

REPORT OF THE 6th MEETING
OF THE LABOUR LAW AND
LABOUR RELATIONS
NETWORK OF SOUTH
EASTERN EUROPE

Edited by Cristina Mihes and Stefan Roch

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Foreword

The present report continues the series of publications which reflect discussions by members of the Network of Experts in Labour Law and Labour Relations (LLN) within the labour ministries of South Eastern European countries on relevant topics related to labour law and industrial relations.

The LLN was initiated in 2003 by the ILO Sub-regional Office in Budapest¹ in cooperation with the Geneva based Department for Social Dialogue, Labour Law and Labour Administration² and the Turin based Programme for Social Dialogue of the ILO International Training Centre, within a technical co-operation project financed by the governments of France, Belgium and Italy.

Since then, the LLN has met once a year to discuss topics of concern to the participating countries. In Belgrade, the LLN members examined two topics, namely the countries' response to the economic crisis, and the establishment of representativity criteria for the social partners. In a special session, the LLN members discussed a case study (Bulgaria) of response in terms of strategies designed to address migration flows.

The report summarizes the main findings of country's papers on the state of play regarding current and in the pipeline intervention of labour administration in economic crisis management and takes stock of statutory representativity criteria laid down in the labour law.

This comprehensive overview of the current situation in terms of crisis response and representativity requirements would not have been possible without the contribution of the members of the LLN. In particular, we would like to express our thanks to Mr. Gramos Xhangolli (Albania), Mr. Damir Dizdarevic, Ms. Dzana Kadribegovic and Mr. Rajko Klickovic (Bosnia and Herzegovina), Mr. Vesselin Atanassov Ilkov (Bulgaria), Ms. Olivera Fisekovic (Croatia), Ms. Maja Papatolevska (the former Yugoslav republic of Macedonia), Ms. Catalina Doru and Ms. Irina Papusoi (Moldova), Ms. Vjera Soc and Ms. Angelina Medjedovic (Montenegro), Ms. Carmen Cirstea (Romania), Ms. Snezana Bogdanovic and Ms. Rajka Vukomanovic (Serbia).

We trust that the information provided in this report will serve for further reflection among tripartite constituents in the participating countries on how to better design and implement anti-crisis measures and to improve national law and practice as to representativity criteria.

The opinions expressed in the individual sections of this report do not necessarily reflect the views of the ILO.

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We are grateful to the Government of Italy for the financial support provided for the LLN meeting to happen in 2009.

Background and methodological approach

The Network of government experts in labour law and industrial relations in the South Eastern Europe countries (SEE), known as the Labour Law Network (LLN)¹ met for its 6th annual meeting in Belgrade on 6 and 7 July 2009. The meeting was organized by the ILO's Sub-regional Office for Central and Eastern Europe (SRO) based in Budapest. The meeting was abetted by financial support from the Italian government.

Also attending were members of the Serbian Economic and Social Council's Tripartite Committee on Legislation, members of Serbia's Representativity Panel and senior officials of the country's Ministry of Labour and Social Policy.

Two topics of discussion were selected according to their importance for the members of the network. They were the SEE countries' response to the economic crisis, and the social partners' representativity criteria also placed on the top of the 2009–2010 legislative agenda of the Serbian Ministry of Labour and Social Policy, as well as on the top of the ILOs agenda, as manifested within the Global Jobs Pact adopted by the International Labour Conference (ILC) in 2009.

The meeting had three objectives: a) to facilitate and share knowledge and good practice among participants; b) to up-skill the Tripartite Committee on Legislation of the Serbian Economic and Social Council; c) to enable the Ministry of Labour and Social Policy of Serbia to consider possible changes to the Labour Code in light of international labour standards and European good practices.

To this purpose, the members of the Network were asked to prepare and present country briefs on the selected topics in accordance with Terms of Reference prepared by ILO SRO Budapest and the Geneva based DIALOGUE Department of the ILO.

A case study of Bulgaria's response to migration flows at this time of economic crisis was presented and discussed in order to illustrate the strategies designed by countries of the Western Balkans to address the problem of migrant workers returnees.

The Senior Specialist on Social Dialogue and Labour Law from ILO SRO Budapest gave a presentation on Representativity criteria of the social partners in the various countries.

The Senior Specialist on Labour Administration from LAB/ADMIN Geneva gave a presentation on how Labour Administrations in the region's countries had reacted to the economic crisis. Both of these presentations were followed by interactive discussions.

¹ The Network was established in 2003 by the ILO Sub-regional Office for Central and Eastern Europe in Budapest in cooperation with the Geneva based DIALOGUE Department of the ILO and the Turin-based Programme for Social Dialogue of the ILO. International Training within the technical cooperation project "Promoting Social Dialogue and Enhancing the National Expertise in Labour Law in the Recipient Countries of the Stability Pact for South Eastern Europe" is financed by the governments of France, Belgium and Italy. The initiative aims to enhance knowledge and share good practice among government legal experts in the area of labour law and industrial relations in South Eastern Europe.

TOPIC ONE: ROLE OF LABOUR ADMINISTRATION IN THE CONTEXT OF ECONOMIC CRISIS

1.1. Introduction

In introducing the topic, Mr. Ludek Rychly said labour administrations are key actors in both the creation of a country's labour market policies and in the shaping of its labour standards. In performing their critical tasks of policy design, creation and review, collection of labour market data and the giving of technical advice to employers and employees, they play two key roles:

- creating macroeconomic stability and
- protection of workers.

Labour administrations should ensure the compliance of all national actors with national laws and key international labour standards. They can also help promote a positive business and consumer climate in their country. This will enhance and stabilise national and international trade and investments. More pointedly, the action of labour administrations can have a direct impact on the businesses of employers and their workplace practices in particular.

The current economic crisis presents a major challenge to labour administrations. Economic growth has stalled significantly in all states concerned, unemployment has risen and state budgets have been curtailed. This crisis requires fresh and innovative solutions from Labour administrations in order to ensure both macroeconomic stability and a high level of employee protection.

The last major global economic crisis took place in the late 1970s and early 1980s. Crisis responses at that time focused on pruning state activities. Tighter wage controls and efforts to broaden the flexibility of the labour market through restricting employees' protection were among the policies adopted in response to the crisis. Spending at the state level shrank, but these responses led to an overall decrease in wages and an increase in unemployment. This severely lowered the purchasing power of the national population and with it national consumption, which was counterproductive to the aim of re-establishing sustainable growth.

Not surprisingly, reactions to the current crisis have been different. Policies have been focussed more towards sustaining the purchasing power of the population through keeping people in jobs while avoiding substantial wage cuts. Western countries such as France and Germany have made strong use of part-time work schemes by allowing crisis-hit companies to employ workers on a part-time basis for a limited amount of time. The employer pays only a part of the agreed wage and the state subsidises the rest.

Two of the key challenges of labour administrations are firstly, to facilitate job creation and, secondly, to increase the employability of workers and job seekers. This is especially so in a time of economic crisis. Job creation incentives have to be specifically targeted to the situation on the ground. These may include such measures as: investments in infrastructure and in research, supporting public works, reducing labour costs, etc. To increase employability, training measures have to be designed and targeted towards specific sectors and groups of jobseekers to endow them with valuable skills to compete on the labour market. It is especially important to target those measures towards vulnerable groups such as young jobseekers.

A key component in the implementation of employment policies is an effectively operating national public employment service system (PES). Employment service agencies at all levels must be as flexible and responsive as possible to answer the needs of their clients. Therefore, it is important to ensure that the PES is adequately staffed. Furthermore, it is critical for the PES system to build effective partnerships with employer and employee organisation representatives.

One of the major issues in the current economic crisis is the issue of increased labour migration. Substantial numbers of workers, having migrated to a new country for work reasons, will return to their home region due to job loss. This may cause a number of problems. Remittances from emigrant workers back to their home countries account for a significant share of GDP in many countries in the region (e.g. 38.8% in the Republic of Moldova). This money flow will contract during the crisis leading to less growth and reduced consumption. Furthermore, those people returning are likely to claim welfare benefits, which will place a strain on the social security system.

1.2. Ratification of the Labour Administration Convention, 1978 (No. 150)

The Labour Administration Convention, 1978 (No. 150) requires states to establish consultation, cooperation and negotiation mechanisms with employees' and employers' representatives concerning the creation of national employment policies. The Convention has not been ratified by all participants. It was ratified by Albania, and recently by the Republic of Moldova (2006) and by Romania (2008). The Convention has not yet been ratified by Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Bulgaria, Montenegro and Serbia. Only the Former Yugoslav Republic of Macedonia and Serbia reported that the convention's ratification would be considered in the near future.

1.3. Main bodies at central and decentralised levels engaged in labour administration activities

In the countries of the region, a range of different organisations are involved in the various processes of labour administration.

As far as the development of labour standards is concerned, ministries play an important role in all participant countries. Labour standards development in all countries follows the *Acquis Communautaire* of the EU and other international legal instruments. In almost all countries, national reconciliation tripartite bodies and/or their specific committees play an important role. Employment agencies and their territorial organs usually have some role in developing labour standards, mainly on a county level. In countries such as the Republic of Moldova and Bulgaria, there are also territorial or branch level bodies developing labour standards, mainly in the form of collective agreements.

In Bosnia and Herzegovina, the Entities and Brcko District governments have exclusive competency for labour law setting. In the Federation of Bosnia and Herzegovina, if labour administration issues are governed at the federal level, cantonal parliaments have to be consulted. Enforcement of labour standards is usually performed by labour inspectorates and their local offices. Some employment agencies are also involved in the process.

Almost all countries have a system in place that provides conciliation and mediation services to workers and employers and their respective organisations in the case of labour disputes. Often states differentiate between collective and individual labour disputes and set different resolution mechanisms. The mechanism of conciliation and arbitration differs widely among the states in the region. Some states have established specific bodies responsible for conciliation and arbitration. In other cases, the Ministry of Labour or the Economic and Social Council are responsible for choosing the appropriate body to conciliate and mediate between the different parties involved. For example, in Serbia a national agency for the conciliation of labour disputes was established. In the Federation of Bosnia and Herzegovina on the other hand, the Economic and Social council is responsible for organising the peaceful resolution of collective labour disputes.

In most countries collective agreements are registered. The processes of registration and the agencies responsible differ from one country to another. Some countries do not differentiate between enterprise, branch and national level agreements in terms of registration. In this case all agreements have to be registered at one agency, usually the Ministry of Labour. In other countries, different agencies are responsible for different levels of agreements.

In many countries of the region national Economic and Social Councils have been established. They consist of an equal number of employer, employee and government representatives. Their common aim is to provide a forum for tripartite consultation and negotiation on economic and social policies.

Minimum wages have been introduced by most countries in the region. Furthermore, the ILO's Wages Protection Convention No. 95 has been ratified by Albania, Bosnia and Herzegovina, Serbia, the Republic of Moldova, Montenegro and the Former Yugoslav Republic of Macedonia. Generally the minimum wage is set at ministerial level, either by the Council of Ministers or by the Ministry of Labour or the Economic and Social Council.

