



# **Mutual Learning Programme**

DG Employment, Social Affairs and Inclusion

**Peer Country Comments Paper - Serbia**

## **Reconciling actors, dividing sectors: a way to revive collective bargaining in Serbia?**

**Peer Review "Towards a more dynamic collective bargaining"**

**Portugal, 23-24 October 2017**



**EUROPEAN COMMISSION**

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## **1 Background to collective bargaining in the peer country**

Since its establishment after the collapse of one-party communist system in 1990, collective bargaining has been characterized by the asymmetry in legitimacy and bargaining power of the three key representatives of organized interests – government, trade unions and employers. The government (state) has always been able to influence the key outcomes of the social dialogue and collective bargaining, especially at the national and sectoral levels – but often also taking the role of a powerful mediator even at the company level.

Judging by the collective agreements signed, the main trends with regard to collective bargaining are differentiated – in the public sector, there is a tendency for sectoral negotiations, while in the private sector decentralised, company-level bargaining is more common. However, throughout the country the involvement of union and employer organisation leadership remains high at all levels, including the company level. The actual mechanism of collective bargaining is still very centralised, whereby the heads of all organisations represented at the tripartite Socio-Economic Council (two trade union confederations, the Serbian Association of Employers and the Government, with the dominant involvement of the Ministry of Labour) are heavily engaged in collective bargaining, even though it mostly takes place at the sector level. Wage bargaining in the public sector is still predominantly a matter of centralised talks between the representatives of the government represented by the line ministries and the trade unions, whereas in the private sector it takes place mostly in larger, foreign-owned privatised companies.

Recently, three important and related developments have underlined the importance of the central level, the dominant role of the government and the weakness of other actors. First, after the amendment to the Labour Law in 2014, the conditions for the extension of sectoral collective agreements to non-signatories have become much more restrictive, allowing the Minister of Labour to extend the agreement only if the majority of employees in the sector are covered by signatories. This has further undermined the development of sectoral bargaining outside of public sector, where the government is able to negotiate directly with sectoral trade unions. While around 2013 there were three extended agreements in the private sector (chemical and non-metal industry, construction and construction material industry, and metal industry), in 2015 there was only one - for musical performers.

Second, the preparation and signature of the Stand-by Agreement with the International Monetary Fund (IMF) (2014-2015, expiring in 2018) was preceded by a set of structural reform measures, the most important of which was a revision of the Labour Law in the direction of enhanced flexibility, and fiscal consolidation measures, including the cut of all public sector wages above net 25,000 dinars (some 200 EUR) by 10%.

Third, as far back as 2009, and even more prominently since the conclusion of precautionary Stand-by Arrangement with the IMF, the Government has taken the decisive role in setting the minimum wage, instead of trying to reach the consensus within the Socio-economic Council. With the successful end of Stand-by Arrangement in sight, the minimum wage is set to increase substantially in 2018.

## **2 Assessment of collective bargaining**

### **2.1 Brief description of collective bargaining in Serbia in comparison to the example of Portugal**

Industrial relations and collective bargaining in Serbia are primarily regulated by the two legal documents. The first one is the Labour Law, adopted in 2005 and thoroughly revised in 2014, containing articles regulating the actors and procedures of collective bargaining. It also regulates the minimum wage setting. The second one is the Law on

Socio-Economic Council, adopted in 2004, focusing on tripartite concertation, especially at the national level.

According to the Labour Law, Socio-Economic Council is in charge of negotiating the minimum wage once a year, in September for the following year. Before the changes in 2014, the determination of minimum wage was also upon its mandate every six months. If consensus is not reached, the Government makes the decision.

Back in 2011 when it was stated that despite the consolidation of several nationwide union confederations and the continuous presence of an employers' organisation, the role of central bodies of industrial relations actors has remained the most important (Arandarenko, 2011)<sup>1</sup>. This statement can be reaffirmed in 2017 as well. Despite the shift towards sectoral and company-level bargaining over pay and working conditions, sectoral collective agreements in the private sector have remained few and far between, while at the company-level agreements are common only in large manufacturing firms.

Thus, unlike in Portugal, the central level remains the most important, especially if focus is on collective bargaining in the private sector. Collective bargaining and collective agreements which include negotiations over pay at the sectoral level are very common within the public sector, where the coverage is close to 100% and typically include pay regulations as well. The public sector is very significant in Serbia and its broad definition encompasses some 600,000 persons, which makes almost 30% of all formal employment and around a third of all wage employees<sup>2</sup>. On the other hand, sectoral collective agreements are very rare in the private sector. There are several reasons for this unfortunate trend. These include, first, the weakness and low membership (either as a share of member employers within all employers in the sector or as a share of employees employed by the members of sectoral federations) within the only representative employers' association. Second, the influence of Council of foreign investors which advocates company level negotiations and advises its members not to cooperate with the Employers' association<sup>3</sup>. And third, the recently introduced restrictions to the extension of validity of sectoral collective agreements to non-signatory firms, which will be explained in more details below.

