

## *Chapter 2: Freedom of movement for workers*

Freedom of movement for workers is one of the fundamental freedoms guaranteed by European Union (EU) Law. Pursuant to Article 45 TFEU (ex. 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. EU 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. This includes in particular equal treatment as regards employment-related aspects such as conditions of employment and work, remuneration and dismissal but also the receipt of social advantages (all advantages whether linked to a contract of employment or not that are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory).

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 EU.

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 EU 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.

The Stabilisation and Association Agreement already lays down specific obligations in the areas covered by this Chapter. When answering the questions below, please make reference to the state of implementation of such obligations.

## **THE EUROPEAN COMMISSION QUESTIONNAIRE**

### **Chapter 2 - Freedom of movement for workers**

#### ***I. ACCESS TO LABOUR MARKET (GENERAL PRINCIPLES)***

##### ***A. General***

##### **Question:**

- 1. Do work permit requirements or similar restrictions for EU migrant workers exist, and if so, what are they? Please explain how many types of different work permits there are.**

##### **Answer:**

The employment of foreign nationals in the Republic of Serbia and, hence, the employment of EU migrant workers is regulated by the Law on the Conditions for the Employment of Foreign Citizens (*Official Journal of SFRY*, No. 11/78, 64/89, *Official Journal of FRY*, No. 42/92, 24/94, 28/96, *Official Gazette of RS*, No. 101/05), and also by the Labour Law (*Official Gazette of RS*, 24/05, 61/05 and 54/09) and the Law on Foreigners (*Official Gazette of RS*, No. 97/08).

Law on the Conditions for the Employment of Foreign Citizens stipulates that the foreign national may be employed when having permanent residence permit or temporary residence permit issued by the Ministry of Interior, and if he/she obtains work permit issued by the National Employment Service. However, work permit is not necessary in case when employment is based on the pursuit of professional duties laid down by the agreement on business and technical cooperation, long-term production cooperation, transfer of technology and foreign investment.

Foreign national may be founder or member of the company in the Republic of Serbia and has the right to be employed in his own company. On the basis of Registration Decision, a foreigner submits application for business licence to the Border Police Directorate in the Ministry of Interior of the Republic of Serbia. Please note that business licence is issued to a foreign national or stateless person who has the status of the entrepreneur or founder for the purpose of carrying on the business of management, and it enables them to perform other tasks. This means that foreign nationals, as well as stateless persons who are entrepreneurs, founders or company members, do not get work permits in the National Employment Service, but they get business licence in the Ministry of Interior of the Republic of Serbia.

In accordance with the provisions of the Law on the Conditions for the Employment of Foreign Citizens, the National Employment Service issues only work permit.

##### **Question:**

- 2. Do provisions exist to prevent discrimination on grounds of nationality (direct or indirect) against EU migrant workers as well as their family members (regardless of nationality) in employment, pay and working conditions and if so, what are they.**

**Answer:**

The issue of employment of foreign nationals in the Republic of Serbia is regulated by the Law on Employment and Unemployment Insurance (*Official Gazette of RS*, No. 36/09 and 88/2010). The above mentioned Law stipulates strict prohibition of any form of discrimination when employing, objectiveness when performing business of employing, as well as gender equality, and this refers to both nationals of Republic of Serbia and EU migrant workers.

The Labour Law (*Official Gazette of RS*, No.24/05, 61/05 and 54/09) prohibits any direct or indirect discrimination of persons seeking employment as well as of employed persons with regard to their place of birth, language, race, skin colour, nationality, religion or other affiliation.

Discrimination within the meaning of this Law is prohibited in relation to: employment conditions and selection of candidates for a certain job; working conditions and all rights resulting from employment relationship; education, training and advanced training; promotion at work; termination of contract of employment. Provisions of the contract of employment establishing discrimination on some of the specified grounds shall be null and void.

Since the Labour Law stipulates that a foreign nationals and stateless person shall be employed in accordance with this law and special law, the provisions on the prohibitions of direct and indirect discrimination on those grounds also apply to migrant workers from EU.

**Question:****3. What nationality conditions (if any) apply to employment in the public sector?****Answer:**

“Public sector“ is not a legal category in the legal system of the Republic of Serbia. Whereas the term “public sector” actually means public governance in the broadest sense, public administration or public governance in the legal system of Republic of Serbia primarily refer to the professional part of the state administration, as well as the local self-government which includes provincial, city and municipal authorities of a public nature.

Consequently, the area of employment relations in the public sector of the republic of Serbia is regulated by the Law on Civil Servants (*Official Gazette of RS*, No. 79/05, 81/05, 83/05, 64/07, 67/07, 116/08 and 104/09) and the Law on Labour Relations in State Authorities ( *Official Gazette of RS*, No. 48/91, 66/91, 44/98, 49/99, 34/01 and 39/02).

The Law on Civil Servants applies to employees in state authorities, courts, public prosecutor’ offices, the Republic Public Attorney, services of the National Assembly, services of the President of the Republic and the Government., Constitutional Court and services of the authority whose members are elected by the National Assembly. State authorities include ministries, special organizations, administrative authorities within ministries, and professional services of administrative districts.

In the case of employees in authorities of autonomous province and local self-government, Article 189 of the Law prescribes that the provisions of the Law on Labour Relations in State Authorities (*Official Gazette of RS*, No. 48/91, 66/91, 44/98, 49/99, 34/01 and 39/02) shall continue to apply accordingly to authorities of autonomous province and local self-government until the passing of a special law.

It is prescribed by Article 45 of the Law on Civil Servants and the Article 6 of the Law on Labour Relations in State Authorities that the nationality of the Republic of Serbia is required for employment in state authorities.

Prohibition of employing foreign nationals in public sector is not prescribed by Law on the Conditions for the Employment of the Foreign Citizens. Basic condition for employing foreigners in public administration is that the person must be the citizen of the Republic of Serbia.

Pursuant to Article 2, paragraph 3 of the Law on the Conditions for the Employment of Foreign Citizens it is prescribed that “by General Act the organizations determine, in accordance with the Law, work places where foreigners can employ.”