1.3.1. Registration of collective agreements

Albania

The Social Partners Relations Department within the Labour Relations Directorate of the Ministry of Labour is responsible for the registration of collective agreements.

Bulgaria

An original of a collective agreement must be deposited at the labour inspectorate of the region where the employer's seat is located. In cases where the collective agreement is of sectoral or national coverage, it must be registered with the General Labour Inspectorate.

Croatia

Parties involved in collective agreements have to submit signed collective agreements (and amendments) to the Ministry of Economy, Labour and

Entrepreneurship if such an agreement is applicable in the territory of the entire Republic of Croatia or in the territory of two or more counties. All other collective agreements and changes to collective agreements are submitted to county offices responsible for labour affairs.

The Former Yugoslav Republic of Macedonia

The Ministry of Labour and Social Policy is the authority for registration of collective agreements. All the general and branch level collective agreements, as well as their subsequent modifications, must be submitted for registration to the Ministry.

Republic of Moldova

Collective labour agreements concluded at the enterprise level are registered at the territorial labour inspectorate. Those concluded at the branch and territorial levels are registered with the Ministry of Economy and Trade. A collective convention at national level is not subject to registration. It comes into force on the date it is published in the Official Gazette of the Republic of Moldova. The Ministry of Justice is responsible for registration of trade unions and employer associations at national and branch level.

Romania

Collective labour agreements at the enterprise level must be registered at the county General Labour and Social Protection directorate. Collective labour agreements concluded at the level of groups of enterprises, branches, or at national level must be registered by the Ministry of Labour, Family and Social Protection.

Serbia

In Serbia, the Ministry of Labour and Social Policy is authorised to carry out the registration of collective agreements.

1.3.2. Minimum Wage Fixing

Albania

The minimum wage is determined by a Decision of the Council of Ministers. It is calculated, taking into account both economic and social factors. The Ministry of Labour, Social Affairs and Equal Opportunities has the responsibility to set policies on and around the minimum wage. The process of setting the minimum wage nationwide includes consultation with the social partners on wage index proposals.

The Federation of Bosnia and Herzegovina

The minimum hourly wage is fixed via the General Collective Agreement for the territory of the Federation of Bosnia and Herzegovina. It is adjusted in accordance with movements in living costs, retail prices, and the overall economic scenario at least once a year by the Government of the Federation of BiH pursuant to the agreed positions of the social partners in the Economic and Social Council.

Republic of Srpska

Minimum wage is fixed by the parties to the collective agreement (the Government, the representative trade union and employers' association). The parties take into consideration wage trends, growth of production and rise in living standards in Republic of Srpska when fixing minimum wage. In case the parties fail to reach an agreement on the minimum wage level, previously agreed minimum wage shall be applied, but no longer than one year.

Bulgaria

In Bulgaria, the Council of Ministers determines the minimum wage. The decision is made after consultation with representatives of the national organizations of workers and employers.

Croatia

As an exception to the other States in the region, in Croatia the Central Bureau of Statistics determines the minimum wage.

Republic of Moldova

In the Republic of Moldova the minimum wage is set by Government decree.

Romania

The Ministry of Labour, Family and Social Protection sets the level of the national minimum wage and the recommendation is confirmed by the Government after consulting unions and the employers' organisations.

Serbia

The minimum wage is set by a decision issued by the Social and Economic Council. If no agreement is able to be reached by the Council, the minimum wage will be set by the Government.

1.4. The current economic crisis in the participant countries and its consequences on the labour market and the labour relations

The Federation of Bosnia and Herzegovina

Lower employment levels were recorded at the end of 2008 and the downward trend continued in 2009.

In order to mitigate the negative impact of the economic crisis, the social partners in the Economic and Social Council concluded a Social Pact for the period 2009-2010. They accepted a programme of measures aimed at mitigation of the global economic crisis and the promotion of a positive business environment. The programme sets its priorities on the stabilisation of employment, reduction of public expenditures, and reform in public administration. It also targets improvement in the business environment by the adoption of important laws (Labour Law, Law on Companies, Law on Chambers of Economy, Law on Revision and Control over Privatisation, etc.) The country's economic experts warned in 2009 that the economy would suffer instability because foreign-owned banks could not provide sufficient funds under favourable conditions to support the economy. Negative ramifications for the market as a whole were anticipated.

According to the World Bank, the construction sector would be among the first to suffer the impact of the global economic crisis, because construction projects are fewer than in comparison to previous years. It was estimated that in early 2009 between six and ten thousand construction workers from Bosnia and Herzegovina would be laid off abroad, mainly in Slovenia and Croatia. Furthermore, a number of previously permanent employment agreements will be replaced with agreements for temporary or seasonal work.

Republic of Srpska

According to the Government of the Republic of Srpska, the economic crisis did not have a major impact on the country's economy until the end of 2008. Nevertheless, it was expected that the impact of the crisis was imminent. Industries likely to suffer included the construction sector, the metal and car industry, wood processing, textile, leather and footwear, mining and telecommunications.

Bulgaria

The global financial and economic crisis currently has hit Bulgaria's economy less hard in comparison to most other new EU Member States². This is mainly due to its recent policies of prudent use of budget surpluses, conservative banking surveillance and rigid regulation of its financial markets. Moreover, the crisis hit Bulgaria later than the rest of the Member States.

² Although the Bulgarian GDP shrunk by 5% in 2009, it is still considerably less than Romania with -7.1 and Slovenia with -7.8, (source: Eurostat)

Nevertheless, after September 2008 Bulgaria's earlier success at reducing the number of registered unemployed persons came to a halt. The GDP decreased significantly and investment activities slackened. Economic indicators pointed to a further shrinking of industrial performance in the future. The outlook for the building industry in particular is now pessimistic and prospects for the commercial sector generally are bleak. This has impacted on the labour market in a negative way and will continue to do so. Despite this Bulgaria managed to keep its unemployment levels stable through the first quarter of 2009.

The consequences of the crisis have led to a slowdown of national production and of labour productivity as a whole. This will have a negative impact on wages in the future. In the long run it is anticipated that this will mean a decline of the overall level of living standards.

Croatia

The effects of the global economic crisis were expected to become most apparent in 2009. In that year, the GDP shrunk by 5.8%. As far as the expenditure element of the GDP is concerned, individual consumption was expected to fall in 2009, as a result of reductions in the real net wage bill, a slowdown in the growth of consumer loans and negative sentiment generally. Labour market trends generally mirror the slowdown in economic activity. Thus, a slight fall in employment and an increase in the unemployment rate were expected to be revealed in the 2009 Labour Force Survey.

Primarily as a result of less imported and exported goods and services during 2009, there will be a reduction in the current account deficit in the balance of payments. With these economic trends, and in particular with the difficulties of external financing, a significant slowing down or stagnation of growth in external debt is expected particularly in the areas relating to corporate sector borrowing.

Significant job losses are expected in manufacturing, construction and trade. As these are labour intensive industries, the number of unemployed is expected to rise by about 15% in 2009.

The Former Yugoslav Republic of Macedonia

The global economic crisis is severely affecting the economy of the Former Yugoslav Republic of Macedonia. Output grew by only 2% in the last quarter of 2008 and the trend has continued into the first quarter of 2009. Direct foreign investments, which picked up in 2007 and 2008, in response to the improving investment climate and a strong government investment promotion campaign, are being delayed.. Domestic demand is slowing due to the expansionary fiscal policy since late 2008 and the relatively healthy financial sector. Early signs of a more protracted slow-down are already apparent, as witnessed by diminished tax returns, falling energy consumption and reduced imports.

The crisis is a setback to recent labour market improvements. According to the Bureau of Statistics, 3,200 workers were laid off in the steel sector in October 2008 alone. Mining is also suffering from a downturn in demand. In the textile industry managers have been instructing employees to take unpaid leave and have been temporarily shutting down factories due to a lack of orders.

Republic of Moldova

According to National Bureau of Statistics data, main macroeconomic indicators show a downturn during 2008. Industrial output fell in 2009, as did retail sales and exports. These changes in the economy have flowed through to the job market. The number of unemployed has increased and unpaid wages and severance payments have become significant features.

Specific Government measures to tackle the crisis have not shown significant results so far. Unemployment benefits remain available but benefit data does not distinguish according to the reasons for being unemployed. To alleviate overall state expenditure, the central budget was cut for public administrations at the central and local level.

According to recent Government statements, a programme will soon be announced prioritising anti-crisis measures to be implemented with the support of external financial institutions. Currently, negotiations with China, the Russian Federation and the World Bank are being conducted in order to obtain the necessary funding.

Montenegro

It is expected that the crisis will have a severe effect on the economy as a whole. However until mid 2009, unemployment did not increase. The statistics suggest that unemployment to date has not been a serious problem.

A number of steps have been taken to limit the effects of the crisis. In 2008, two initiatives were introduced to provide legal protection for workers in the case of redundancy. In the case of redundancy due to technological or economic restructuring changes, an employee is eligible to a minimum of 6 average salaries as compensation plus other benefits via the employment bureau. Additionally, a Labour Fund was introduced which guarantees the employee payment of unpaid wages in the case of bankruptcy of the employer.

Romania

The financial crisis has had an across-the-board impact on Romania's economy. Financial institutions have suffered asset erosion, national production has decreased, purchasing power has declined and consequently, the GDP has shrunk. A drop in national production has had negative effects on overall wages, workplaces and company profits.

Serbia

Economic indicators for the Serbian economy showed deterioration in early 2009, because of the negative effects of the global financial crisis on the manufacturing sector. Industrial production fell, foreign and domestic trade levels worsened and inflation grew. In 2009 there was a contraction in labour demand, with an inevitable rise in the number of unemployed.

1.5. Supportive measures taken by the labour administration to help employers and workers to confront the crisis

The Federation of Bosnia and Herzegovina

Federal and cantonal employment services have implemented training programmes aimed directly at finding employment for unemployed. Several thousand unemployed are being targeted, especially young people with no employment experience, returnees above 40 years of age, persons with disabilities, etc. These programmes will be continued in the future.

Republic of Srpska

The government had not introduced any concrete measures until mid 2009 but planned to do so in the near future. Those measures include cuts in public expenditure and the introduction of a Government Guar-

antee Fund to support businesses in trouble due to the crisis. Furthermore, various fiscal measures are planned to avert dismissals due to the economic crisis.

Bulgaria

As a financial measure to alleviate the impact of the crisis minimum and maximum amounts of compensation for unemployment have been increased by 20% in 2009. In addition, persons who have the right to unemployment benefits and who have been dismissed in 2009 will receive higher benefits.

Among other measures, a decrease of 2.4% on the common contributions of businesses has been introduced. Its aim is to give enterprises the chance to reduce expenditure on labour costs and to maintain the employment rate of their staff.

Since the beginning of 2009, amendments to the Act on Employment Promotion mean it is possible to finance measures to promote and maintain levels of employment with the resources available from active labour market policies. The Government approved the framework, the conditions, and the way in which compensation of employees who work part-time would be paid.

By an amendment of the Labour Code, an employer now has the right to unilaterally introduce part-time work schemes for a maximum period of 6 months in the 2009 calendar year instead of the previous period of three months. This measure applies to enterprises from sectors of industry and services which have established part-time jobs for not less than 5 % of its staff.