## **2.2 How does the evolution of collective bargaining compare to that of Portugal? What were the reasons for these trends?**

While to some degree it could be said for both Portugal and Serbia that they have experienced top to bottom transition to pluralistic industrial relations as part of their overall democratic transition - Portugal after 1974 and Serbia after 1990 - the initial circumstances, both internal and external, were much more favourable in Portugal than in Serbia.

Internally, in Portugal the actors of industrial relations and collective bargaining were better prepared to take their new roles and responsibilities, as they operated within the undemocratic, but still capitalist system. In Serbia, however, under the old socialist system, there was no significant employer other than the state, and trade unions were immersed in the self-management system, which supported an ideological fiction according to which interests of workers and their firms were inseparable<sup>4</sup>.

Externally, Portugal was able to quickly integrate within the then European Community, and to benefit institutionally from the adoption and emulation of labour legislation which was at the time quite favourable towards the trade unions. It was also able to from the generally supportive atmosphere for the wide concertation of social partners and collective bargaining at the national and sectoral levels. Serbia however, was for the

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<sup>1</sup> Arandarenko, M. 2011 Industrial Relations Profile – Serbia. Eurofound.

<sup>2</sup> Arandarenko, M. et al. 2017 Analysis of capacities and organisational structure of the social dialogue participants. Report within the project '*Analytical support to negotiations with the EU*

<sup>3</sup> Ibid.

<sup>4</sup> See for example M.Korac 1977. *Socijalisticki samoupravni nacin proizvodnje I-III* (Socialist self-management mode of production), Jugoslovenska knjiga.

whole decade during the 1990s immersed in the war for the Yugoslav legacy, faced with sanctions and isolation, and left without any official ties with the European Union (EU).

After the political change in 2000, which brought about the end of sanctions, Serbia re-established its membership in the World Bank and IMF and these institutions became the main agents of international advice in labour and industrial relations matters and they exercised key influence on the neoliberal Labour Law adopted in 2001. The impact of the more balanced agendas of the EU and International Labour Organisation (ILO) was felt stronger between 2004 and 2008, with the adoption of in some aspects pro-labour Labour Law in 2005 and the establishment of Socio-Economic Council. That period was marked by the dynamic consumption-driven economic growth and rapid increase in government revenues due to the introduction of VAT and the peak in privatization proceeds. During that period, the government intentionally increased the previously depressed wages in the public sector and as a result, the difference between public and private wages increased quite substantially (Lausev, 2012)<sup>5</sup>. This led to further strengthening of trade unions in the public sector, while they remained very weak in the private sector.

As part of the political programme agreed with two major trade unions before the elections, the new government, established in mid-2008, agreed the extended validity of the General Collective Agreement (GCA). This was expected to bring substantial pay rises and to extend certain facultative fringe benefits common only in the public sector, such as 'hot meal' and holiday allowances, to all workers. However, the advent of the Great Recession that spread to Serbia in the autumn of 2008 caused the Government (supposedly under the pressure from employers' association) to withdraw its signature from the extended GCA in early 2009.

Since then the tide has turned against the further development of social dialogue and collective bargaining. The GCA expired (without ever being extended) in 2011, and no new one has ever been concluded. Serbia was exposed to prolonged economic stagnation, with the GDP recovering to its pre-crisis level only in 2015. The employment rate dropped much faster than the GDP, reaching its historical minimum in 2012 of 2.15 million, or 45.3% for the population 15-64 according to the Labour Force Survey (LFS). It has significantly recovered since, but its quality remains modest and the wages are low even in sub-regional perspective, with the average monthly wage currently standing below 400 EUR net.

The growth crisis from the late 00s has gradually transformed into public debt crisis in early 10s, and the Stand-by arrangement (SBA) with the IMF was concluded, but was soon dropped in 2011. The next SBA was concluded only in 2015, but this time the harsh austerity measures combined with structural reforms were arranged beforehand. The austerity measures included, among others, the nominal cut in public sector wages by 10%, reduction in the number of public sector employees, nominal pension cuts, extension of pensionable age for women and introduction of actuarial penalties for early retirement, and a thorough reform of the Labour Law in the direction of more flexibility. Among many changes which restricted individual and collective workers' entitlements, there is also one reducing legal possibility to extend the collective agreement to non-signatory employers within the sector.

