Employment and Social Affairs Platform
Tripartite Meeting of Working Group on Labour Code Reform

9-10 May, Montenegro

According to Montenegro's national strategic documents (Montenegro's Programme of Accession to the European Union 2016-2018, the Action Plan for the Gradual Transposition of the Acquis and for Building Up the Necessary Capacity to Implement and Enforce the Acquis for chapter 19), the Ministry of Labour and Social Welfare is obliged to adopt a new Labour Law during the fourth quarter of 2017.

In this context, the meeting was jointly organized by ILO and RCC upon the request of the Montenegrin Ministry of Labour and Social Welfare. The aim of the meeting was to contribute to the harmonization of the Draft Labour Law with the regulations of European Union through joint discussions and presentations of practices from EU members.

Participants included representatives of the Ministry of Labour and Social Welfare, the Ministry for Human and Minority Rights, Ministry of Finance, Administration for Inspection Affairs, Montenegrin Employers Federation, Union of Free Trade Unions of Montenegro, Federation of Trade Unions of Montenegro and the NGO sector. The ESAP technical assistance instrument, which provides specific national support to Ministries of Labour and Public Employment Services of the Western Balkan economies, supported the participation of two international labour law experts from EU member states (Hungary and Romania) who shared their experience and work with participants in the relevant articles of the draft labour law.

The following main topics were discussed:

1. Temporary Work Agency (TWA)

TWA concludes employment contracts/relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction. TWA are to be distinguished from subcontracting.

Some of the benefits of TWA include avoiding administrative procedures, lower costs, work contract signed directly with the agency, dismissal is much easier and it helps in situations where there is a temporary shortage of workers. However, often TWAs are misused to replace

regular workers through a prolonged probation period. They are largely used as a means to employ the lower qualified work force.

Participants were presented with the features of TWAs in Hungary and Romania. The contract establishing a temporary employment has a special format, containing a job description and wage. There are precisely listed categories of workers which are eligible for employment under TWAs (long term absent from the labour market, unemployed older than 50 years, unemployed longer that 12 months etc.). An assignment can be terminated upon the request of the employer to the TWA, and the TWA has a 30 days deadline to find the worker a new job.

The representatives of the trade unions noted that the TWAs in Montenegro are widely misused and therefore their work should be maximally limited. Employers use TWAs to avoid full open ended employment and the TWA contract is a commercial contract and there is no obligation to share with other parties. The sanctions for breaching any obligation vary from 5 years ban to losing the license. There are already 27 TWAs registered and no licenses revoked.

2. Fixed term employment

The Directive 99/70/EC concerning the framework agreement on fixed-term work was presented. It sets minimum requirements relating to fixed-term work, in order to ensure equal treatment of workers and to prevent abuse arising from the use of successive employment contracts or relationships of this type. It covers only working conditions for fixed-term employees; statutory social security schemes are the prerogative of EU countries.

To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, EU countries, after consultation with the social partners, must introduce *one or more* of the following measures (taking account of the needs of specific sectors and categories of workers): objective reasons justifying the renewal of such contracts or relationships; the maximum total duration of successive fixed-term employment contracts and relationships; the number of renewals.

In Romania, after amendments, the directive was transposed, providing the same protection as in open-ended contracts. Requirements for a fixed term contract include objective reason, among those expressly listed in the statute, statutory maximum duration of 36 months and a maximum number of successive contracts, which may be concluded. A fixed

term worker enjoys the rights of equal treatment, additional employment opportunities and provision of information and consultation.

In Hungary, the time limit for fixed term contracts is 5 years, with 6 months in between two contracts, however for 3rd countries nationals and subject to licenses, can be longer. The prolongation is subject to a balance test – it cannot be against the legitimate interest of the worker. The court practice has shown that business reasons are not enough, and as such 19 contracts were rejected. Currently there are 3 conditions for termination: liquidation or bankruptcy, workers' ability and vis major. Fixed term contracts are not limited in terms of numbers. For Montenegro, the expert suggested to provide limitations.

3. Workers' rights

On the issue of workers' rights upon dismissal, and the procedure of dismissal, severance pay, social contributions or a combination thereof, it was explained that the relevant convention of ILO provides for limitations, if there was a serious breach. In a global study on the convention (48 out of 55 countries provide for the severance, Serbia and Slovenia only for redundancies). The convention stated that the worker, who has done a severe breach of duty, will be subject to a hearing. In Romania, the standards are even higher than the ones in the convention; the contract remains in force until termination of the procedure. Also, the dismissal during sick leave is prohibited.

In Hungary, there is no need for evidence based procedure. It is sufficient that the employer has an established knowledge on breach of duty (15 days subjective, 1 year from the occurrence as an objective deadline). It is also required that the breach of duty is reasoned, significant, and that there was an intention or severe negligence of the worker. Alternatively, it can be the case when the employee has done an action which results in the loss of employers' confidence, and therefore the working relation becomes unsustainable. The burden of proof is on the employer, as in most of countries. The basic principles are hearing and cooperation, but the disciplinary proceedings are different for public and private sector and specific for military and police. As of 2012, the disciplinary proceedings are made part of the labour contracts. The law on Hungary remains quite limited here: one provision only and hints – proportionality, protection of personality and dignity of the worker, financial repercussions, and fines (1 monthly salary). Suspension is paid for one month, until the claims are verified. The legal consequence of unlawful dismissal is compensation (one year salary), but the worker cannot be

returned to the previous working place. The expert assessed the solution as unsustainable, as the sanctions are weak and the employer can fire a worker inexpensively.

4. Collective bargaining

ILO promotes collective bargaining as a fundamental labour relations topic and has three conventions on it. The purpose of bargaining is to arrange the relations between trade unions and employers. Convention 151 on public sector bargaining, and Convention 154, on collective bargaining, should guide the government to promote bargaining. Collective agreements are difficult to reach and very detailed. Trade unions strongly opposed the possible cancelation of collective agreements, bargaining and employers` enactment. Generally, bargaining should deal with providing higher employment standards than the ones set out already in the labour law. Collective bargaining should be on national level and on company level. The representation of social partners needs to be secured, especially in the region, where there are difficulties on bipartite levels. In that sense, the state becomes an important factor, by creating general collective agreements. Labour law should provide for all details (wages, leaves, etc.) and bargaining on bipartite level should be fostered. Trade unions stressed the utmost importance of general collective agreements for workers in Montenegro, especially since branch collective agreements are not in place. Trade unions also stated that the culture of social dialogue on bipartite level is quite low.

Other topics discussed included the procedures for the employment of foreign workers (which is regulated by the law on foreigners); cases of discrimination at work, in which the protection of worker is stronger and that the burden of proof is 100% on the employers; suspension in cases of criminal proceedings against the worker (in Romania the employer can suspend the worker once the criminal procedure is initiated, but if released of charges, it has to compensate the damage, while in Hungary there are no specific rules, just binding by general principles).

As a conclusion, the Ministry of Labour and Social Welfare assessed the workshop as very helpful for the further deliberations of the working group, shedding light to many dilemmas they have had in the work so far. The working group will continue to work towards the finalization of the draft law by consensus with all relevant parties.