Croatia

In 2009, the Croatian Employment Service (CES) focused its activities on subsidising first-time employment for young workers with no work experience. It also focussed on long-term unemployed persons and other vulnerable groups. Training measures were introduced with the aim of getting employment for persons from the unemployment register, and helping employers to retain people threatened by job loss. Funds were provided for the training of unemployed persons according to labour market needs and subsidising the employment of long-term unemployed in public works programmes.

The measures are specifically targeted towards a number of vulnerable groups such as young persons with no work experience, unemployed, employed older persons (50+), prime-age women, long-term unemployed, persons with disabilities, single parents, victims of domestic violence, rehabilitated addicts and members of the Roma minority.

With the aim of encouraging unemployed persons to more active involvement in job seeking and greater availability to work, the Croatian Employment Service must now establish an individual employment plan for an unemployed person within 60 days of their registration. After that, the person has to take up a job in the occupation determined in the plan, if such a job is available. Persons unemployed for longer than 12 months must take up jobs offered to them regardless of their professional qualifications, if the job is within their psychological and physical abilities.

In 2008 the Government adopted a programme for promotion and development of small and medium enterprises (SMEs) and an operational plan for the promotion of small and medium size entrepreneurship in 2009. In order to support and increase the efficiency and competitiveness of SMEs, the operational plan contains projects, measures and funds for co-financing various activities of SMEs. Those include upskilling related to education, innovation, development of clusters, entrepreneurship programmes for women, youth, people with disabilities development of entrepreneurial zones, the co-financing of self-employment, etc.

In 2009 the Croatian Government adopted a package of ten anti-recession measures with the specific aim to strengthen the stability of Croatia's macro economy. The measures include a budget revision, tax incentives, offering guarantees to companies and the revision of national state aid provisions. The measures also aimed at strengthening the financial position of the Croatian Bank for Reconstruction and Development. The Government promoted direct investments, the transfer of technology and increased the supervision of imports. Within this package, steps were taken to maintain the standard of living of the most vulnerable groups in society. A wage guarantee fund was also introduced.

The Former Yugoslav Republic of Macedonia

In tackling the consequences of the economic crisis, the government has produced three packages of measures.

The first package of measures, adopted in November 2008, was directed towards the liquidity of enterprises, the alleviation of VAT, reduced customs and social contributions and the lowering of taxes in the agricultural sector.

The second package covered capital projects in the road and rail infrastructure, the energy sector, apartment construction and environmental measures. The programme has an 8 year timeframe in order to realize the projects.

The aim of the third package of anti-crisis measures is an additional alleviation of the costs of doing business in the Former Yugoslav Republic of Macedonia. The package consists of 70 individual anti-crisis measures, including rebalancing the budget, facilitating the export of goods and reducing costs.

Active labour market measures to support vulnerable groups such as women, youth, redundant workers etc have been implemented. Furthermore, the Government has provided funds for engaging 5,000 unemployed persons to perform public works for a period of six months.

Montenegro

Laws on the termination of employment have been amended. In the case of termination of employment due to technological, economic and restructuring changes in a company, an employer is obliged to pay the worker severance pay and the employee is entitled to a set of rights granted by the state as follows:

- The right to health insurance until new employment is found or until retirement,
- The receipt of monthly benefits (in the amount of EUR 30) and the right to receive pension and disability insurance contributions paid until new employment is found, or retirement.

Furthermore, a wage guarantee fund was introduced.

Romania

In order to protect vulnerable groups from the impact of the crisis, Romania's government has introduced various counter-crisis measures. Among these are tax compensations for people with low income, or the rationalisation of social expenses towards the most poor and vulnerable people and groups in society. As regards the labour market, the Government has set out various objectives to stabilise employment. Among these are balancing out the labour market through reducing labour force deficits, increasing labour market flexibility, improving access to the labour market for disadvantaged groups and emphasising social dialogue. The Romanian Government has introduced several measures to address unemployment such as extending the period when unemployment benefits are payable. Another measure gives relief to the obligation to pay social benefits of the employer and the employee in the case of the interruption of the employers activities due to the crisis.

Serbia

Pro-active employment policies have been targeted towards the re-employment of redundant workers as well as other vulnerable groups such as persons above the age of 45, persons with disability, unskilled labour, the Roma, refugees and displaced persons, and long-term unemployed.

In 2009, the Government enacted a set of measures designed to stimulate the economy, one of which enabled banks to grant credit with affordable interest rates to businesses. Additional measures for improving the liquidity of the economy include debt rescheduling, temporary conversion of debt for capital, multilateral compensation and other instruments. Credits for investments were granted by the Government and credits from foreign credit lines have become more readily available.

A Crisis Committee was established. It aims to monitor employee layoffs which occur as a consequence of the global economic crisis.

1.6. Labour administration and social dialogue in connection with the crisis

It appears to be the shared opinion that social dialogue is an important policy component within an overall crisis response strategy. In some of the countries (Croatia, Serbia) the already existing national tripartite bodies have been entrusted to deal with the issues raised in connection with the economic crisis. In other countries (Romania) special ad-hoc tripartite committees/working groups were set up to negotiate anti-crisis measures.

Croatia

On the initiative of the Premier Minister and in cooperation with the Economic and Social Council, the Economic Council was established as an advisory body to discuss issues relating to the economic crisis (such as wage policy, restructuring, privatisation, reforms) and to propose solutions and steps to be taken in order to cope with, and minimize the consequences of the crisis. It consists of prominent economic experts from various fields. Additionally ad hoc consultations between the Social Partners take place from time to time to find specific solutions to issues which may arise.

Romania

Within the framework of the Ministry of Labour, Family and Social Protection in particular, discussions between the national social partners were held in order to determine social protection measures which would minimise the negative effects of the economic crisis on the labour market.

Serbia

An agreement on further development of social dialogue between trade unions and employers' association represented in the Social and Economic Council and the Government was concluded in January 2009. Furthermore, provisions of the General Tripartite Agreement that result in substantial financial liabilities on employers and may jeopardise jobs have been postponed for an indefinite period.

1.7. Other challenges for labour administrations in the current context of economic crisis and increase in labour disputes

In most of the participant countries the authorities expect a significant increase in the number of unemployed. This is a major challenge for labour administrations and the social partners. Undeclared work and the non-payment of social contributions is an additional issue which has been raised as problematic and for which specific programmes are drawn up (e.g. Romania: a National Campaign). Due to in-

creased termination of employment agreements, an additional phenomenon will be the rise of legal disputes in labour and civil courts and other dispute settlement bodies. Added to these challenges is the fact that in most countries a rise in returning migrant workers is expected.

1.8. Increase of resources of the labour administration (human and financial resources)

None of the states increased the resources of their labour administration systems. In fact some countries (Romania and the Republic of Moldova) have specifically noted that budget cuts for their labour administrations are planned as part of the overall efforts to reduce public expenditures.

1.9. Labour administration and labour migration

Migrant workers from the SEE countries are mainly present in such sectors as construction, manufacturing, hotels and restaurants, manufacturing, health care, domestic service and agriculture. Construction, manufacturing, and hotels and restaurants, have been particularly hit by the economic crisis, both in terms of growth and employment.

Shrinking markets and labour demand have triggered voluntary return programmes in some destination countries (e.g. the Czech Republic launched a voluntary return programme for non-EU nationals in February 2009³). Origin countries, which often heavily depend upon the remittances sent by their migrant workers, are being called to respond to the impact of the crisis by introducing reintegration and employment packages and by identifying solutions to cushion the effects of returns on national social security schemes.

Up to date, no mass returns of migrant workers have been observed in the SEE countries. Two factors may explain this situation. First, regular migrants, covered by social security systems in destination countries might lose their benefit entitlements if they left the country. Second the very limited labour market opportunities in countries of origin compared to destination countries may act as a deterrent against return of both legal and illegal migrant workers.

However, most countries acknowledge an increase in returning migrants. To address this various measures have been debated. These include specific training and information measures and financial assistance to integrate the returning migrants.

Albania

The numbers of returning migrant workers to Albania cannot be fully estimated as no reliable statistical data is available. Workers are returning from Italy primarily, according to the latest studies. Structures and services are being developed for returning citizens. Integration measures include targeted training and financial support.

Federation of Bosnia and Herzegovina

Labour migration to and from neighbouring countries (Republic of Croatia, Slovenia, Montenegro) is significant in this region and the return of migrant workers who formerly worked abroad and have been laid off is taking place.

³ The global economic crisis and migrant workers: impact and response / Ibrahim Awad ; International Labour Office, International Migration Programme. – Second edition. – Geneva: ILO, 2009

Since the onset of the economic crisis, the Government of the Federation of Bosnia and Herzegovina has not increased human resources to aid the integration of returning migrants, largely because of the requirement to identify measures to reduce public expenditure in 2009.

Republic of Srpska

Workers are returning mainly from neighbouring countries to Republika Srpska. Republika Srpska keeps records of those returning and acknowledges that the rise of inflow due to the crisis is posing a challenge to the country.

Bulgaria

The Ministry of Labour and Social Policy has no statistics on the number of returning migrant workers. However, it is acknowledged that the phenomenon exists and a government strategy has been created to deal with the issue of integration of returning workers. The strategy is implemented in connection to annual action plans in which the concrete measures for each aim, direction and program are determined in order to guarantee the development of the policies and the achievement of the desired results (see Appendix 2).

Republic of Moldova

According to data provided by the Ministry of Internal Affairs, migrant workers are returning to the country but there is no significant increase registered yet. A government action plan advises and assists workers who return from abroad. Although it wasn't designed to combat the crisis effects, the plan provides a range of ongoing measures for the reintegration of the repatriated emigrants which are helpful for the current situation.

Montenegro

Montenegro has no significant number of its citizens working abroad and consequently there is no problem for the moment concerning returning workers.

Romania

An increased return of migrants has been registered from Spain and Italy. Improved co-operation and legal means of accessing the employment markets of the said countries is encouraged by the Romanian government. Studies also show that more Romanian citizens are likely to return in the medium-term.

Serbia

While migrant workers are returning, statistics are not reliable enough to capture their numbers accurately. In 2009 the Government adopted a strategy for the reintegration of returnees including information services, training and financial support.

1.10. Conclusions

As set out above, the economic crisis presents a major challenge to all Labour Administrations in the region. The slowdown of FDI and international trade puts pressure on the labour markets in the region, leading to growing unemployment and a less favourable environment for job creation. Returning migrants to the labour markets also have to be reintegrated. The main challenge for Labour Administrations in the region is quite simply to work more effectively with steady or even less resources than before

to be an effective actor in overcoming the implications of the crisis. New and innovative policies have to be developed in order to support the two main priorities of creating macroeconomic stability and the protection of workers. This will have to be accomplished in an environment of severe cuts in public expenditure for all public and state bodies. The resulting depletion of resources will have to be countered by labour administrations through greater efficiencies, more finely targeted policies that have a clear and positive impact, and through improved cooperation and communication between all agencies and the social partners.

