false surplus and deficient occupations. There are three types of problems\(^\text{17}\): the labour market looks for profiles that do not exist; the required profiles exist, but without appropriate competences; the required profiles exist, but people do not want to work within the given occupation (because of more profitable grey economy, bad working conditions, low wages, etc.). Therefore, Serbia has to create a compatible system of education to meet labour market demands. Then there is a need for collecting data on real surplus and deficient occupations, and for making projections about future labour demands. Demographic projections have also been taken into considerations in the process of making annual immigration quota.

### 4 QUESTIONS

- Could the functioning of the Citizenship and Migration Board (CMB) be explained more fully?
- What was the reaction of the Estonian Ministry of Interior regarding the new procedure on registered short time work? Did they oppose this process using the argument of security in the context of migration policy?
- How do you assess the evidences of foreigners in Estonia? Is it possible to avoid procedures defined by the Law?
- What can Serbia do to avoid illegal immigration in agriculture and seasonal work, especially in border areas?
- Can you explain in more details the way Estonian institutions calculate the value of the coefficient?
- What are the prerequisites for determination of quotas in Estonia? How do they identify demands of the labour market? Do they do projections of the demands of the labour market in Estonia, but also in the region? How does Estonia’s educational system meet the demands of the labour market?
- What are the living conditions for immigrants? Do they offer them family reunion, better working conditions, some other benefits? How do they integrate them into the society?
- How do the local population, especially the highly-qualified members, react to the measures, especially regarding wages?
- Does Estonia motivate its own emigrants to return to Estonia, as response to immigration labour needs?

ANNEX 1: SUMMARY TABLE

<table>
<thead>
<tr>
<th>Labour market situation in the Peer Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Labour market situation in Serbia is characterised with low employment rate and high unemployment rate, and it is more “push” factor for emigrants than “pull” factor for immigrants.</td>
</tr>
<tr>
<td>• Comparison of the number of immigrants and the number of forced migrants in Serbia indicate that current problem in the labour market are forced migrants.</td>
</tr>
<tr>
<td>• Long term developments, especially demographic projections, show needs for immigrant labour in Serbia.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assessment of the policy measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The situation in Serbia is very different than in Estonia, because Serbia still implements the old Yugoslav Law on the Conditions for Employment of Aliens through which an alien has the possibility to work even without work permit and without registration.</td>
</tr>
<tr>
<td>• In Serbia there is neither a salary threshold nor an annual immigration quota.</td>
</tr>
<tr>
<td>• The results of ineffective legislation are: 1) incomplete evidences of foreigners who work in Serbia; 2) unclear position regarding their access to state services and opportunity for development of grey zone in Serbian labour market; and 3) lack of money for pension and social contribution, as well as for issuing work permits.</td>
</tr>
<tr>
<td>• At this moment, the Ministry of Labour and Social Affairs is preparing the Draft Law on Employment of Foreigners where clear procedure of employment of foreigners, and quotas will be established.</td>
</tr>
<tr>
<td>• Serbia is also in the process of developing the first national Strategy for Migration Management.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assessment of success factors and transferability</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Estonian reform and new solutions in this area can be successfully implemented in Serbian new Law on Employment of Foreigners and the Strategy for Migration Management.</td>
</tr>
<tr>
<td>• The role of the Citizenship and Migration Board (CMB) instead of the Ministry of Interior provides a good example for Serbian government on how to reduce bureaucracy and accelerate procedures for employment of foreigners through establishing a migration agency.</td>
</tr>
<tr>
<td>• Estonian registering short-term work could improve evidence of immigrants in Serbia and prevent illegal immigrants especially in the agricultural sector and seasonal work engagement.</td>
</tr>
<tr>
<td>• Regarding the wage criterion, in Serbia this criterion should be combined with other factors.</td>
</tr>
<tr>
<td>• Estonian experience in defining quota can be valuable for Serbian efforts to develop them</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Could the functioning of the Citizenship and Migration Board (CMB) be explained more fully?</td>
</tr>
<tr>
<td>• What was the reaction of the Estonian Ministry of Interior regarding the new procedure on</td>
</tr>
</tbody>
</table>
registered short time work and the issue of security?

Can you explain in more details the way Estonian institutions calculate the value of the coefficient and define quota?

- How are labour immigrants integrated in the Estonian society?
- How do the local population, especially the highly-qualified members react to the measures, especially regarding wages?