***B. Freedom of movement for workers within the EU (Regulation (EEC) 1612/68)***

**Question:**

**4. Do EU migrant workers have access to available employment under the same conditions as Serbian nationals?**

**Answer:**

In accordance with Article 85 of the Law on Employment and Unemployment Insurance, foreign nationals or stateless person can be registered as an unemployed person providing that he/she has approval for permanent or temporary residence. Registered foreign national thus has the right to be informed about the possibilities and conditions of employment by the National Employment Service.

In accordance with Article 2 of the Law on the Conditions for the Employment of Foreign Citizens, foreign nationals may be employed when having approval for permanent or temporary residence in Republic of Serbia, and if having approval for employment etc.

**Question:**

**5. Are EU migrant workers protected against discrimination on the basis of nationality as regards conditions of employment and work, dismissal and pay?**

**Answer:**

In accordance with Article 18 of the Labour Law, both direct or indirect discrimination are prohibited against persons seeking employment and employees, in respect to their sex, origin, language, race, colour of skin, age, pregnancy, health status or disability, nationality, religion, marital status, familiar commitments, sexual orientation, political or other belief, social background, financial status, membership in political organizations, trade unions or any other personal quality.

Discrimination within the meaning of this Law is prohibited in relation to: employment conditions and selection of candidates for a certain job; working conditions and all rights resulting from employment relationship; education, training and advanced training; promotion at work; and, termination of contract of employment. Provisions of the contract of employment establishing discrimination on some of the specified grounds shall be null and void.

Since the Labour Law stipulates that a foreign national and a stateless person shall be employed in accordance with the law and special law, the provisions on the prohibitions of direct and indirect discrimination on those grounds also apply to migrant workers from EU, in other words, they are protected from direct and indirect discrimination, with regard to employment, termination of contract of employment and pay.

**Question:**

**6. Are there any language requirements for specific jobs and, if yes, which ones?**

**Answer:**

Labour Law does not prescribe any special conditions for employment on a certain jobs, those conditions are prescribed by particular law or regulation on organization and systematization of jobs issued by employer.

National Employment Service carries out a preliminary selection of persons, taking into account the conditions defined by the employer, the specificity of job- the required type and level of education, occupation, work experience and other knowledge and skills (e.g. computer skills, foreign languages, driver's licence...), which candidates should obtain. In accordance with Article 35 of the Law on Employment and Unemployment Insurance, the employer has the obligation to provide equal treatment for all the persons who applied for job interview.

Provisions of Article 168 of the Law on Health Care ( *Official Gazette of RS*, No. 107/05, 72/05 and 54/09-other law) stipulates that health worker can independently provide health protection (individual work) in a medical institution, private practice or can with another employer, by means of this Law, perform certain duties of health service, if:

- 1) He/she has completed internship and passed the professional exam,
- 2) He/she is registered in the Chamber's directory;
- 3) He/she gained or renewed approval for independent work.

Independent work, within the meaning of this Law, means the individual providing health care without direct supervision of another health worker.

A foreign national who performs health activities in the Republic of Serbia shall, in addition to the conditions specified in paragraph 1. of this Article, know the Serbian language as well as the other language in official use, in accordance with the regulations of the official use of languages in the Republic, and must meet other requirements in accordance with the regulations governing the employment of foreign citizens

**Question:**

**7. Do EU migrant workers receive assistance (other than financial assistance) from employment offices?**

**Answer:**

Foreign nationals or stateless persons, and therefore the EU migrant workers who are registered as unemployed in National Employment Service, are equal with domestic nationals, in relation to the rights and opportunities for employment and are involved in the active employment policy measures, implemented by the National Employment Service, and on the basis of National Employment Action Plan for the year 2010. (*Official Gazette of RS*, No 7/2010 ) and National Action Plan for the year 2011. (*Official Gazette of RS*, No. 55/2010).

Foreign nationals or stateless persons who apply to register of unemployed persons of the National Employment Service, have the right to be informed about vacancies, consultation, job matching and participation in programs of additional education and training, etc.

If foreign nationals and stateless persons are registered as unemployed persons of the National Employment Service, in accordance with the law, they can exercise the right to financial support when employing, or they can use the right to award subsidies and to use funds for self-employment, for new job creation and public works program at the National Employment Service, which are defined by public invitation and open competition.

**Question:**

**8. What rights to “tax and social advantages” and vocational training do EU workers have?**

**Answer:**

With respect to “social advantages”, social security benefits are calculated in the same manner as for the nationals of Republic of Serbia.

User of rights to benefit is payer of contributions for pension, disability and health insurance. Basis for payment of contributions is the amount of financial compensation. For a financial compensation taxes are not paid.

Foreign nationals or stateless person, who applies to register of unemployed persons of the National Employment Service, have the right to participate in the programs of additional education and vocational training.

In accordance with Article 49 of The Labour Law, employer shall provide conditions for education, vocational training and advanced training for his/her employees when the work process requires so, or when new methods and organization are to be introduced.

Any employee shall train, educate and improve him/herself in the working process.

The costs of such education, vocational training or advanced training shall be provided from the funds of the employer and other sources, pursuant to the law and the general act.

In case an employee stops with education, vocational training or advanced training, he/she shall compensate the cost of such training to the employer, except in case when reasons are justified.

**Question:**

**9. What trade union rights do EU workers have?**

**Answer:**

Right to trade union organizing and action are governed by Article 55 Paragraph 1 of the Constitution of Republic of Serbia. Trade union organizing and action shall be free without prior approval and entered in the register kept by the competent authority, in accordance with the Law. Moreover, this right is also guaranteed by the Labour Law. Labour Law provisions apply to employed foreign nationals and stateless persons who work for the employer on the territory of the Republic of Serbia, unless otherwise specified by Law. According to that, EU workers have the same trade union rights as domestic nationals. Every employee has the right to independently determine for trade union membership. Membership and participation of employees in the work and trade union bodies shall be regulated by statute or other general act of trade union.