In the countries of the region, a number of different bodies are involved in the process of labour administration. These include ministries at national and regional level and various employment related agencies. Most countries have established tripartite bodies at national level, such as Economic and Social Councils, in order to facilitate collective bargaining processes and the social partners' involvement in the labour administration process. Through the establishment of registration mechanisms for collective agreements, most countries ensure cooperation and information flow between the social partners and the national and regional labour administration agencies.

Minimum wage fixing is an important way for labour administrations to secure a decent wage floor. Most countries in the region have set minimum wages. The fixing process is mainly carried out at ministerial level or through general collective agreements. An exception is Croatia, where the Ministry of Statistics sets the minimum wage.

Most countries in the region have been severely hit by the economic crisis and are suffering economic and social consequences. These include shrinking foreign investments, the occurrence of a credit crunch which means lowered GDP growth, rising unemployment and falling net wages. Labour administrations in the region have developed various counter measures to cushion the effects of the economic downturn. These include active labour market policies such as training programmes for vulnerable groups and individual employment plans. Additionally the creation of wage funds for redundant workers and a reduced tax burden for businesses have been implemented. Most countries utilised national tripartite bodies to discuss the crisis and the general consensus was that social dialogue should be an important tool in finding solutions. Ironically, although the demand for labour administrations to be more proactive has grown, none of the countries have or are planning to increase the resources of their labour administrations. In fact on the contrary, some are planning to substantially cut resources in conjunction with overall budget cuts.

One of the most challenging phenomena of the financial crisis is the return of migrants to their home countries in the region. This is likely to contribute to rising unemployment and a further reduction of economic growth due to lower incoming remittances. Specific measures implemented to tackle this include specific training

measures and financial assistance for returning migrants. Countries must improve their statistical system to capture the phenomenon of returned migrant workers. Also, it is recommended that they put in place mechanisms to help these workers to reintegrate into the local labour market.

TOPIC TWO: REPRESENTATIVITY CRITERIA OF THE SOCIAL PARTNERS

2.1. Introduction

Mrs. Cristina Mihes (ILO SRO Budapest) introduced the topic. She noted that the issues of representativity criteria and the certification of fulfilment of representativity have become significant and contentious issues in South Eastern European countries.

In the case of trade unions, traditional organizations which were generally the successors of the trade union in the former communist regimes have increasingly been challenged by newly emerged trade unions, many of which call themselves “free”. In most of the countries, there are currently one or more such challengers claiming representativity status. Both old and new trade unions are competing for representativity in the public sector but have so far not achieved significant penetration the emerging private sector.

With quite a brief history, dating back merely to the beginning of '90s, employers' organizations are still somewhat establishing their identities. They usually represent a mixture of state managers, private employers and business associations, and act mainly as lobbyists to the government rather than trade unions' counterparts.

The “top to bottom” structure of the existing social partners raises legitimacy questions, while the link between different levels of representativity (national, branch/sector/industry, enterprise) remains unclear.

Since the social partners rarely meet in bipartite social dialogue at the national and branch levels, voluntary recognition does not operate. Consequently, governments have recognised the need to set out statutory criteria for selection of the most representative organizations, which are then granted a series of privileges such as the right to participate in collective bargaining, to sit on national tripartite bodies, or to nominate participants to the International Labour Conference) Recently, most of the SEE countries, have initiated an overhaul of the legislation on representativity criteria following an identified need to update, clarify or introduce new criteria which better reflect the current realities of national industrial relations.

The concept of “most representative organization” was established by article 3, paragraph 5 of the ILO Constitution. While accepted by international labour standards, the recognition of trade unions as exclusive bargaining agents should be based on objective and pre-determined criteria. Since collective agreements have increasingly become an important source of legally enforceable rights, the participants in negotiations need to be truly representative. However at the same time, minority organizations should not be denied the right to represent their members' interests.

International labour standards are not prescriptive as to the establishment of representativity criteria of the social partners. However certain legal and practical safeguards of independence and objectivity in the certification process are required in compulsory systems of representativity determination. Therefore, compulsory (statutory) recognition requires objective, pre-established and clear criteria accepted by all participants in collective bargaining and tripartite consultations or negotiations.

Practice on assessing representativity varies significantly across Europe according to the specific features of the different industrial relations systems. Thus, general labour laws or specific laws provide a procedure for assessment of representativity of the social partners. The competent certification body is either an administrative authority or a court. In the systems based on a “judge's intervention”, representativity criteria are developed by the courts on a “case by case” basis.

Recognition for the purposes of representation in national tripartite bodies may be by direct recognition by the Government, statutory recognition set out by law or recognition based on tripartite agreement.

In addition to quantitative criteria, general qualitative measures also apply, such as independence, financial stability, experience, infrastructure, etc. Engagement in collective bargaining and the number of collective agreements concluded has been used to measure the effectiveness and credibility of a professional organization. Generally, participation in collective bargaining at the national level confers to a trade union or an employers' organization the necessary representativity to get a seat on national tripartite bodies.

2.2. Establishment of representativity criteria of the social partners for the purpose of collective bargaining and/or tripartite consultations and negotiations

Albania

Workers' and employers' organizations recognized as representative are entitled to engage in collective bargaining. It is up to the employers' organization to recognise or to challenge the representativity of the workers' organization that has submitted a written request for collective bargaining.

Any legally representative workers' organization may ask an employer or employers' organization to start negotiations on a collective agreement. Two or more workers' organizations may exercise this right jointly. If the representativity of a workers' organization has been recognized by the employer, the employers' organization or organizations must meet the party demanding the negotiations within 14 calendar days. If the representativity of the workers' organization which requested negotiations has been challenged, the workers' organization in question has to submit evidence of representativity.

The organization that is proved to have the highest number of member employees at the enterprise, or branch, shall be considered as the most representative one. Where two or more employees' organizations are jointly presented, the group of organizations which has the greatest number of members must be considered most representative.

The National Labour Council (NLC) is composed of the most representative employees' and employers' organizations of the country. The most representative organizations are defined by the Council of Ministers' Decree every three years. The representativity criteria for trade unions include the number of members, the number of collective agreements concluded, the number of occupational branches or territorial based organizations, the capacity to engage in collective agreements, and membership of international organisations. The representativity criteria for employers'

organisations include the number of affiliate enterprises and the total number of their employees, the number of occupational branches, their budget, their organisational capacity, and their membership of international organisations.

Employees' and employers' organisations applying for seats in tripartite bodies have to submit the data based on the above-mentioned criteria to the Ministry of Labour, Social Affairs and Equal Opportunity. Based on this, the Ministry prepares a report on the level of representativity of applicant organisations. The Council of Ministers, after examination of the said report, adopts a Decree determining the employees' and employers' organizations to be represented in the NLC and their respective seats in this Council.

Because of the lack of specific, easy-to check criteria, the establishment of the representative organizations at the national level has proved to be problematic however.

Federation of Bosnia and Herzegovina

The criteria for representativity have not yet been regulated. However, the adoption of amendments to the Labour Law which will resolve this issue is imminent. The draft law sets certain specific requirements for the representativity of a social partner. The organisation would have to be registered by the responsible authority in compliance with the law. It would have to be financed from its own sources such as membership fees. Furthermore it would need a minimum percentage of membership.

The representative trade union for one or more areas of activity would be a trade union which in addition to the listed requirements, fulfils the criterion related to the possession of no less than 30% affiliated members out of the total number of those employed in the area of activity (branch) in the territory of the Federation of BiH.

Recognition of trade unions at the enterprise level would be initiated by the application of the concerned trade union operating in the enterprise. The application is supported by evidence of fulfilment of the criteria, and a statement of a person authorised to represent the trade union. If the trade union fails to fulfil the requirement related to the number of members in terms of percentage out of the total number of those employed, the representative union should be the trade union with the largest number of affiliated members out of the total number employed.

An employer's association would be considered representative if made up of a minimum of 20% of the affiliated employers out of the full number of employers from a specific area of activities on the level of the Federation of BiH, provided that such employers employ a minimum of 20% of the total workforce of the Federation of BiH, according to Federal Statistical Institute data.

The Minister may recognize trade union's or employers' association's representativity if the requirements set by law are met within 15 days from the day of the application submission.

Republic of Srpska

The rules on representativity were changed by the government in March 2007 in order to establish a more coherent system. Employers' and workers' organisations are required to have a membership level of at least 20% of all employed persons or employers in a branch or activity and of all the employed or employers in the Republic, according to the data of the Statistical Institute. Furthermore, organisations must be independent and be able to carry out their own administrative tasks.

In the Republic of Srpska, the most representative social partners have the right to conclude collective agreements and to take part in the negotiation process. However, other social partners also have the right to participate in the negotiations if they represent at least 10% of the employees concerned.

The representativity of a trade union at the enterprise level is determined by the employer in the presence of the interested parties' representatives. An application for recognition of representativity at national, branch or activity level must be submitted by a trade union or employers' association to a special board.

There are also qualitative criteria for trade unions or employers' organisations to be considered representative. The main one for employers' organisations is its registration in compliance with the law. For unions, the following qualitative criteria apply: it has to be organised under the principles governing trade unions' organisation and functioning; they have to be independent of the authorities and of the employer; provision of funds has to be established through the union's own sources such as membership fees; registration has to be carried out in compliance with the law.

Bulgaria

The Labour Code defines the criteria for trade union representativity at national, branch and sectoral level.

For a trade union to be recognized as representative at national level, it must meet the following criteria:

- at least 50,000 members;
- at least 50 trade union organisations with at least five members in more than a third of the sectors set out in the National Sector Classification;
- local authorities in more than half of the 263 municipalities in the country;
- a national governing body.

A representative employers' organisations must have:

- at least 750 member companies with no fewer than 10 employees each and no fewer than 15,000 employees in the member companies;
- 30,000 employees in all member companies of the organisation;
- organisations with no fewer than 10 members in more than a fifth of the sectors defined in the National Sector Classification;
- local bodies in more than a fifth of the country's municipalities;
- a national governing body.

When a social partner is considered representative it holds the right to participate in tri-partite social dialogue processes at all levels (including national and branch level and municipal councils for tripartite partnership); and the right to represent members before the court. Enterprise level representativity is not regulated.

Under the Labour Code, all federations of trade unions and employers' organizations recognized as representative at national level are also recognized as being nationally representative. At sectoral or branch level, only nationally representative trade unions and employers' organizations can conclude collective agreements.

Trade unions and employers' organizations which wish to be recognized as representatives at national level have to notify their requests. The Minister of Labour and Social Policy sets up a committee which investigates whether the applicant organisation meets all legal requirements. The outcome of the investigation is announced within 3 months from the registration of the request made by the interested organisation. A refusal of recognition has to be communicated to the interested organisation within 7 days from its adoption. The interested organisation can contest a refusal before the Supreme Administrative Court. The Council of Ministers grants recognition for a term of four years.

Croatia

Croatian legislation does not determine representativity for the conclusion of a collective agreement. In the Labour Act there is no designation of criteria which trade unions should fulfil in order to have the right to bargain collectively or any limitations concerning parties to a collective agreement on the employers' side. It is only prescribed that the statute of an association must include provisions on the bodies authorised to conclude collective agreements and requirements and procedures for organising industrial action. An authority to conclude collective agreements may be delegated to a higher-level association by virtue of the statute.

