

Croatia

Becoming the 28th EU member state on 1 July 2013, Croatia was however already under the pressure of in particular World Bank and IMF since 2010 to flexibilise its labour market and labour legislation. In order to get out the faced recession, the Croatian Government adopted in April 2010 an Economic Recovery Program of which the “revision of labour regulations to create a more dynamic labour market by ensuring labour force flexibility and job security” a central pillar. In order to do so, the government had asked for support of the World Bank for this possible labour law reform. Not surprisingly the World Bank came to some key recommendations in order to deregulate the labour legislation. There key recommendations were amongst others:

- Reduce the costs of hiring and firing. In particular dismissal costs had to be lowered by “1) removing the requirement that fixed-term contracts can be used only on an exceptional basis, 2) relaxing conditions for lawful dismissal when some individuals and some categories of protected workers need to be dismissed for business reasons and 3) relaxing the conditions for collective dismissal (in particular in relation the consultations with the works council, the detailed social plan and the required approval by the employment bureau)”;
- Render working hours more flexible, for instance the actual working time during each month can not deviate by more than 12 hours from the standard 40 hours a week and thus limits the ability of employers to increase working hours during period of high demand or to reduce them when demand is low;
- Address wage rigidities which are mainly set by collective bargaining agreements and one suggestion was to provide for the possibility of cancelling with notice a collective agreement concluded for a definite term and by limiting the extension of an expired agreement to a maximum of six months.

Other sources of “labour market rigidity in Croatia” were according to the World Bank:

- the pro-labour bias labour courts exhibit: according to the Labor Law, workers who were dismissed without just cause should be either re-employed or paid their foregone earnings (up to 18 months of salary). The World Bank considers that “*the latter option would make the expected cost of dismissal high (expected cost reflects the high probability that the court will rule in favor of the dismissed worker)—a powerful and effective deterrent to lay-offs. This in turn negatively affects the ability of employers to adjust the size and composition of their workforce to changing market demands*”;
- the central position of the trade unions: according to the World Bank “*although strong trade unions increase employment protection for their members and workers covered by collective agreements, this worsens the employment chances of workers not covered by the EPL, the unemployed, and entrants into*

the labor market. Croatian unions have also demonstrated their strength by influencing EPL, blocking most attempts by the government or employers' associations to make the labor market more adaptable. Trade unions amplify both the positive and the negative effects of EPL, enhance insider job security and benefits (including wages), and lower outsider opportunities and benefits. More generally, by limiting job destruction and creation, union activity is also likely to slow down enterprise restructuring in unionized sectors, which lowers productivity and competitiveness”.

- collective bargaining agreements (in particular in the public sector): for the World Bank “*collective agreements cause wage rigidities because under EPL after they expire they cannot be terminated or renegotiated without explicit trade union agreement. Public sector collective agreements were negotiated during the period of economic prosperity preceding the global economic crisis and contain generous the wage and employee benefit provisions. Regulations and the terms of collective agreements have made it virtually impossible for the government as employer to renegotiate the compensation package granted to public sector workers and adjust it to reflect the changed economic conditions. The wage rigidities resulting from inefficient regulation of collective agreements surely contribute to the unsatisfactory labor market outcomes in Croatia.*” To note is that the Government had attempted to address the “inefficiency of the rules concerning collective agreements by proposing amendments that envisaged (a) the possibility of terminating a collective agreement with one month’s notice, and (b) limiting the duration of the after-effect to six months rather than the current indefinite duration. However, trade unions effectively blocked the planned changes by collecting enough signatures to call a national referendum. As a consequence, the government withdrew the proposed changes to the Labor Law from the Parliament. At the same time the Constitutional Court ruled that pertinent provisions of Labor Law cannot be revised until the end of 2011 unless the referendum allows the change.

The World Bank therefore advised the Government to consider the following concrete options to render labour regulations more flexible:

- Removing the provision that fixed-term contracts can be used only on an exceptional basis and when justified by certain reasons, such as performance of a specific task or occurrence of a specific event (Labor Law, Article 10).
- Reducing the maximum amount of compensation paid to a wrongfully dismissed worker from the current 18 months’ salary to 6 months (Article 117).
- Relaxing the conditions for lawful dismissal of an individual due to business reasons, which are currently: lack of alternative employment, the worker’s socioeconomic status, retraining for a different job, and closure of the pertinent job (Article 107).
- Relaxing the conditions for collective dismissal, which currently involve consultation with the workers’ council –with the aim of removing the need for dismissal and preparation of a detailed –redundancy social security plan (Articles 120 and 121).
- Relaxing the constraints on dismissal of some categories of protected workers in case of justified business reasons, while ensuring that these workers are adequately protected (Articles 71, 72, 73, 113).