**Question:**

**10. What housing rights do EU workers have?**

**Answer:**

The Labour law prescribes the rights, duties and responsibilities of employment relations. This law does not define the housing rights. Only when it comes to contract of employment for housekeeping assistance (Article 45.), there is possibility of payment of salary in kind- by providing of the board and lodging for an employee.

**Question:**

**11. What rights to education do the children of EU migrant workers have?**

**Answer:**

Right to education is governed by the Constitution of Republic of Serbia (Article 71)[1] and the Law on the Foundations of Education System.( Article 6)[2].

The Constitution stipulates that everyone has the right to education. Elementary education is compulsory and free, secondary education is free. All citizens shall have equal access to university education.

The citizens of the Republic of Serbia shall be equal in exercising their right to education and upbringing, regardless of their gender, race, national, religious and language background,

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[1] *Official Gazette of RS*, No 98/2006

[2] *Official Gazette of RS*, No 72/2009

social and cultural background, financial status, age, disabilities, political affiliation or another personal trait.

Persons with disabilities shall be entitled to education and upbringing which takes into consideration their educational needs within the regular education system, with individual i.e. group assistance or in a special pre-school group or school.

Persons with exceptional abilities shall be entitled to education and upbringing which takes into consideration their special educational needs, within the regular system, in 1 classes or schools for gifted students.

Foreign nationals and persons without citizenship shall be entitled to education under same conditions and in the same manner as prescribed for the nationals of the Republic of Serbia. This provision shall also apply to education of children of the EU migrant workers.

The parents who are nationals of the EU may choose, if they want, to enrol their children in private or foreign school (institution not founded by the Republic of Serbia, autonomous provinces or local governments) with covering costs of education.

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***C. Rights 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)***

***(N.B.: These questions only relate to the specific provisions for EU citizens exercising an economic activity as salaried workers; please note that all other provisions of the Directive are dealt with under Chapter 23)***

**Question:**

**12. What documents do EU migrant workers and their family members (including those who are not EU nationals) need in order to enter Serbia?**

**Answer:**

All the foreigners entering the Republic of Serbia are required to have valid travel documents and visas according to the visa regime of the Republic of Serbia.

International agreement or decision of the Government may determine that foreigners from certain countries may enter the Republic of Serbia without visa.

By Decision of the Government of the Republic of Serbia (*Official Gazette of RS*, No. 38/10) nationals of EU, Norway, Switzerland and Iceland are allowed to enter the territory of the RS with valid ID card.

The foreigner who does not need a visa or travel document to enter the Republic of Serbia can stay in the country for maximum 90 days, within the period of six months after the date of entry.

The foreigner registered in the travel document of another person, may enter and leave the Republic of Serbia only with the person in whose travel document the foreigner was registered.



After a foreigner entered the Republic of Serbia, legal and natural persons that provide accommodation services to foreigners for a fee, as well as persons being visited by foreigners, are obliged to register their presence with the competent authority within 24 hours from providing accommodation service to a foreigner, or from the moment a foreigner arrived for a visit.

In case a foreigner is staying at a private address, the landlord, with proof of ownership or occupancy and tenancy right, personal document of identity and passport of foreigner, shall report a foreigner to the Police Department on duty in the municipality where the dwelling is.

Upon registration, the foreigner is issued a stay registration card which he/she needs to have with him/her, together with the passport, during the entire stay in the country.

Upon registration, the foreigner is issued a residence registration card in his/her own name which he/she shall have with him/her, together with the passport, during the stay.

A foreigner can own real estate on the territory of the Republic of Serbia under the terms of reciprocity. If a foreigner is owner of housing, he/she will have to register the residence for himself/herself or other foreigners who are staying in a flat of which he/she is the owner.

### **Question:**

#### **13. What are the residence formalities for EU citizens exercising an economic activity as salaried workers?**

### **Answer:**

Foreign nationals (including EU citizens) can regulate the employment relationship upon the approval of temporary residence by the competent authority (Ministry of Interior of the Republic of Serbia)

Article 26 of the Law on Foreigners prescribes that temporary residence may be granted to a foreigner whose intention is to stay in the Republic of Serbia longer than 90 days for the purpose of:

- work, employment, performance of economic or other professional activities ;
- enrolling in a school, university or advanced education course, scientific research, practical training, participation in the programmes of international exchange of pupils and students, and/or other scientific-education activities;
- family reunion;
- other justified reasons in accordance with the law or an international treaty.

A foreigner to whom temporary residence has been granted is obliged to stay in the Republic of Serbia in accordance with the purpose for which the stay has been approved.

In addition to the application for temporary residence, a foreigner is obliged to submit a valid travel document, as well as the proof that he/she has got sufficient financial means to sustain him/herself, proof he/she has got health insurance and the proof that his/her reasons for temporary residence are justified and in compliance with the purpose of temporary residence.

The proof that the request for approval of temporary residence is justified on the basis of:

1. Opening an enterprise, agency or bank, or for the persons entered into the decision on registration of enterprise, agency or bank is:
  - registration decision
  - commercial bank confirmation of transactions on the account;.
2. Establishment and ownership of independent store (trade, craft, catering, etc.) or agency is:
  - registration decision
3. Consignment, the contract on business cooperation, an agreement on business and technical cooperation and transfer of technology is:
  - decision on registration of domestic companies
  - agreement on cooperation between foreign and domestic legal person
  - referral or delegation of the sending company (original and translation of court interpreter)
4. Employment is:
  - decision on registration of companies or other legal person in which the foreigner is employed
  - contract of employment or contract of hire
  - opinion of the National Employment Service when employing for the first time or decision of the National Employment Service approving the employment ( each time after the approval of temporary residence it is necessary to re-regulate the decision of the National Employment Service, which approves of company's employing stranger, since the Decision is issued with a validity period of temporary residence.
5. Performing temporary and part-time jobs (up to 90 days) is:
  - contract of employment or contract of hire with legal or natural person who has a rural household which is the main source of income.
  - decision on registration of legal person or, in the case of a contract with a natural person, certificate that agriculture is the main business of that person
6. Engagement of foreign sportsmen is:
  - decision on registration of the club
  - contract of engagement certified in the competent Sports Federation
7. Engagement of accredited journalists is:
  - accreditation of the Ministry of Culture
8. Engagement in NGO is:
  - letter certifying that MFA is familiar with the activities of NGO
  - contract of employment or letter of the NGO that the foreigner is engaged as a volunteer
9. Engagement of foreign priests is:
  - proof of registration of a church or, in case that religious community is not registered, a letter of support of the Ministry of Religions, as well as NGOs.
  - contract of employment or a letter of the church that the foreigner is engaged in religious activities or for the religious service