Where more than one trade union or higher-level trade union associations are present at the level at which a collective agreement is to be concluded, the Labour Act does not consider the principle of representativity. Rather the principle of representation of all trade unions which satisfy conditions and thus can be parties to a collective agreement is germane. If more than one trade union or higher-level trade union associations are present at the level at which a collective agreement is to be concluded, the employer or employers' association or higher-level employers' association is permitted to negotiate a collective agreement only with a joint bargaining committee composed of representatives of these trade unions. Trade unions decide by agreement on the number of members and the composition of the bargaining committee.

Trade union associations wishing to participate in a national tripartite body must meet various conditions to be considered representative, such as:

- Have at least 15 000 fee paying members;
- Have at least five trade unions operating at national level;
- Be active in at least 11 counties in Croatia through local unions or trade unions affiliates;
- Operate in accordance with freedom of association and democratic principles;
- Be party to at least three collective agreements for different sectors of economic activity at national level

Similarly, an employers' organization, wishing to participate in a national tripartite body must meet various conditions to be considered representative. These are: -Have at least 2000 members which employ at least 100000 employees and represent at least 10% of the total number of employers;

- Have at least 3 sectoral collective agreements concluded;
- Run at least 3 regional offices;
- Be a member of at least 2 international organizations;
- Its members contribute to at least 10% of the total GDP;
- Has a minimum of 10 staff members out of which at least 5 with university education and have 5 staff members at sectoral level;
- Have at least 3 types of sources of income;
- Was involved in at least 3 mediation cases.

When an association meets these conditions and wishes to be represented in the national tripartite bodies, it has to submit a request for determining representativity. The competent Minister then appoints a Commission, consisting of an equal number of association representatives and the government, which assess the organisation's compliance with the criteria. Each association can, within 15 days, challenge the data before the Commission on the number of members of trade unions affiliated to it.

After determination by the Commission, the Minister of Labour adopts a formal decision designating the associations that meet the conditions and the total number of members of all the trade unions affiliated to an individual association. The decision is published in the Official Journal. It is the associations' responsibility to reach an agreement on their representation in tripartite bodies at the national level.

At present five trade union confederations and one association of employers are considered to be representative at the higher level.

At present in Croatia significant challenges exist because of the lack of a sufficiently developed bipartite dialogue, poor social dialogue at sector level, scarce capacity on the part of the social partners, unclear representativity criteria for social partners and the fragmentation of trade unions. The dearth of criteria for determining the number and composition of the trade union bargaining committees for collective bargaining means legal insecurity and conflicts among trade unions. Argument over who will be

the negotiator for conclusion of collective agreements weakens the position of trade unions even before the bargaining process is commenced.

Due to this insecurity and lack of consensus, trade unions have initiated the preparation of a new law on trade union representativity. This should determine the representativity for all levels of trade union organizations, enterprises or institutions, regional level, branch or industry, and for the confederations at national level. The new legislation has not been adopted yet.

The Former Yugoslav Republic of Macedonia

General collective agreements must be concluded between the representative employers' association and the representative trade union for the territory of the Republic of the Former Yugoslav Republic of Macedonia. Once representativity is established, an employers' organization or a union is granted seats in national tripartite bodies and delegations.

A trade union is representative at the national level if it meets cumulatively the following criteria: 1) It is registered in the Trade Unions' register kept by the Ministry of Labour and Social Policy 2) Fee paying members count for at least 10% of the national workforce;

1) It is made up of at least three national trade unions of different branches/sectors registered with the Ministry of Labour and Social Policy;

2) It has members registered in at least 1/5 of the municipalities in the country;

3) Member organizations are party to at least three branch collective agreements.

A trade union is representative in the public sector if it is registered with the Ministry of Labour and Social Policy and at least 20% of the employed persons in the public sector who pay membership fee are members.⁴

A trade union is representative in the private sector if it is registered with the Ministry of Labour and Social Policy and at least 20% of the employed persons in the private sector who pay membership fee are members.

A trade union is representative at the branch/sector level if it is registered with the Ministry of Labour and Social Policy and at least 20% of the employed persons in the branch/sector who pay membership fee are members.

A trade union is representative at the company level if it is registered with the Ministry of Labour and Social Policy and at least 20% of the employed persons in the company who pay membership fee are members.⁴

An employer's organisation is considered representative at the national level when it consists of a minimum of 5% of the total number of employers in the private sector or its members employ at least 5% of the total number of employees in the country. Furthermore, it has to have registered members in at least 1/5 of all municipalities of the country, it has to have negotiated at least 3 collective agreements at branch or sectoral level and it has to act in accordance with its statute and democratic principles.⁵

In addition to lower thresholds of representativity of the social partners (following the recommendation of the ILO Committee of Experts on the Application of Conventions and Recommendations), a new provision creates a Representativity Commission, which is competent for certifying the fulfilment of representativity criteria laid down by law. The Commission is made up of government representatives, while the interested social partners participate as observers in the certification process. Since the role of

⁴ According to the amended Labour Relations Law in October 2009

⁵ According to the amended Labour Relations Law in October 2009

the Commission (which has a purely administrative nature) is merely to check compliance with statutory representativity criteria based on evidence provided by applicant organizations, a truly tripartite structure is not necessary. Moreover, according to the Ministry of Labour, this solution was favoured in order to avoid situations where workers' and employers' organizations which had previously been given fully-fledged member status block the certification of representativity of competing organizations.

Republic of Moldova

The concept of representativity has no statutory recognition. However there are legal provisions, especially in connection with the right to conclude a collective agreement, which are in practice very similar to the concept of representativity in other countries.

In the Republic of Moldova legislation does not stipulate any criteria for representation of the social partners' organizations. Collective agreements at national and branch levels do not contain provisions regarding the representation of employers' and workers' organizations either.

The only provisions in existence refer exclusively to trade unions. The right to participate in collective bargaining, to sign collective conventions on behalf of employees at national, branch and territorial levels belongs to the appropriate trade union. Where there is more than one trade union at the national, branch and territorial level, one joint representative body is set up for the conduct of collective bargaining, designing the draft of the collective agreement and its conclusion. The joint representative body is constituted on the basis of proportional representation of the trade unions based on the relative number of union members. In the absence of agreement the right to conduct negotiations goes to the trade union with the largest number of members. The legislation does not provide for the manner in which the number of the trade union's members is determined or the way it is proved.

Romania

Unions and the employer associations that comply with representativity criteria have the right to participate in the negotiation and conclusion of collective labour agreements at the national, branch or enterprise level. The notion of 'most representative' is not determined by legislative criteria in Romania.

There are different representativity levels, namely enterprise, branch and national. The criteria for employers' organisations are:

a) National level:

- independence;
- members in at least half of the total number of counties, including Bucharest Municipality;
- members in at least 25% of the branches of the economy;
- member companies employ altogether minimum 7% of the national workforce.

b) Branch level:

- independence;
- member companies employ altogether minimum 10% of the total number of employees in the concerned branch. Fulfilment of the representativity conditions must be established by the Bucharest Municipality Tribunal, at the request of the concerned employers' association.

As to trade unions, to be considered representative for negotiation of collective agreements at national, branch and enterprise level, they have to fulfil the following conditions:

a) National level:

- legal status of union confederation;
- independence;

- territorial union structures in at least half of the total number of counties, including the Bucharest Municipality; -made up of representative union federations from at least 25% of all branches of the economy;

- member unions have, cumulatively, a number of members at least equal to 5% of the national workforce.

b) Branch level:

- legal status of union federation;

- independence;

- member unions have, cumulatively, a number of members at least equal to 7% of the total number of employees in the concerned branch;

c) Enterprise level:

- legal status of union organisation;

- the number of members represents at least one third of the total number of employees of the enterprise

The validity of representativity recognition lasts 4 years from the date when the judge's decision became final. In Romania there are 13 employers' organizations and 5 trade unions recognized as representative at national level.

Montenegro

Only employers' or workers' organisations deemed representative have the right to negotiate and conclude collective agreements at the national level. As well as collective bargaining, they may participate in social dialogue, and be a signatory to all the documents that regulate relations in this area. Representativity is only regulated at the national level.

A representative trade union at the national level is the one which has the largest number of members among all trade unions, and is registered with the Ministry responsible for labour issues.

An employers' organisation is considered representative at the national level when its members employ at least 25% of all employees in Montenegro and contribute a minimum of 25% of the GDP of Montenegro. It must register with the Ministry in charge. If no employers' organisation meets these requirements, several employers' organizations may conclude an agreement on participating in collective bargaining at the national level.

There is one employers' organization and one trade union qualifying as representative at present. A new law has been drafted on trade unions' representativity and was to be tabled in Parliament of Montenegro in late 2009.

Serbia

A trade union or association of employers, for which representativity has been established pursuant to the Law, is authorised to undertake collective bargaining and conclude collective agreements at the appropriate level. Representativity also bestows the right to be a party to collective legal disputes and to participate in tripartite and multipartite bodies at the relevant level.

In respect of recognition by an employer, a representative trade union is the one whose membership comprises no less than 15% of the total number of employees of that employer. That trade union must also be the trade union in the branch, group, subgroup or line of business comprising no less than 15% of the total number of employees with that employer.

A trade union is considered representative at the national level when it represents at least 15% of all employees in Serbia. In addition to this, it has to be set up on the basis of principles of freedom of trade union organization and activity, it has to be independent from public bodies and employers, it must be funded from mainly membership fees and other own sources and it has to enter into the official registry.

To be considered representative at national level, an employers' organisation has to represent at least 10% of all employers in the country and its members have to employ at least 15% of the total number of employees in the country. In addition to this it has to be entered rightfully into the official registry.

A claim of representativity by a trade union to a particular employer is determined by that employer in the presence of interested trade unions. That decision can be challenged before a panel established for this specific purpose. Representativity of a trade union at national or territorial level, or in a branch, group, subgroup or line of business is established by the Minister upon advice from the said panel. The panel is composed of three representatives of the Government, trade unions and association of employers and it is appointed for a four-year term.

2.3. Conclusions

One significant conclusion to be drawn from the discussions is that the representativity thresholds and the certification procedure for representativity are key issues in today's industrial relations in SEE countries. In general, the statutory thresholds for national representativity are established as a per cent of the national workforce. In most of the Western Balkan countries, with the exception of Serbia (unions) this is ten percent. In some cases (e.g. the Former Yugoslav Republic of Macedonia, Serbia) previous excessive thresholds such as 33 per cent have been lowered following recommendations of the ILO's supervisory bodies. For employers' organizations, a per cent of the total number of employers is in some countries added to the above as a representativity criterion to be met cumulatively (Serbia) or alternatively (the Former Yugoslav republic of Macedonia).

Discussions around a definition for representativity of the social partners in the sub-region indicate a preference for a set of cumulative criteria. These include a number or percentage of the national workforce as members or employed, a number of branches/sectors, and territorial coverage. In some cases, criteria such as a minimum number of concluded collective agreements (Croatia, the former Yugoslav Republic of Macedonia) or a minimum contribution to the country GDP (Croatia, Montenegro), are provided as measurement of organization's effectiveness. Qualitative criteria, like independence, international affiliation (Albania, Croatia), number of higher educated staff (Croatia) are added to the list.

