

REPORT OF THE OFFICIAL VISIT TO BRUSSELS 5-7 December 2018

A visit to Brussels concerning the implementation of four directives in the Labor Law (Council Directives 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version), Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work).

During a three-hour meeting held on 6 December 2018 in the Directorate for Employment of the European Commission, representatives of the Ministry of Labor and Social Welfare discussed with representatives of the European Commission the implementation of the:

- **Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP**
- **Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version),**
- **Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time**
- **Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work**

Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

Regarding the implementation of the **Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP**, the European Commission suggested to delete the words "as long as the contract is in force" from Article 34, paragraph 8, which is accepted because the deletion of these words does not essentially change the content of the provision. Also, in the same Article, in paragraph

6, they doubted whether the length of the contract of employment exceeding 36 months due to the replacement of a temporarily absent employee implies the replacement of only one employee or several of them - they have pointed as an example the situation in a larger company where someone may be absent from work for longer period of time, which would mean that this is not a temporary need, but a need for a longer time interval. Representatives of the Ministry of Labor explained that this type of employee replacement relates to a specific employee who is absent from work, and that the contract of employment includes a statement that the employee is only a replacement for a temporary absent employee.

In Article 20, they questioned whether this Article covers employees who have a fixed-term employment contract with part-time job, which the representatives of the Ministry of Labor and Social Welfare confirmed, as it was verified by the European Commission. The European Commission realised that they had received a corrected Article 20 just prior to the meeting in Brussels.

Regarding Article 34 they found that the term apprenticeship was incorrectly translated into English, which was confirmed by the representatives of the Ministry of Labor and Social Welfare, and the corrected version of the Article will be provided along with other responses.

The European Commission requested that the Law on Civil Servants and State Employees is to be submitted to them, because they asked whether there are special rules for the public administration to establish employment relations, or whether they are applying the Labor Law.

It was concluded that there are no more disputable issues related to this Directive.

Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version)

Concerning the implementation of the **Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version)**, it was agreed that English term used for the payment of outstanding claims "unpaid receivables" should be replaced with "outstanding claims".

The European Commission pointed out that we made an improvement in relation to the previously submitted provisions, in terms of the number of employees who can apply for the exercise of the right to outstanding claims, as previously these were only employees who were employed on the day of the initiation of the bankruptcy proceeding, and now the right is extended to those employees whose employment has ceased in a period of 6 months prior to the bankruptcy proceedings.

Furthermore, they pointed out that the aim of the Directive is to complete the procedure on collection of outstanding claims of employees in the shortest possible time, which is why the representatives of the Ministry of Labor and Social Welfare pointed out that this Directive is directly linked to the Labor Law and the Law on the Labor Fund, so to fully fulfill the Directive's objective we have amended the provision of Article 15 of the Law on the Labor Fund in the

manner that it is no longer necessary to wait for the bankruptcy proceedings to be completed, but the request for the settlement of these outstanding claims may be submitted to the Labor Fund within 90 days from the day of issuing the decision on the list of established and disputed claims in the proceedings. Representatives of the European Commission have accepted this provision with the indication that it meets the aim of the Directive and thus achieves the early settlement of employees' outstanding claims referred to in preamble 6 of this Directive.

They also suggested that the words "in the calendar year" of Article 107 paragraph 1, point 4 should be deleted as was done in the same Article in point 3. They have noted that when submitting comments to this Directive they failed to make this suggestion, and as we have accepted the deletion of these words from point 3, it is also necessary to do the same in this paragraph.

It was also recommended to consider taking into account employee's salary when paying outstanding claims, instead of the minimum wage, to which the representatives of the Ministry of Labor and Social Welfare responded that it was not acceptable for Montenegro at the moment due to fiscal impact, which the European Commission accepted and pointed out that this suggestion is taken as an option to include in the Law only those provisions that meet the aim and purpose of the Directive.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

Regarding the implementation of the **Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time**, EC representatives stated that this Directive requires an interpretation, or instruction for its implementation, which has not been delivered to us. Since the implementation of this Directive implies an instruction for its implementation and the definition of all terms of working time individually (on-call duty, on duty, shift work, working time, etc.) it was agreed that the European Commission should, as soon as possible, provide instructions with comments on its application.

Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work

In relation to the implementation of **Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work**, a comment made by the Ministry of Labor and Social Welfare was accepted, concerning Article 17 of the Labor Law, which was submitted to the EC prior to the meeting in Brussels. The comment related to the stipulation of the minimum age limit for persons older than 15 years of age who are undergoing a compulsory primary education. The provision of the Labor Law has been improved so that a person under the age of 15 or a person who is 15 years old undergoing the compulsory primary education cannot be employed. We also pointed out that, according to the regulations of Montenegro, persons older than 15 years of age cannot undergo the compulsory primary education, but are transferred to the adult education program. In addition, representatives of the Ministry of Labor and Social Welfare pointed out that this provision further strengthens the ban on child labor in Montenegro.

The European Commission has proposed that in Article 19, paragraph 1, the part which stipulates that the work of persons under the age of 18 shall not harm their health, moral or education, should include "development" in addition to the aforementioned, which the representatives of the Ministry of Labor and Social Welfare accepted.

The European Commission pointed out that following the replies of the Ministry of Labor and Social Welfare, Article 114, paragraphs 4 and 7, is now fully clear and the Directive has been fully implemented.

They emphasized that paragraph 6 of this Article is redundant and should be deleted, which the representatives of the Ministry of Labor and Social Welfare accepted, since the deletion of this paragraph does not substantially affect the content and intent of Article 114.

They pointed out that in Article 118, concerning the protection of women during pregnancy and after childbirth, in addition to the child's life and health, a "child and unborn child" should be added, which is also accepted.

At the end of the meeting, it was concluded that the European Commission should submit all comments made during the meeting to the Ministry of Labor and Social Welfare in the shortest possible time, and that the Ministry, upon reception of the comments sent by the European Commission, should deliver, in track changes, all that was agreed during the meeting to the European Commission.

Accordingly, it was agreed that the next technical level meeting is to be held in February 2019 in order to discuss 6 more directives.

Finally, the European Commission requested that the latest version of the Law on the Labor Fund is to be submitted for review.