10. Education – Study - learning the language is:
- confirmation of the faculty or the school the foreigner is attending
11. Training and practice is:
- decision on registration of companies where training or practice are carried out
  - certificate of institution that organizes training or practice, with exact start and end dates.
  - contract or certificate of carrying out training and practice
12. Advanced professional specialization is:
- confirmation of the competent institution or organization of these specialized studies with specified duration of specialization
13. Employment of lecturers and professors of the University is:
- contract of employment and faculty report
14. Working in a foreign DCM and private visit to the foreign DCM staff is:
- letter of the Embassy with exact information about the workplace where a foreigner is engaged and duration of engagement signed by the Head of DCM, or a letter which explains the reason and duration of private visit.
15. Officials of international institutions ( World Bank, IMF...) and consulting companies engaged in realization of the projects in cooperation with other state authorities is:
- letter of the competent ministry with reference number and date of the Grant Agreement or other agreement with the explanation of needs of hiring foreigners and duration.

A foreigner submits the request for extension of temporary residence to competent authority, not later than 30 days prior to the expiration of temporary residence.

**Question:**

**14. Do EU migrant workers in Serbia have the right to bring their family members with them?**

**Answer:**

Migrant workers - citizens of EU who perform professional activities on the territory of the Republic of Serbia, may bring their close family members with them. The basis for their residence in our country is governed by Article 32 of the Law on Foreigners, and by respective bylaws.

**Question:**

**15. Are non EU national family members of an EU migrant worker in Serbia granted a residence permit of the same length of validity as the EU citizen?**

**Answer:**

Temporary residence may be approved for up to one year and may be extended for the same period, unless otherwise specified by this Law or International Treaty.

A temporary residence permit is entered into the foreigner's travel document. Expiry date of the travel document must be at least six months longer than the period for which the permit is issued.

Family members of a foreigner with temporary residence permit shall be granted temporary residence permit with a validity period of the holder's residence permit, except in cases when it is not possible due to validity period of passports.

The proof of justification of the request for temporary residence permit is:

- proof of family relationship with a residing foreigner (birth certificate, marriage certificate, Embassy certificate etc. with translation of court interpreter)

This refers to foreign nationals, including family members of EU migrant workers who are not nationals of EU.

**Question:**

**16. Do work permit requirements or similar restrictions exist for the family members (including those who are not EU nationals) of a migrant worker in Serbia, and if so what are they?**

**Answer:**

Family members of migrant workers, including family members of EU migrant workers, need a work permit if they want to employ. However, if the employment relationship is based on performing professional activities stipulated by the business and technical cooperation agreement, long-term production cooperation, technology transfer and foreign investments, if they perform duties under contract of performing temporary and part-time jobs, in those cases a work permit is not required.

**Question:**

**17. Can EU migrant worker's right to reside be revoked on grounds of involuntary unemployment, illness or accident?**

**Answer:**

**It cannot be revoked.**

A foreigner's residence shall terminate:

- 1) Upon expiry of period of his/her residence permission
- 2) If residence is cancelled
- 3) If the protection measure of removal or security measure of expulsion is imposed on him/her.

If a foreigner, after the expiration of residence, does not have the evidence justifying the reasons for granting temporary residence, does not have sufficient means of livelihood, or in some other way is not provided with livelihood support during the stay in the Republic of

Serbia, if there is reasonable doubt that residence will not be used for intended purpose, residence shall not be approved to him/her.

**Question:**

**18. Do the spouse and children under 21 (regardless of nationality) of an EU migrant worker have the right to employment in your country without a work permit?**

**Answer:**

Spouse and children under 21 of migrant workers have that right, but under the conditions specified below:

A foreigner to whom temporary residence has been granted is obliged to stay in the Republic of Serbia in accordance with the purpose for which the residence has been approved.

If a foreigner who has been granted temporary residence on the basis of being a member of the family of a temporary residing foreigner gets employed, the company he/she is employed with shall be provided with the decision of the National Employment Service that the foreigner shall submit, together with the contract of employment, to the competent authority which granted him/her a temporary residence, so that, when extending residence period, he/she could change the basis for residence.

A foreigner can get employed without a work permit, if he/she has temporary or permanent residence permit and if employment relationship is established in order to perform professional activities stipulated by the agreement on business and technical cooperation, long-term production cooperation, transfer of technology and foreign investment.

**Question:**

**19. Are there rules providing for a right to remain for an EU citizen**

- a) who has worked in your country and then reaches retirement age;**
- b) who has worked in your country, who has resided continuously for at least 2 years in your country and then becomes permanently incapable of work;**
- a) who has worked in your country and then becomes incapable of work because of an accident at work or an occupational disease?**

**Answer:**

The question of stay of EU citizens in Serbia who belong to one of mentioned categories is not regulated by law. However, EU citizens, as well as the other foreign nationals, may exercise their right of residence i.e. stay in Republic of Serbia on the grounds stipulated by the Law on Foreigners and respective bylaws.

**Question:**

**20. What are the residence rights of the family members of EU citizens in above categories?**

**Answer:**

Close family members of EU citizens who belong to one of these categories can regulate their residence in the Republic of Serbia. The basis for their residence in our country is governed by Article 32 of the Law on Foreigners, and respective bylaws.