In most of the SEE countries, certification procedures are laid down in labour legislation, via either general (Bulgaria, the Former Yugoslav Republic of Macedonia, Serbia) or special laws (Albania, Romania). Generally, compliance with statutory

criteria is certified by an administrative authority (usually the Ministry of Labour) at the recommendation of a tripartite commission on the basis of evidence of the fulfilment of criteria. The nature of such a commission is purely administrative. Romania is the only country in the sub-region where representation is checked and granted by a court. In most participating countries, vague legal provisions regarding the type and nature of evidence required and the lack of reliable statistical data for validating testimony provided by applicants, often make the certification procedure a controversial one.

Certification procedures are often based on membership card counting. This practice does not exclude the possibility of duplication; a person can be counted by several organizations. Direct deduction from the payroll is the common system for collecting union membership fees in all Western Balkan countries.

This practice may act as a deterrent in cases where anti-union discrimination is a problem. Current practices may require change to more reliable, less time consuming and more user-friendly methods.

Social partner participation in representativity determination varies. Social partners participate as fully-fledged members of representativity panels in Serbia, while they have only observer status in the Former Yugoslav Republic of Macedonia. The Macedonian legislators favoured the latter option, having become aware of difficulties the Serbian Representativity Panel had been facing. These difficulties are mainly due to consensus-based decision making, which in certain situations can block the certification process. Furthermore, workers' and employers' organizations which have previously been granted the status of fully-fledged members of such boards may hinder the certification of representativity of competing organizations outside the board.

In some countries, like Croatia, the law only sets out criteria for representativity in national tripartite bodies. In other countries, statutory criteria are prescribed for both participation in collective bargaining and national representation (eg Romania, Serbia). In a single case (Moldova), the concept of representativity is not legally defined, but the right of trade unions to participate in collective bargaining is bestowed by law.

In the Western Balkan countries and Moldova sectoral social dialogue is regarded as poor. Reasons proffered for this problem include the lack of clear representativity criteria for collective bargaining as well as the absence of employer organisations at branch level.

A further conclusion is that there is an urgent need for governments and the social partners to negotiate and agree on specific, clearly defined, up to date representativity criteria for the purpose of collective bargaining and representation in national tripartite bodies in Albania, Bosnia and Herzegovina (state level), Moldova and Serbia. These criteria should take into account each country's specific context so as to allow trade unions and employers' organizations pluralism. The criteria should exclude the possibility of discretionary or abusive interpretation, while the fulfilment of the criteria must be easily and objectively gauged by an impartial/ independent body against comprehensive and reliable data.

Appendix

I. Representativity Criteria at the national level (except for Bosnia and Herzegovina)

	Trade Unions	Employers' Organisations
Albania	<ul style="list-style-type: none"> • the number of members, • the number of collective agreements concluded • the number of occupational branches or territorial based organizations, • the capacity to engage in collective agreements and mediation of labour disputes and • the membership in international organisations. 	<ul style="list-style-type: none"> • the number of affiliate enterprises and the total number of their employees, • the number of occupational branches, • the budget for social purpose, • the capacity to engage into collective bargaining and mediation of labour disputes and • the membership in international organisations
Federation of Bosnia and Herzegovina	<ul style="list-style-type: none"> • To be registered • To be financed out of the membership fee and other own sources • Has at least a 30% membership at the area of activity or of the total number of employees in the Federation 	<ul style="list-style-type: none"> • To be registered • To be financed out of the membership fee and other own sources • Membership of at least 20% of all employers in the Federation, employing at least 20% of all employees
Republic of Srpska	<ul style="list-style-type: none"> • Membership of at least 20% of all employees in the Republic of Srpska • Unions with a membership of at least 10% are allowed to participate in the negotiations of collective agreements 	<ul style="list-style-type: none"> • Membership of at least 20% of all employers in the Republic of Srpska • Employers' organisations with a membership of at least 10% are allowed to participate in the negotiations of collective agreements
Bulgaria	<ul style="list-style-type: none"> • at least 50,000 members; • at least 50 trade union organisations with at least five members in more than a third of the sectors set out in the National Sector Classification; • local authorities in more than half of the 263 municipalities in the country; • a national governing body. 	<ul style="list-style-type: none"> • at least 750 member companies with no fewer than 10 employees each and no fewer than 15,000 employees in the member companies; • 30,000 employees in all member companies of the organisation; • organisations with no fewer than 10 members in more than a fifth of the sectors defined in the National Sector Classification; • local bodies in more than a fifth of the country's municipalities; • a national governing body.

	Trade Unions	Employers' Organisations
Croatia	<ul style="list-style-type: none"> • Have at least 15000 members • Have at least 5 trade unions operating at national level • Be active in at least 11 counties of Croatia • Operate in accordance with democratic principles • Be party to at least 3 collective agreements for different sectors of economic activity at national level 	<ul style="list-style-type: none"> • Have at least 2000 members, employing at least 100 000 employees and representing at least 10% of the number of employers ; • Have at least 3 national sectoral agreements and 10 in house agreements concluded • Run at least 3 regional offices • Be a member of at least 2 international organizations • Its members contribute to at least 10% of the total GDP • Have a minimum of 10 staff members, out of which at least 5 with university education and 5 staff members at sectoral level • Have at least 3 types of sources of income • Have been involved in at least 3 mediation cases
The Former Yugoslav Republic of Macedonia	<ul style="list-style-type: none"> • Be registered in the trade unions' register kept by the Ministry competent for the matters in the area of labour. • Have at least 10% of all employees in the country who pay membership fee • Made up of at least three national trade unions of different branches, i.e. sectors registered in the register of Trade Unions kept by the competent Ministry • Act at national level and have registered members in at least 1/5 of the municipalities in the country • Act in accordance with its statute and democratic principles. • Have as members Trade Unions which are party to at least three collective agreements on a level of branch, i.e. sector. 	<ul style="list-style-type: none"> • Be registered in the employers' associations register kept by the Ministry competent for the matters in the area of labour. • Have as members at least 5% of all employers in the private sector or employers who are members in the association employ at least 5% of all employees in the private sector • Members of the association should be employers of at least three branches i.e. sectors. • Have registered members in at least 1/5 of the municipalities • Be party to at least three Collective Agreements in a branch i.e. sector. • Act in accordance with its statute and democratic principles
Republic of Moldova	<ul style="list-style-type: none"> • No official representativity criteria are existent 	<ul style="list-style-type: none"> • No official representativity criteria are existent
Montenegro	<ul style="list-style-type: none"> • The law on the representativity of trade unions has not yet been adopted 	<ul style="list-style-type: none"> • Members employ at least 25% of all employees in the country and contribute to at least 25% of the country's GDP • Be registered with the competent Ministry

	Trade Unions	Employers' Organisations
Romania	<ul style="list-style-type: none"> • Independence • Territorial union structures in at least half of the total number of counties, including the Bucharest Municipality • Union federations in at least 25% of all branches of the economy • Membership of at least 5% of the national workforce 	<ul style="list-style-type: none"> • Legal status • Independence • Members in at least half of the total number of counties, including the Bucharest Municipality • Members in at least 25% of all branches of the economy • Members employ at least 7% of the national workforce
Serbia	<ul style="list-style-type: none"> • Represents at least 15% of all employees in the country • Dully registered • Observes principles of freedom of trade union organization and activity • Independent from public bodies and employers • Funded mostly from membership fees and own sources 	<ul style="list-style-type: none"> • Represent at least 10% of all employers in the country or trade • Members employ at least 15% of the national workforce • Dully registered

II. The impact of the financial crisis on Bulgarian migrants

I. Introduction

1.1. Background

The transformation to a market-based system has influenced the direction of economic policy and also shaped social policies, business practices and institutions in Bulgaria. The collapse of the central planning system in Europe also provided the citizens of these former communist regimes with greater opportunities to migrate. The first post-communist emigration wave from Bulgaria started soon after the liberalisation of state passport regulations and the abolition of exit visa requirements in 1989. Nevertheless, it was not until the mid-1990s that the pattern of Bulgarian emigration could be characterised as primarily driven by economic factors. During this period, Bulgarian emigration was mainly towards Central European destinations, notably the Czech Republic, Hungary and Austria (see SOPEMI, 1999). The economic environment during the period 1990-2008 can be divided into three distinct periods with regard to migration patterns.

The first period (1990–2000) was triggered by the regime transition and the economic downturn as a result of some very radical economic and social reforms. Within that period the scarcity of jobs and population impoverishment prompted emigration. Census data indicates that between the two censuses of 1992 and 2001, a population decrease over 6% occurred.

The second period covers 2000–2007 and is characterised by a significantly improved economic and social environment; increased job opportunities and higher income levels. This contributed to decreased emigration flows and increased immigration. After 2002 the emigration outflow had stabilised.⁶ However, the country remained relatively poor, making it rather a “transitional” country for immigrants on their way to Western Europe.

The third period in the economic development starts in 2007, when Bulgaria became a member of the EU. This new status on the one hand changed the content of the ‘Bulgarian emigration’ to Western Europe and on the other, increased the attractiveness of the country for immigrants.

1.2. Migration flows – quantitative and qualitative dimensions

Migration flows consist of emigrants, immigrants and refugees. Bulgaria is a net exporter of people, since the number of emigrants prevails, while that of immigrants and refugees is still negligible. Bulgaria’s population is decreasing. Compared to 1989, the population has now decreased by 1.2 million people. This is a result of not just a negative balance of emigration over immigration but also of a negative balance of births and deaths. Emigration has become a serious problem for Bulgaria in terms of both population growth and a shortage of labour. From 2002 the emigration wave extended to approximately 90,000 people per year.

Some projections indicate that the level of emigration is likely to decrease and stabilise at about 6000-8000 per annum from 2010. According to 2001 data the main groups of long-term emigrants were then well-educated young people, incl. women of fertile age. Lower-qualified

⁶ Family patterns and migration, National Representative Survey, 2007, MLSP, United Nations Population Fund, Centre for Comparative Studies, Agency for Social and Economic Analysis, p. 86.

6 Family patterns and migration, National Representative Survey, 2007, MLSP, United Nations Population Fund, Centre for Comparative Studies, Agency for Social and Economic Analysis, p. 86.

people declared intentions for short-term, seasonal labour emigration. The intention for short-term mobility in the respective year has increased from 26% in 2001 to 42.4% in 2007⁷.

The main motive for migration is economic. The rise in temporary or circular economic migration is connected to increased unemployment in certain regions within Bulgaria. The ability to stay in countries in the Schengen-area of the EU for three months without requiring a visa is very appealing.⁸

Spain in particular emerged as an attractive destination for Bulgarian migrants from the second half of the 1990s. An OECD report estimated that the total number of Bulgarians in Spain in 2006 to be approximately 60,000 (SOPEMI, 2006). The evidence suggests that this country became a preferred destination for Bulgarians because of the comparative tolerance towards Bulgarians on the part of both the Spanish authorities and employers and the favourable legal framework towards undocumented foreign workers.