### **2.3 How does the rules for extending the validity of an agreement after its expiry compare? What impact does these rules have on the collective bargaining system?**

According to Article 263 of the Labour Law, collective agreement is concluded for the duration of up to three years. After the expiration of that period, the agreement automatically ceases to hold unless the partners agree differently at least 30 days before

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<sup>5</sup> Laušev, J., 2012. Public sector pay gap in Serbia during large-scale privatisation, by educational qualification. *Economic Annals*, 57(192), pp.7-24.



the expiration of the old agreement. The validity of the agreement can cease before the expiration, either by the joint agreement of all signatories, or by unilateral cancellation, in accordance with the said agreement. In case of cancellation, collective agreement remains valid up to six months from the cancellation date. The parties are however obliged to start negotiations within 15 days after the cancellation date.

In practice, even this procedure, which can be considered to be flexible in comparative perspective, is not strictly enforced. Actually, it is more common for one of the parties to simply 'withdraw the signature' of the agreement, although such a gesture is not recognized by the law. But as already mentioned, the most famous example of such behaviour was the move of central Government in early 2009, withdrawing its signature on the extended GCA. More recently, on several occasions the Employers' Union had 'conditionally' signed sectoral agreements, expecting that more individual companies would join the agreements, and then when that did not happen, the Union simply withdrew its 'conditional' signature. Again, the institute of conditional signature is not recognized by the Law.

In comparison with Portugal, the practice of withdrawing the signature which is the dominant, although legally unrecognized way of cancelling agreements, appears to be even more harmful than the reduction of survival period of cancelled collective agreements which was applied in Portugal since 2003 and reinforced with the MoU.

#### **2.4 How do the use of extension mechanisms to achieve a wider scope of application compare?**

Before the recent changes in 2014, the Labour Law had allowed the Minister of Labour to decide on behalf of the Government, in essence according to his understanding of what constitutes the common interest, to extend the validity of sectoral collective agreements to all employers (and consequently their employees) in that sector. The common interest was broadly defined as providing equal work conditions, reducing intra-sectoral wage differentials, preventing social dumping, and other similar elements. However, under the pressure of influential Foreign Investors Council<sup>6</sup> and some international agencies such as the United States Agency for International Development (USAID), pushing for structural reforms to enhance flexibility in the labour market, this regulation has been changed. Now the Government can decide to extend the collective agreement to all employers only upon the additional condition that the original agreement covers the employers employing more than 50% of the total number of employees in the sector / branch. The decision is made at the request of one of the interested parties, alongside with the proposal of the Ministry of Labour, and upon the opinion of the Socio-economic Council.

Since this change in 2014, the Employers' Association has started a new practice in sectoral collective bargaining in the private sector. It 'conditionally' signed three sectoral agreements - for agriculture, chemistry and non-metals and construction -, under the condition that the majority of employers within each of these sectors ex post approve of and join the agreement within the set deadline. Since non-signatory employers did not do that, the EA eventually withdraw its signature in all three cases, without the agreement ever being put in force. The only agreement that has remained in force is a marginal one, for music performers and artists. Such behaviour has caused an outcry of trade union sectoral signatories, since it is difficult for them to explain to their members that the collective agreements they have signed were just exercises and trials, rather than legally binding contracts.

Compared to Portugal, it is clear that in Serbia the extension of collective agreements has become de facto impossible in the private sector because of the low density of Employers' Association and because of the changes in legislation limiting the possibility of the Government to enforce the extension in the name of common interest.

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<sup>6</sup> See White Papers of FIC, various years.

### **3 Assessment of the success factors and transferability**

Despite the significant differences in the nature of what was basically a bailout programme for Portugal between 2011 and 2014, on the one hand, and Stand-by Arrangement for Serbia for the period 2015-2018, on the other hand, it is interesting to note that, after successfully implementing the fiscal consolidation programme, Serbia is now roughly at the point at which Portugal was in 2014. The question is, can Serbia, upon exiting the SBA emulate to a degree the post-MoU experience of Portugal and make the social dialogue and collective bargaining more dynamic and be able to upgrade them into strong processes supporting economic development and social cohesion?

Some of the circumstances are similar between Portugal and Serbia, however the circumstances that are different are more pronounced. It seems that Serbia would need much more efforts and would have to make several important extra steps to catch up with Portugal. What appears to be similar is the Serbian government's commitment to improve living standard of the population after three years of sacrifices and stagnation.

After several years of freeze or low nominal growth, and unilateral decisions on the minimum wage by the Government, it has been announced in early September that the Socio-economic Council has reached a consensus that the minimum wage will increase from 130 dinars net per hour in 2017 to 143 dinars in 2018. With the anticipated year on year inflation rate of around 3% it represents a significant real increase of some 5%. The Government is typically keen to increase the minimum wage for fiscal reasons, since in that way it increases its revenues from self-employed and their employees of whom the large majority report only minimum wages. This time it has promised to employers that net wage increase will imply less than proportional increase in labour costs, since it intends to reduce somewhat the tax wedge at the level of minimum wage. However, the exact parameters of labour tax cuts are not yet known. Another sign of better relations among the social partners is the very fact that for the first time since 2009 it was for the Socio-economic Council to make the decision about the increase in the minimum wage, rather than the Government itself.