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

**Please provide details on the following:**

**Question:**

**21. Does your country have any supplementary (or private) pension schemes?**

**Answer:**

In the Republic of Serbia in the pension and disability insurance system there is Pillar III regulated by the Law on Voluntary Pension Funds and Pension Plans (*Official Gazette of RS*, No. 85/05).

**Question:**

**22. What happens if member of supplementary pension scheme moves to an EU Member State?**

**Answer:**

The rights of voluntary pension fund do not change depending on the change of residence. However, it should be noted that a member does not have the possibility to transfer funds accumulated in voluntary pension fund, which operates in Republic of Serbia and which received permission to operate under the Law on Voluntary Pension Funds and Pension Schemes, to another voluntary pension fund which does not operate on the territory of the Republic of Serbia and has not been given work permit under the above mentioned law.

**Question:**

**23. Can payment from a supplementary pension scheme be made to a scheme member residing in an EU Member State?**

**Answer:**

Payment to members of voluntary pension fund may be made for the user staying in an EU Member State.

**Question:**

**24. Can workers who are temporarily posted from your country to an EU Member State continue to make contributions to their supplementary pension scheme?**

**Answer:**

Workers who are temporary posted to an EU Member State can continue to make contributions to their supplementary pension schemes.

**Question:**

**25. Do supplementary pension schemes provide adequate information to members about their pension rights if they move to an EU Member State?**

**Answer:**

Company managing a voluntary pension fund shall, on request of a member, provide all necessary information to member about his/her rights. However, it should bear in mind that, especially with regard to payments, there is no developed practice, concerning the fact that in the system of voluntary pension funds currently there are only 7 members in the stage of payment.

***II. EURES (European Employment Service)***

**Please provide details on the following:**

**Question:**

**26. Is there a national vacancy database? Is there a National website for those vacancies? How are vacancies displayed on this website?**

**Answer:**

There is not any national vacancy database.

In accordance with the Article 34, paragraph 3. of the Law on Employment and Unemployment Insurance, the employer has the right “to employ a person without the intervention of the National Employment Service or agency”.

Therefore, the National Employment Service shall keep records of submitted applications with need to employ in country or abroad, which employer submits in case intervention needed, in terms of sending job-seekers for selection for employment or other work engagement, taking into account the specified conditions to a specific workplace.

In case that the employer wants to advertise, the National Employment Service shall, within 24 hours of receiving notice of need for employment from the employer, make that information available to persons seeking employment by placing it on the bulletin board, the website of the National Employment Service and in the journal “Jobs”

**Question:**

**27. Is mobility of workers promoted by the Public Employment Service? How?**

**Answer:**

When it comes to mobility of workers, we can talk about two aspects: professional and territorial mobility.

In order to promote professional mobility of workers, the National Employment Service organizes retraining and upgrading courses for unemployed persons, and when it comes to territorial mobility the National Employment Service provides inter-regional intervention in employment of unemployed persons.

***III. CO-ORDINATION OF SOCIAL SECURITY SYSTEMS******A. Scope of co-ordination<sup>1</sup>*****Question:**

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<sup>1</sup> Ref. Council Regulation 883/2004 and its Implementing Regulation

## **28. Material scope:**

- a) Regulation 883/2004 will apply to the social security branches mentioned in Article 43: Are all these branches covered by your legislation?**
- b) As regard Article 9, please list the legislation and social security schemes covered by the Regulation**
- c) Please explain the distinction between social security benefits and social assistance as provided for by the Regulation**
- d) Are there special schemes for war victims? Please explain.**
- e) Please provide a list of your bilateral social security conventions.**

### **Answer:**

**a)** Regulations of Republic of Serbia cover all branches of social security in Article 43 Regulation 883/2004.

**b)** Regulations of the Republic of Serbia to which Regulation refers are:

- for wage compensation for temporary incapacity for work: Law on Health Insurance (*Official Gazette of RS*, No. 107/05 and 109/05).
- for maternity benefits: Law on Financial Support to Families with Children (*Official Gazette of RS*, No. 16/02, 115/05 and 107/09).
- for benefits in case of disability: Pension and Disability Insurance Law (*Official Gazette of RS*, No. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09 and 107/09),
- for benefits in case of old age: Pension and Disability Insurance Law (*Official Gazette of RS*, No. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09 and 107/09),
- for benefits for successors of the deceased insured person: Pension and Disability Insurance Law (*Official Gazette of RS*, No. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09 and 107/09),
- for benefits in case of accidents at work and occupational disease:
  - 1. for short-term benefits: Law on Health Insurance (*Official Gazette of RS*, No. 107/05 and 109/05).
  - 2. for long-term benefits: Pension and Disability Insurance Law (*Official Gazette of RS*, No. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09 and 107/09).
- for benefits in case of death: Pension and Disability Insurance Law (*Official Gazette of RS*, No. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09 and 107/09)
- for benefits in case of unemployment: Law on Employment and Unemployment Insurance (*Official Gazette of RS*, No. 36/09 and 88/2010),
- family benefits: Law on Financial Support to Families with Children (*Official Gazette of RS*, No. 16/02, 115/05 and 107/09).



c) In the Republic of Serbia the rights to social benefits are regulated by the Law on Social Protection and Providing Security of Citizens (*Official Gazette of RS*, No. 36/91, 79/91, 33/93, 53/93, 67/93, 67/93, 46/94, 48/94, 52/96, 29/01, 84/04, 101/05, 115/05) and include persons who are not in insurance or a person not covered by the regulations set under b) According to that, it is precisely defined which persons and under what conditions exercise their rights to benefits in accordance with regulations on social protection, and which they exercise in accordance with the regulation social security.

d) There is a separate system for veteran's invalidity protection of servicemen, military disabled and the members of families of fallen veterans and fallen military invalids, as well as the system of protection of civilian war invalids and the families of civilian victims of war.

The above mentioned systems of protection are not based on the social security system, but on the principle of compensation for bodily injury or loss of close relatives, and the right of the servicemen, war and peacetime military invalids, members of families of fallen veterans- are based on the principle of national recognition.