Data released by the BNB confirm that the remittances sent by Bulgarians abroad to relatives back home has steadily increased both in absolute terms and as a percentage of measured GDP. In 2003 such transfers comprised about 3.5% of the Bulgarian GDP. The scale of these remittances raises important questions as to their impact in Bulgaria and whether the gain through remittances counterbalances the 'brain-drain' the country initially experiences through permanent emigration.

1.3. Immigration flows

Immigration flows are insignificant if compared with emigration flows. Most immigrants (77%) come from Europe, notably Turkey, Russia, Ukraine, the Republic of Macedonia and Moldova. Immigrants are not a homogenous group; they include long term immigrants, refugees and stateless people. Furthermore, immigrants are relatively young (56% between 18 and 40) and relatively well educated.

1.4. Migration policy

The Bulgarian migration policy is drawn from the international commitments and agreements it is party to. The policy follows the generally acknowledged principles regarding migrants and is much more focused on emigration. Presently, the government undertakes systematic steps to achieve consistency in migration policy, including the development of strategic documents and action plans related to emigration and immigration. The policy focus is to reduce and stabilise the emigration flows and to stimulate immigration for a better demographic balance and increased labour supply.

A paper entitled "General trends in the migration policy of the Republic of Bulgaria" was tabled by an intra-institutional working group in September 2007. This document envisaged the development of a National Strategy on Migration and Integration in Bulgaria to be based upon new and current trends. A strategy and a yearly plan for its implementation were approved in June 2008. The underlying principle of the Strategy is to have close regard to global and regional trends in migration movement, and at the same time observe the national interest and commitments to the European Union.

⁷ Family patterns and migration, National Representative Survey, 2007, p.87.

⁸ Bulgaria was removed from the 'black Schengen list' in April 2001, which meant that Bulgarian citizens could travel freely within the Schengen area for three months.

1.5. Conclusions

– The National Strategy on Migration and Integration is the first document of its type to deal with issues relating to migration policy which are extremely important to the development and security of Bulgaria.

– There is a low degree of accuracy in forecasting migration trends.

– Emigration processes need examination and review, in order to effectively tackle the problems which have arisen.

– Issues related to preserving the identity of Bulgarian emigrants, and to facilitating their permanent return have not been adequately considered in the Strategy. These need to be addressed.

– The implications of internal migration and the problems this can cause such as depopulation have not been considered in the Strategy. The effects and possible solutions should be given more attention.

– The constitution of the body formulating and implementing the migration policy is unclear. A migration agency with Council of Ministers authorisation would be preferable.

– To achieve better inflows, priority should be given to those target groups who have clearly defined goals and could contribute to the development of Bulgaria. Fixed criteria should determine selectively directed measures to achieve this.

– The role of local authorities has not been specified in the Strategy. This should be remedied.

– The Strategy does not delineate its relationship with other national strategic documents related to migration.

– An evaluation of all possible risks concerning immigration should be developed by highly qualified experts. This would assist implementation of the Strategy.

– There appear to be serious flaws in the design and structure of the annual plans which need to be addressed. The current annual plan does not stipulate the functions and responsibilities of the specific institutions or determine their financing. There are no precise accountability indicators. Furthermore, the activities of the institutions have not been accorded any prioritization.

– There is an information and research deficit in the Strategy. A plan outlining the necessary research should be developed and added to the annual plan. Institutes of higher education should be integrated in the process to achieve worthy research outcomes.

– The special role of the social partners should be given particular attention in the Strategy. It fails to state the need and desirability of their participation. Their role in policy implementation should be defined. The capacity of the social partners to influence the migration scenario should be recognised in the Strategy.

– The potential intellectual and financial benefits of migration should be used as an instrument for development.

– Accepting immigrants with “green cards” is not dependent on specific regulations referring to employment and can lead to distortion in the labour market. This needs to be addressed. Accepting immigrants with “green cards” should be in accordance with the particular requirements of the labour market at a given time

II. Emigration policy

The core of the emigration policy is to avoid the need for young people to consider future emigration.

III. Immigration policy

In anticipation that present upward immigration trends will continue, the National Emigration and Immigration Strategy of the Republic of Bulgaria (May 2008) emphasises the need for: (a) extensive public debate about the socio-economic impact of immigration; (b) development of immigration policy that assists Bulgarians living abroad to settle in the country; (c) improvement of existing legislation so as to consolidate immigration laws; (d) further development of the information system for immigrants and the creation of a register of immigrants; (e) promotion of knowledge about manners, customs, traditions and culture of immigrants by conducting information campaigns; (f) regulation of procedures for granting legal recognition of the education and professional qualification of the immigrants, etc.

The core of the immigration policy is the focus on ethnic Bulgarians living abroad. There are four main strategies: (a) facilitating the procedures for obtaining Bulgarian citizenship; (b) providing scholarships for children of ethnic Bulgarian origin from other countries, who wish to stay in Bulgaria; (c) activating and expanding the spheres of co-operation with Bulgarian emigrants abroad; and (d) developing a policy for attracting ethnic Bulgarians to settle in the country and to encourage their entrepreneurship in Bulgaria.

IV. Migration statistics-challenges and realities

Interest in statistics on personal mobility and on international migration in particular has heightened over the last two decades. A greater need for comprehensive, comparable and consistent data on migration flows and stocks were prompted by the dramatic expansion in migration and its serious political and social repercussions for both countries of origin and destination. In destination countries migrants can be considered from both positive and negative perspectives. Countries of origin of international migration experience a loss of human capital, skilled labour and young people. At the same time, emigrants ease the pressure on the labour market and compensate the loss of income of their families by sending remittances. A certain number of emigrants return to their country of origin bringing enhanced human capital and entrepreneurship.

The growing importance and complex nature of migration make it necessary to go beyond the simple measurement of migrant numbers. Understanding migration requires gathering more and better quality data about its myriad manifestations, causes and effects. Migration data is an essential ingredient in population projections especially considering the implications of such demographic trends as the ageing of the population.

In response to this growing desire for information, various international organizations have set up a framework for comparable and consistent migration statistics. The Recommendations on Statistics of International Migration by the United Nations (UN) was the first crucial step towards global harmonization of statistics on migration. The adoption of Regulation No. 862/2007 on Community Statistics on Migration and International Protection is another important step that set out steps for improvement in collecting and compiling comparable data in the EU.

Despite these improvements, serious challenges remain. Firstly, the principles and definitions contained in the Recommendations and Regulation are not always translated in a consistent and harmonized way into national legislation. Secondly, the implementation of regulations is often constrained by the non-availability of certain data sources in the countries and by the limitations of national statistical offices in their access to certain data. To establish a cooperative environment with administrative bodies collecting data on migration (usually Ministry of Interior and Policy Departments), is a serious challenge. Finally, the multifaceted nature of migration implies tasks beyond the obligation to supply data

to Eurostat in the scope and structure stipulated in Regulation No. 862/2007. In order to make well-informed decisions, official statistics must provide data in various additional dimensions.

V. Bulgaria as a case study

Bulgaria is among the EU countries that are most adversely affected by negative **demographic trends** and emigration. According to estimates based on various data, in the period 1989-2002, about 715,000 people left the country. That represents about 9% of the total population as measured at 1 March 2001 (Census data)⁹. The combination of low fertility rates and increased mortality, coupled with negative net migration flows, is expected to result in a further population decline over the next few years. Forecasts for Bulgaria show negative growth of -21% by 2030.

The country will continue to be affected by accelerated **population ageing**. Statistics place Bulgaria among the countries with the highest proportion of the population aged 65 and over

– 17% in 2002 compared to 16% in the EU-15 in 2000. The proportion of the elderly population is expected to grow further to 25% by 2020. Fertility rates below replacement level and large emigration flows of young people have led to a process of dejuvenation. While the number and percentage of older people is increasing, the number and percentage of young people (0-14 years) is declining. The combination of decreasing younger age groups, the expected further decline in the working age population and the ongoing trend of a growing elderly population are obscured in the total (demographic) dependency ratio. In Bulgaria, this ratio is forecasted to rise from 45% in 2004 to about 50.4% in 2020.

In the context of demographic trends described above, recent debate in Bulgaria has been whether immigration has to be activated in order to ensure population growth and to plug the current gaps in particular skills. However, immigration is not enough in itself to solve the problems associated with ageing. Admission mechanisms for third country nationals must be managed effectively and transparently, and proactive integration and equal opportunity policies must be ensured in order to achieve a balance between the respective rights and responsibilities of migrants and Bulgarian nationals. In order to design such policies, timely and comprehensive immigration statistics are needed.

High emigration has affected the regional composition of the population. Distribution of emigrants by place of usual residence is becoming an important precondition for compiling correct numbers of population by settlement and for regional population projections.

In January 2007, Bulgaria became an external border of the EU. This imposes additional obligations on the country's collection of immigration statistics. Bulgaria appears to be an attractive place for temporary stay by non-EU residents on their way to other (internal) EU countries. In the last 5 years, Bulgaria has become a desirable destination for a new type of immigrant -retired people from North European countries such as United Kingdom, Netherlands and Germany. These people usually populate small villages in the mountains and on the Black Sea coast, generating demand for various services. This has implications for the local economic development and labour demand.

The free movement of people across borders in the EU makes it even more challenging to measure migration. As a result, short-term (usually 3 months) migration by seasonal workers has gained significance in the last years. These persons are not registered with administrative bodies, thus remaining "invisible" in the statistics. Providing reliable data on the numbers, composition of skills and the remittances such migrants regularly take home is of crucial importance in policy design.

⁹ The largest wave of emigration took place in the first three years after abolishment of the restrictions to travel abroad imposed by the communist regime. One third of the emigration flow (218 000) were ethnic Turks that left the country in 1989 and moved to Turkey led by political reasons.

All the above-mentioned manifestations of migration make Bulgaria a good case study for implementing all the definitions and approaches to data collection and compilation of indicators for international migration concerning both emigration and immigration.

VI. Challenges in using administrative sources for the production of migrant statistics

EU Regulation No. 862/2007 was adopted in July 2007 and introduced harmonized definitions on basic concepts such as emigration, immigration, and place of usual residence.

This will enable the compilation of comparable data across EU countries and will substantially improve the quality of official statistics. The definition used by Eurostat is that a migrant is somebody who changes their country of usual residence for 12 months and more. The Regulation requires each country to review their data sources and collection methods in order to choose the most appropriate ones and to systematically organize them

In Bulgaria, as in many other EU countries, the Population Register is considered to be the most viable source of data to identify and count international migrants. The register contains data on Bulgarian citizens, foreigners that receive residence permits, foreigners that live in the country in accordance with the legally allowed duration of stay, and asylum seekers and refugees.

The Population Register contains data on the permanent and current address of each person as well as any changes related to them. The data can be used for counting the stock of emigrants for those that have been deleted from the national residence system and have been abroad for at least 12 months at the end of the reference year. The problem is that for persons leaving Bulgaria, there is no mandatory requirement to notify a change of address.

An opportunity to obtain more reliable data on migrant flows is to introduce either compulsory deregistration for persons leaving the country for a period longer than a year or a set of incentives for doing so, such as linking deregistration to tax relief or access to social services. Currently, the most feasible options for compiling complete data on migrant stocks and flows is to link Population Register data with that from border statistics and other administrative sources.