However, there are other important preconditions and circumstances that appear to be less favourable in Serbia than in Portugal.

The relative weakness of trade unions and Employers' Union can be explained as stemming both from structural, objective circumstances, such as retention of significant state ownership throughout the prolonged transition period, as well as from subjective factors, such as the inability of trade unions and employers' organizations to attract more members, to organize their actions more efficiently and to jointly agree on a set of basic common goals, avoiding thus the need for frequent state intervention and mediation. Instead, trade unions and employers' associations have been engaged in permanent disputes over representativeness and other issues, both among themselves and against the other side in social dialogue and collective bargaining. The rules regulating representativeness at all levels are quite unclear and are expressed as percentages of the total employment, the concept of which is ill defined. Furthermore, the rules regulating the process of establishing and revoking representativeness are even murkier. As a result, even at national level, only one trade union confederation, Confederation of Autonomous Trade Unions (CATUS) could be considered unquestionably representative. Another confederation, Nezavisnost, is represented in SES, but two rival union confederations currently outside of SES dispute its representativeness. Furthermore, Employers' Union representativeness is disputed not only by trade unions, but by some other business associations, including the Council of Foreign Investors.

It has recently been suggested (Arandarenko et al. 2017)<sup>7</sup> that the best way out from this lose-lose situation for collective bargaining actors would be mutual recognition of all relevant parties and acceptance of new relevant national actors, in the first place one or two trade union organisations with significant membership, into SES. New approach would include simpler and more relaxed rules for recognizing representativeness at all levels, based on relatively low absolute numbers rather than on relatively high percentages of unknown and disputable total populations of employees and employers. This would enable collective bargaining partners to enter into fruitful and constructive negotiations at various levels – national, sectoral, sub-sectoral, and firm-level.

Another weakness of current sectoral bargaining lies in the large size of most sectors according to national classification of sectors used for over 30 years and taken over for bargaining purposes. Employers complain that current sectors in which bargaining takes place are agglomerations of quite different branches and it is difficult to find common ground for pay rates and other negotiating items. On the other hand, trade unions are reluctant to accept segmentation of sectors because they are organized precisely around the current sectoral lines. However, trade unions should eventually realize that it is still better to be able to conclude many collective agreements in branches and sub-sectors, than to negotiate a few agreements in large sectors and eventually conclude none.

#### **4 Questions to the host country in the Peer Review**

- What are the rules regarding representativeness of social partners? Is there an institute of mutual recognition?
- What is the typical size of sectors covered by negotiations? How many sectoral agreements there are?
- What was the share of minimum wage to median / average wage during the implementation of MOU? Has it dropped and by how much?

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<sup>7</sup> Arandarenko, M. et al. 2017 Analysis of capacities and organisational structure of the social dialogue participants. Report within the project 'Analytical support to negotiations with the EU.

## Annex 1 Summary table

### Background to collective bargaining in the peer country

- Both countries undergoing transition to pluralist industrial relations at different time points
- Both countries forced to enter into bailout / fiscal consolidation measures
- Portugal having longer tradition and stronger actors
- In Serbia, centralized concertation still dominant, weak bargaining at the sectoral level outside the public sector

### Assessment of collective bargaining

- During the MoU / SBA collective bargaining suffered several setbacks
- Restrictions to extended coverage of sectoral collective agreements introduced as part of structural reforms in 2014
- Coverage of CA in private sector in Serbia fell from low to almost non-existent
- Minimum wage mostly kept unchanged and fell in real terms

### Assessment of success factors and transferability

- End of MoU / SBA marked by efforts to improve living standard and revive collective bargaining
- Minimum wage increases
- In Serbia, there is a need to make extra effort to replace culture of conflict with the culture of cooperation among the collective bargaining actors
- Rules for representativeness should be relaxed and made more transparent
- Large sectors should be divided into more homogenous branches for more dynamism and better results of collective bargaining

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## Annex 2 Example of relevant practice

Name of the practice:	Minimum wage determination
Year of implementation:	Semi-annually since 2005, last negotiation round in September 2017, in reference to 2018
Coordinating authority:	Socio-economic Council
Objectives:	It has been agreed to increase the minimum wage from 130 dinars net per hour to 143 dinars in 2018. The goal is to restore and increase the living standard of low wage workers and to support economic recovery through the recovery of private consumption.
Main activities:	Negotiations between parties within the Socio-economic Council in early September. Quickly reached compromise solution. Government promised to reduce the tax wedge at the level of minimum wage to relax the labour cost pressure on employers caused by the agreed rise in net minimum wage.
Results so far:	Restored cooperation and coordination instead of conflict within the Socio-economic Council. Government abandoned unilateral way of determining minimum wage most frequently used during the economic crisis and the implementation of SBA