The above mentioned systems of protection are prescribed by the regulations:

- Law on the Rights of Servicemen, Military Disabled and Members of their Families (*Official Gazette of SRS*, No.54/89 and *Official Gazette of RS*, No.137/04);
- Law on the Rights of Civilian War Invalids (*Official Gazette of RS*, No.52/96)
- Law on the Basic Rights of Veterans, Disabled Veterans and Families of Fallen Veterans (*Official Journal of FRY*, No. 24/98, 29/98 and 25/00 – SUS and *Official Gazette of RS*, No. 101/05 – of the other law);
- Law on the Basic Rights of Holders of Partisan Memorials 1941 (*Official Journal of SFRY*, No. 67/72, 40/73, 33/76, 32/81, 68/81, 25/85, 75/85, 44/89, 87/89, 20/90 and 42/90);
- Law on the Basic Rights of Veterans of Spanish National Liberation and Revolutionary War from 1936. to 1939. year ( *Official Journal of SFRY*, No. 67/72, 40/73, 33/76, 32/81, 68/81, 25/85, 75/85, 44/89, 87/89, 20/90 and 42/90);
- Law on the Basic Rights of Persons Awarded the Order of People's Hero ( *Official Journal of SFRY*, No. 67/72, 21/74, 33/76, 32/81, 68/81, 25/85, 75/85, 44/89, 87/89, 20/90 and 42/90);
- Law on the Basic Rights of Persons Awarded the Order of Karageorge Star with Swords, Order of the White Eagle with Swords and with Gold Obilic Medal ( *Official Journal of SFRY*, No. 67/72, 22/73, 33/76, 68/81, 75/85, 44/89 and 87/89);
- Law on Veteran's Benefit ( *Official Journal of SFRY*, No. 67/72, 33/76, 32/81, 68/81, 75/85, 44/89, 87/89, 20/90 and 42/90);
- Regulation on the manner of exercising the rights of members of the Yugoslav Army in the country and of the Ravnonogorski Movement in the field of veteran's invalidity protection ( *Official Gazette of RS*, No.51/05);
- Regulation on the right to monthly payment while being unemployed for war military invalids from the V to X group of armed actions after 17. August 1990. year (*Official Gazette of RS*, No 42/06)

Rights prescribed by these regulations shall be exercised in administrative proceedings. Competent authorities for recognition of these rights, in the first instance, are the local administrations for veterans invalidity protection, and in the second instance the Secretariat for Social Security and Demography of AP Vojvodina (for municipalities on the territory of AP Vojvodina), Secretariat for Social Security of the City of Belgrade (for the municipalities

on the territory of Belgrade) and the Ministry of Labour and Social Affair for the other municipalities. Final administrative decisions of recognition of these rights can be reviewed in legal proceeding.

e) Conventions on Social Security are concluded with following countries:

1. **Austria** – Agreement between Federal Republic of Yugoslavia and Republic of Austria on Social Insurance, Official Journal of FRY – International treaties, No.7/98
2. **Belgium** – Convention on Social Insurance between Yugoslavia and Belgium, Official Journal of FPRY- International treaties 7/56
3. **Bulgaria** – Convention on Social Insurance between Federal People's Republic of Yugoslavia and People's Republic of Bulgaria, Official Journal of FPRY- International treaties 4/59
4. **Czech** – Agreement between Federal Republic of Yugoslavia and Czech Republic on Social Insurance
5. **Slovakia** – Convention on Social Insurance between Federal People's Republic of Yugoslavia and Republic of Czechoslovakia, Official Journal of FPRY- International treaties 1/59
6. **Denmark** – Convention between Federal People's Republic of Yugoslavia and Kingdom of Denmark on Social Insurance, Official Journal of FPRY- International treaties 5/80
7. **France** –General Convention on Social Insurance between Yugoslavia and France, Official Journal. of FPRY 4/51, Official Journal of SFRY, International treaties 1/67, 17/71, 22/75, 7/77, 5/79 and 9/90
8. **Italia** – Convention on Social Insurance between Federal People's Republic of Yugoslavia and Republic of Italy, Official Journal of FPRY- International treaties 1/59
9. **Luxemburg** – Agreement on Social Insurance between Serbia and Montenegro and Grand Duchy of Luxemburg, Official Journal of SM 10/04
10. **Hungary** – from 1958, Official Journal SFRJ- International treaties 33/75
11. **Netherlands** – Convention on Social Insurance between Federal People's Republic of Yugoslavia and Kingdom of Netherlands, Official Journal of SFRY- International treaties 11/80
12. **Norway** – Convention between Federal People's Republic of Yugoslavia and Kingdom of Norway on Social Insurance, Official Journal of SFRY- International treaties 22/75
13. **Poland** – Convention on Social Insurance between Federal People's Republic of Yugoslavia and Government of People's Republic of Poland, Official Journal of FPRY- International treaties 9/58

14. **Germany** – Convention between Socialist Federal Republic of Yugoslavia and Federal Republic of Germany on Social Insurance, Official Journal of SFRY- International treaties 9/69 and 4/76
15. **Sweden** – Convention between Socialist Federal Republic of Yugoslavia and Kingdom of Sweden on Social Insurance, Official Journal of SFRY- International treaties 12/79
16. **Swiss** – Convention on Social Insurance between Federal People's Republic of Yugoslavia and Swiss Confederation, Official Journal of SFRY- International treaties 8/63 and 12/84
17. **Great Britain and Ireland** – Convention on Social Insurance between Federal People's Republic of Yugoslavia and United Kingdom of Great Britain and North Ireland, Official Journal of FPRY- International treaties 7/58 and 10/60
18. **Libya** – Agreement on Social Insurance between Socialist Federal Republic of Yugoslavia and Great Socialist People's Libyan Arab Jamahiriya, only for pension and disability insurance, by which the Treaty on avoiding double payment of social security contributions was abolished from 1974, Official Journal of SFRJ International treaties 1/90
19. **Panama** – Agreement on Co-operation in the Field of Social Insurance between Socialist Federal Republic of Yugoslavia and Republic of Panama, only for pension and disability insurance, Official Journal of SFRY- International treaties 11/77
20. **Romania** – Agreement between Socialist Federal Republic of Yugoslavia and the Government of Socialist Republic of Romania on Co-operation in the Field of Health Insurance, only for health insurance, Official Journal of SFRY- International treaties 13/77
21. **Macedonia** – Agreement between Federal Republic of Yugoslavia and Republic of Macedonia on Social Insurance, Official Journal of FRY – International treaties, No. 1/2001.
22. **Croatia** – Agreement between Federal Republic of Yugoslavia and Republic of Croatia on Social Insurance, Official Journal of FRY – International treaties, No.1/2001.
23. **Bosnia and Herzegovina** – Agreement between Federal Republic of Yugoslavia and Republic of Macedonia on Social Insurance, Official Journal of FRY – International treaties, No.7/2003. 7/2003.
24. **Montenegro** – Agreement between Republic of Serbia and Republic of Montenegro on Social Insurance, Official Gazette of RS – International treaties, No.102/2007.
25. **Slovenia** - Agreement between Republic of Serbia and Republic of Slovenia ( Official Gazette of RS, No. 111/09),