Border statistics are collected on persons crossing entering or leaving the country. In addition to border statistics, data from the Population Register can be linked to data from other administrative sources such as the Tax Administration and Social Security Register where people may be more motivated to inform the authorities about their moving abroad and changing their address of usual residence. The advantage of matching data from different sources through a personal identity number is that it allows going beyond the simple counting of the number of migrants in a given period.

The main challenge related to combining data from various sources is to establish gateways that allow data sharing for statistical purposes. Such sharing will always be subject to agreement by the institutions concerned. Agreement would open a completely new phase in the collecting and compiling of migration statistics in Bulgaria.

Citizens returning to the country after having been absent for at least one year are considered immigrants and part of the usual resident population if they live or intend to live there for at least one year. In general, information about this category can be provided by the Population Register, since citizens living in Bulgaria are obliged to register. Since January 2007, border statistics on persons entering and leaving Bulgaria have registered only “third country nationals”. According to the Foreigners Act, any foreigner who enters the country has to register within 48 hours in the municipality where they intend to reside and to notify them of his/her address. In practice, many foreigners do not observe this rule be-

cause there is no effective system to enforce it. Therefore, in order to produce complete statistics on immigrants, it is necessary to obtain data from various administrative sources.

Data on foreigners are administrated by the Ministry of Interior in accordance with the Foreigners Act. The Ministry is responsible for the administrative oversight of all foreigners in Bulgaria and for the issuing of a residence permit or specific authorization to live in the country. Therefore, data on the number of foreigners in the country and their legal status can be provided by the Ministry of Interior. Another important source of data on foreigners is the Population Register. Data is assumed to be reliable as foreigners living longer than a year in the country are obliged to register. There is a specific group of non-citizens without a residence permit who are seeking asylum who are considered immigrants and also part of the usual resident population after one year of effective residence in the country. Information about this group as well as for monthly asylum applications is provided by the National Refugee Agency. Data on persons seeking asylum is administered by the National Refugee Agency until asylum decisions are made. In the case of asylum being granted, personal data is transmitted to the Population Register.

VII. Challenges in using other sources for the gathering of migration statistics

The upcoming round of national censuses is an excellent opportunity to improve data collection in the field of migration. Bulgaria has experience with using population censuses for counting the stock of international emigrants. In Census 2001, all households were asked to report on behalf of a member who was abroad at the time of the census. Analysis of the data collected shows that for some of the emigrants there was no one left to report for them. Some data was incomplete due to erroneous interpretation of the responses with regard to duration and reasons for remaining abroad and hence there was some erroneous classification of persons as emigrants. Nevertheless, Population Census 2001 provided useful estimates of the stock and flows of emigration in the early '90s. It also constituted a sampling frame for designing later specialized sample surveys. The upcoming Population and Housing Census in March 2011 can be used to gather detailed information about international migrants –especially short-term migrants.

In order to fill in the existing information gaps in June 2008, the NSI planned to start regularly implementing International Passengers Surveys (IPS) to track migration. The IPS is a voluntary survey of passengers entering and leaving Bulgaria based on face-to-face interviews which take up to 5 minutes. The questionnaire is short, containing basic questions about the traveller's country of residence, reason for visit, duration of stay and details on expenditures. The passengers surveyed make up around 90% of all travellers entering and leaving Bulgaria. The survey is conducted monthly during the second week of each month. The IPS aims to collect data on international migration as well as on travel expenditure and their impact on balance of payments. It also provides data needed for the purposes of tourism policy.

As interest in data on international migration increases, the feasibility, methodology and organization of sample surveys on migration as a supplement to the statistics based on administrative sources will attract more attention. One low cost opportunity for gathering data on migration is to add questions to the sample survey of households or persons designed for other purposes. This, for example, is the case with the adding of questions on international migration to the labour force survey or to the household budget survey. In 2008, Bulgaria introduced a question on remittances as a potential source of income of households in the household budget survey. The main advantage of the approach is the minimum additional costs due to the usage of the existing survey budget and infrastructure.

A key issue in deciding whether it is worthwhile to add questions on international migration to an existing survey is the sample size of that survey. In general, for a sample survey (of any type with another aim than to collect data on migration) to be a potentially reliable source of data on migration, it should be either fairly large or the country being surveyed should have a high prevalence of international migrants. In the ideal case, both these preconditions should

be available. Unfortunately, the sample surveys in Bulgaria are too small to yield statistically reliable data on international immigration; they are more likely to provide reliable estimates on both long-term and short-term emigration. A notable exception is the labour force survey, firstly due to its large sample size and secondly due to the fact that most people emigrate in search of a better job and higher income.

VIII. Conclusions

International migration has been increasingly important for Bulgaria, being a country that has experienced large-scale emigration in the last decade (almost 10% of its population) and now which now sees a rising seasonal emigration and pressure for immigration by “third country nationals”. High demand for reliable and comprehensive data on migration statistics poses serious challenges to official statistics in the country. To this end, the Bulgarian NSI plans to move forward with the Population Register as an integrated data source on documenting residency. The main challenge is to access and integrate data from various administrative sources and use them to improve the production of migration statistics. As population mobility gathers momentum, enhancing international cooperation through conducting mirror estimations and bilateral projects become important tools for improving migration statistics.

IX. Influence of the global economic crisis on Bulgarian migration.

In the past months there has been speculation as to whether short term migrants are returning home. Trade unions in the country noted that eligibility to receive unemployment benefits in Bulgaria for employment periods in some other European countries could provide motivation for such a return. Opinion is divided as to whether there is enough evidence to indicate that a mass return has started.

9.1. What do we know?

9.1.1. Renewed employment strategy for 2008-2015 adopted

In April 2008, the Bulgarian government adopted an employment strategy for 2008-2015. This aims to implement the EU’s updated Lisbon growth and jobs strategy, whereby the Member States agree on integrated guidelines on economic and employment policies for a three-year period and individual countries draw up national reform programmes to implement the guidelines. The current central feature of the Lisbon strategy is employment policy promoting flexicurity.

9.1.2. Challenges

Bulgaria’s employment strategy for 2008-2015 has been adopted in response to the following challenges facing its socio-economic development in the medium-and long-term perspective:

- following EU accession in 2007, Bulgaria is obliged to implement EU employment policy, including Regulation (EEC) No 1612/68 on freedom of movement for workers;
- Bulgaria has low productivity levels compared to the EU average;

- There is an increasing shortage of labour in Bulgaria, in the context of a continuing demographic crisis and rising emigration;
- Bulgaria has the lowest wages of those EU Member States that face large-scale emigration;
- Bulgaria has a high level of non-regulated employment, which distorts the labour market;
- there is a deteriorating structure for overseeing unemployment,
- the vocational training system does not correspond to the needs of the economy;
- there is a need for an improvement of the working environment and working conditions,
- regional differences in terms of employment and unemployment levels are deepening;
- it is expected that the number of immigrants who pass through Bulgaria will increase.

9.2. Main directions

The main aims of the 2008-2015 strategy include ‘activating’ economically inactive people and ‘non-integrated’ and disadvantaged groups. It is hoped that the strategy will also deliver appropriate education to enable Bulgaria’s transition to a knowledge-based economy. Further, the strategy seeks to increase labour market flexibility and security and encourage a policy of economic growth that will lead to higher quality jobs.

The strategy’s implementation is expected to increase the employment rate to 72% by 2015 (currently around 62%); increase the labour force participation of older workers, up to an average retirement age of 68; cut the unemployment rate (currently around 6%) by three percentage points; reduce the early school-leaving rate from 16.6% to 10%; and increase labour productivity.

9.2.1. Social partners’ involvement

The Strategy for Employment was developed in conjunction with experts and with the active involvement of the social partners, who in fact initiated the development of the Strategy in response to political and economical changes. The Strategy was discussed at the National Council for Employment Promotion (NCEP) and the National Council for Tripartite Cooperation (NCTC)

Based on analysis and discussion of the social and economic situation in the country, the majority of the social partners’ recommendations concerning the Strategy’s objectives and activities were adopted.

The Strategy states that its successful implementation requires the participation of the social partners. In addition to their participation in the working groups that develop employment policy, they have consultative functions in a number of tripartite bodies that implement these policies. The tripartite bodies at national level are the NCTC, the NCEP, the Economic and Social Council and the National Council for Regional Policy.

At regional and local levels, the social partners are actively involved in the implementation of employment policies through Regional Employment Commissions and Municipal Employment Councils.

9.2.2. Government Initiatives

Official statistics indicate that the increase in unemployment in Bulgaria is smaller than expected. In March 2009, the unemployment rate was registered at 7% due to measures undertaken by the government to preserve employment levels. The Government is paying some employers who are ready to keep workers on part time contracts

There is no clear indication how remittances will continue, as the tendency to use informal channels for transfers is strong, especially now when there is mistrust in the banking system.

According to the Government there is no reason to expect dramatic increases in unemployment if all mechanisms of the Operational Programme for Human Resource Development (OPHRD) are put to use.

Some 100,000 people are already involved in various components of this OPHRD. The programme was the first of the Operating Programmes to start, in July 2007. This OP encompasses education, the labour market and social inclusion. It has a total budget of 1.2

billion euro, including 39% for integration in the labour market, 14% for social integration and 36% for education.

A programme entitled *New Employment Opportunity* and funded by the OPHRD is now operational with a budget of 8 million leva and includes 3,000 people. Another 4,591 persons participate in a programme aimed to encourage worker mobility (with a budget of over 3 million leva). 5,000 are employed as child carers under a programme in support of maternity (with a budget of 19.5 million leva). A follow-up programme (*Back to Work*) with a budget of 64,000 leva is designed to include some 8,000 beneficiaries over a period of three years. A programme for training services and encouragement of employment has commenced and will go until 2010. It has a budget of 36 million leva that will go to a total of 18,000 beneficiaries.

Another new programme is *Adaptability*, which will pay 132 leva for retraining to 42,000 employees working reduced hours. A total of 72 million leva is available for this. *On the Road* is designed to cover workers' costs for commuting to and from work (up to 80 km one way) for a period of one year. Over 6,000 beneficiaries will get payments under this programme. *I Can* starts in June 25 and will pay up to 1,500 leva for training to 7,000 employees (hired on a contract of employment). Development is designed for workers who have been made redundant since November 2008. Under this programme, they will be trained, placed and have their first-year wages paid by the Government.

A new political party has recently been registered in Bulgaria, claiming to represent Bulgarian emigrants. Bulgarian emigrants in Greece have started to return en masse to Bulgaria according to the leader of the new party "The Other Bulgaria", Bozhidar Tomalevski.

He appealed to the Bulgarian Government to deal with the problem of illegal Bulgarian workers in Greece and stated that his party, which was set up by Bulgarian emigrants, would put forward new, adequate political measures to assist Bulgarian emigrants and their families.

Increased stigmatisation of migrant communities in well developed countries might also be a reason for return of short term emigrants.

Given the fact that the global economic crisis, after initial delay, is affecting Bulgaria and the economy is on the verge of recession, migrants who invested money in developed countries might prefer to stay where they are and await improvements.