## ***B. The main principles of co-ordination***

### **Question:**

#### **29. Equal treatment:**

**a) Are there any examples in your social security legislation where non-nationals are treated less favourable than nationals?**

**Answer:**

In Republic of Serbia there are not any examples where foreign nationals have less favourable treatment than domestic nationals. In the system of compulsory pension and disability insurance, foreign nationals are equal in rights and obligations with nationals of the Republic of Serbia.

Foreign nationals who have been insured in case of unemployment in the Republic of Serbia and who after termination of insurance have been entered in the records of the National Employment Service, have the right to financial compensation in the manner and under the same conditions as nationals of the Republic of Serbia.

In accordance with Article 29. of the Law on Health Insurance( *Official Gazette of RS*, No. 107/05 and 109/05), nationals, or insured persons from countries that signed the International Treaty on Social Insurance exercise the right to compulsory health insurance in the content and scope prescribed by this Law, if not otherwise decided by the International Agreement on Social Insurance. Accordingly, nationals or insured persons of countries which signed the International Treaty on Social Security, shall be provided with health protection in the same manner and to the same extent as nationals of the Republic of Serbia, while temporary or permanent residence on its territory. In addition, the principle of equal treatment is present in all Agreements on Social Security concluded by the Republic of Serbia.

Nationals of countries that have not signed the International Treaty on Social Security are provided with emergency health care. Namely, in accordance with Article 240. of the Law on Health Protection (*Official Gazette of RS*, No. 107/05, 72/09-other law and 88/10), health institution and private practice, as well as health workers are required to administer emergency medical care. Foreigners pay costs for provided emergency medical care, as well as for the other types of health services provided to them at their request.

In addition, in accordance with Article 23. of the Law, non-compulsory insured persons can be included in compulsory health insurance in order to provide for themselves and their close family members rights of compulsory health insurance, under the conditions, manner, content and scope prescribed by this Law. These persons pay contribution from their own resources, in accordance with the Law governing contributions for compulsory social insurance.

In accordance with Article 2. of the Rulebook on the procedure for inclusion in the compulsory health insurance of non-compulsory insured persons ( *Official Gazette of RS*, No. 24/06. 68/06 –other letter, 95/07 and 23/09), person who is included in the compulsory health insurance, acquires the status of insured on the date of applying for compulsory insurance to the branch of the Republic Health Insurance Fund in the territory of his/her permanent or temporary residence, if he/she is a foreigner.

From the above mentioned we can conclude that nationals of countries that signed the International Treaty on Social Insurance, as well as the foreigners involved in compulsory health insurance, exercise their right to compulsory health insurance under the same procedure and to the same extent as other categories of insured persons, or as nationals of the Republic of Serbia. Nationals of countries that have not signed the International Treaty on Social Insurance, or who are not included in compulsory health insurance are provided with emergency health care.

**Question:**

**30. Determination of the applicable legislation:**

- a) Are your social security schemes based on the principle of *lex loci laboris* or are they based on residence?**
- b) Do you have rules and administrative structures applicable in the case of posting of workers?**

**Answer:**

**a)** In Republic of Serbia the system of compulsory pension and disability insurance is based on the principle of insurance, or the principle of *lex loci laboris*, which means that the obligation of the insurance proceeds from the fact that a person works or carries on business in the Republic of Serbia.

An unemployed person is registered in the records of the National Employment Service according to the place of residence or place of work or termination of employment, if resides in that place. Persons who were compulsory insured in case of unemployment apply for the right to financial compensation on the basis of unemployment, and branch of National Employment Service decides about that, regardless of place of termination of work.

**b)** Posting of workers is applied according to the Agreement on Social Insurance concluded by the Republic of Serbia or, if posting of workers is not regulated by International Treaty, it shall apply regulations of the Republic of Serbia.

Pursuant to Article 111 of Law on Health Insurance (Official Gazette of RS, № 107/05 and 109/05) the property of insured person is determined by the branch on which territory insured person resides, or on which territory is the seat of the taxpayer of contribution, which within the meaning of this Law is considered the parent branch, unless otherwise provided by Law.

Furthermore, in accordance with the Article 139 of the Law, the insured person is provided with the rights to compulsory health insurance in the parent branch – branch where resides, if this Law does not otherwise specifies. Insured persons considered vulnerable categories in Article 22. of this Law (refugees and displaced persons, Roma people, etc.), persons who are included in compulsory health insurance as well as persons who are in some cases provided with the right to compulsory health insurance under Article 28 of this law, are all provided with the rights to compulsory health insurance at the branch in the territory where they have permanent or temporary residence. Moreover, signed agreements on social security stipulate that the permanent or temporary residence of foreign nationals (depending on the category of insured person) is condition for health care in the Republic of Serbia.

From the above mentioned it can be concluded that the permanent or temporary residence in the territory of the Republic of Serbia is an important condition to acquire the status of an insured person, or a condition for exercising the right to compulsory health insurance.

**Question:**

**31. Aggregation of periods:**

- a) Do you have any experience with applying the principle of aggregation of periods in your relations with other countries? Which administrative structures are responsible for this?**

**b) What are the waiting periods for entitlement to benefits equivalent to those covered by the scope of the EU Regulation?**

**Answer:**

a). Republic of Serbia applies the principle of aggregation of periods of insurance completed in countries with which concluded social insurance agreements. The responsibility for the implementation of this principle in all social insurance agreements lies with the institutions of compulsory social insurance, or Pension and Disability Insurance Fund, Health Insurance Institute and the National Employment Service.

When deciding on rights to insurance in case of unemployment by applying international agreements on social insurance, insurance period completed in the Republic of Serbia shall be aggregated with the insurance period completed in other member state, if necessary for the exercise of rights.

Exercising of the right to insurance in case of unemployment is in competence of National Employment Service.

b) Waiting period for exercising the right to financial compensation according to international agreements depends on the period of time that is needed to confirm the insurance period completed in other member state. Before obtaining this information, an unemployed person may exercise the right on the basis of insurance that has been completed in Republic of Serbia.

In principle, waiting period for exercising the right to benefits from pension and disability insurance, according to agreement on social insurance, is about 12 months.

**Question:**

**32. Export of benefits:**

**Please provide details on the following:**

**a) Do you have any experience in applying the principle of export of benefits in your relations with other countries? Which administrative structures are responsible for this? Does your legislation include residence clauses?**

**Answer:**

a) In the field of exercising the right to insurance in case of unemployment, the principle of export of benefits on the basis of unemployment is provided only under the Agreement on Social Insurance between Federal Republic of Yugoslavia and Bosnia and Herzegovina. Provisions of that agreement mean that unemployed person who enjoys the right, provided by decision of one of the contracting state, may be paid financial compensation to the appropriate currency account, while being registered in the records of another country as unemployed person.

National Employment Service and the Labour Agency of Bosnia and Herzegovina are in charge of implementation of this provision of the agreement

Legislation of the Republic of Serbia provides for the payment of pensions abroad on the basis of agreement on social insurance or on the basis of reciprocity with the relevant country. Almost all of the agreements on social insurance concluded by the Republic of Serbia stipulate that pensions are paid directly to the beneficiaries in the contracting state, where their residence is.

Republic Fund for Pension and Disability Insurance provides payment of pensions or financial benefit to users abroad, under the condition provided by International Treaty, or subject to reciprocity.

### ***C. Co-ordination of different categories of benefits***

#### **Question:**

**33. Do you expect to encounter any difficulties in applying the provisions of the various chapters of the Regulations (sickness and maternity, invalidity, old age, and death, unemployment, family benefits, etc.)?**

#### **Answer:**

In the field of pension and disability insurance no special difficulties in the implementation of provisions of Regulation are expected.

The National Employment Service does not expect difficulties in the implementation of those provisions of Regulation (EC No. 883/2004) related to employment area, since it has administrative capacities, as well as technical and organisational capacities to deal with the challenges in the process of co-ordination of regulations of the Republic of Serbia with regulations of EU.

### ***D. Administrative capacity***

#### **Question:**

**34. Which administrative structures will be responsible for applying the co-ordination rules for the various chapters of the Regulation (sickness and maternity, invalidity, old-age and death, unemployment, family benefits, etc.)?**

#### **Answer:**

Pension and Disability Insurance Fund, Health Insurance Institute and National Employment Service and Ministry of Labour and Social Policy will be responsible for applying the co-ordination rules for the various chapters of Regulation.

National Employment Service and Ministry of Economy and Regional Development are responsible for applying the co-ordination rules for the chapter referring to Regulation relating to unemployment.

Ministry of Economy and Regional Development is responsible for creating and implementing employment policy in the Republic of Serbia.

National Employment Service is public service and operates under the supervision of the Ministry of Economy and Regional Development. Its position and responsibilities are defined by the Law on Employment and Unemployment Insurance. As an institution, it is engaged in activities of employment, insurance in case of unemployment, exercise of right to insurance in case of unemployment, as well as keeping records in the area of employment.

#### **Question:**

**35. How do the social security institutions in Serbia exchange information internally?**

**Answer:**

Institutions in the Republic of Serbia perform permanent and direct internal communication, aimed at a more qualitative and faster exercise of rights in the social insurance field. Each individual information is directly exchanged in writing form, by post or e-mail.

**Question:**

**36. How do the social security institutions in Serbia exchange information with the institutions of the countries with which Serbia has signed social security agreements?**

**Answer:**

In the Republic of Serbia, social security services exchange information with services in other countries through the forms provided by international agreements on social security, as well as through the liaison bodies determined by the agreements on social insurance ( in Republic of Serbia is Institute for Social Insurance)

In international treaties and agreements on social insurance and administrative agreements for their implementation, there have been defined special liaison bodies responsible for implementation of the provisions of treaties and administrative agreements and which enable easy and fast connection of the insured persons of both countries.

By the Law on Ministries (*Official Gazette of RS*, No. 45/07 and 65/08) the Department of Social Insurance was formed as a separate organisation with a mission to perform professional tasks and duties of public administration related to the implementation of international agreements on social insurance, creation of agreements and creation of bilingual forms for applying international agreements on social insurance.

**IV. EUROPEAN HEALTH INSURANCE CARD**

**Question:**

**37. Do you have an electronic national insurance card? If not, do you have any plans to introduce it and what is the timeframe? Please provide information.**

**Answer:**

In the Republic of Serbia an electronic national card has not been introduced yet. In the 2010. year "Pilot project – project of substitution of health insurance documents" through the introduction of electronic health card for insured persons from the territory of Valjevo city, will be implemented.. It has been planned to start, during the 2011.year, with successive substitution and introduction of electronic health card for all insured persons in the territory of the Republic of Serbia. This process of successive introduction of electronic health cards is expected to be completed by the 30.June 2012, in other words said, by the 1st July 2012.all insured persons in the territory of the Republic of Serbia will have electronic health card.