- Increasing work-time flexibility by extending the scope for rescheduling work hours (Articles 46 and 47).
- Providing for the possibility of cancelling with notice a collective agreement concluded for a definite term (Article 263).
- Limiting the extension of an expired collective agreement (the after-effect) to a maximum of 6 months (Article 262).

The World Bank is however aware that *“because changes to an employment protection legislation PL tend to be politically difficult, it is advisable to prepare for them by carrying out a public information campaign that explains their rationale and by initiating dialogue with social partners. The key message that needs to be conveyed is that relaxing the most rigid provisions of labor law will eventually lead to better employment prospects, shorter spells of unemployment, less informality, higher productivity, and consequently higher incomes. This involves introducing flexicurity: moving from protecting jobs to protecting workers.”* (World Bank 2011)

But not only the World Bank, also the IMF has been “on the back of the Croatian government” to deregulate their labour market and legislation. In its concluding statement of an IMF staff visit of February 2012, it is concluded that not only Croatia’s export and growth performance is constrained by relatively high wages and pervasive rigidities but also that implementation of long overdue structural reforms is necessary to improve competitiveness and attain sustainable medium-term growth. For the latter priority must be given to structural reforms aimed at (i) increasing labor market flexibility by changing labor laws to induce more competitive wage setting and by reducing hiring and firing costs; (ii) boosting labor force participation through reforms of the social protection system; and (iii) reducing public sector employment and improving efficiency. (IMF 2012a) Basically, the IMF comes to the same conclusions of the World Bank by stating that “Labor market flexibility is limited due to strong employment protection and strict regulations, particularly in the public sector. Hiring and firing costs are high, notably due to high tax wedge on labor, relatively high severance payments, numerous administrative loops for collective dismissals and pro-labor bias of courts, all of which considerably raise dismissal costs. There is also little flexibility to adjust working hours. Collective agreements (with a coverage of 50–60 percent), especially in the public sector, contribute to wage rigidities as, until recently, they could not be changed without explicit trade union agreement and all provisions of a collective agreement of definite duration continued to be valid after it expires until a new agreement has been signed”. The Croatian government is therefore recommended to “increase labor market flexibility by easing labor markets regulations and reducing insider protection, introduce more flexibility in setting wage contracts and lower hiring and firing costs will induce more competitive wage setting and raise the profitability of investment in tradable sectors ». In particular, “several changes in the Labor Law would reduce the hiring and firing costs, and notably: (i) relax the conditions for dismissal, notably for poor performance, for collective dismissal and for some categories of protected workers in case of justified business reasons; (ii) allow firms to opt out from onerous sector-level collective agreements; and (iii) decrease the maximum amount of compensation paid to a wrongfully dismissed worker from the current 18 months of salary to a more affordable 6 months. » (IMF 2012b) And it goes on by stating under chapter “5. [Structural Reforms to Raise Growth](#) » that IMF Staff urged the authorities to implement a strong reform agenda to address these weaknesses. The government’s program, adopted in August, is a good start and some measures have already been taken. However, many key

reforms remain to be developed. Staff recommended that priority be given to measures aiming to: (i) raise labor force participation via a faster increase in the retirement age for women to 65, a further increase to 67 for both men and women, higher penalty for early retirement, and tighter control over the apparently abused system of disability retirement; (ii) improve labor market flexibility by reducing hiring and dismissal costs, including for poor performance, ensuring that the envisaged single open-ended contract does not impede flexibility, and allowing firms to opt out from onerous sector-level collective agreements; (...) The authorities largely agreed with staff's diagnostics and reform priorities. They stressed their commitment to rapid implementation of the recently adopted structural agenda, with a new Pension Act and Labor Law planned to be adopted by mid-2013, although they noted that raising the retirement age to 67 is a task for the future. They also pointed out that Croatia's inclusion in EU economic governance mechanisms would spur further institutional and structural reforms." In an accompanying letter, the Croatian government also indicated that "in the coming months the Government will initiate the reform of the labour law, which will facilitate temporary and part-time work. (IMF 2012c)

In July 2011, the Government began a process of establishing the Municipal Labour Court in Zagreb. Before, there were no courts specialized in labour disputes in Croatia. In January 2012, this first labour court in Zagreb started its work. Apart from increasing the efficiency of legal proceedings from labour disputes at the Municipal Civil court in Zagreb (due to work overload judiciary in the labour law field took on average between three and five years), its jurisdiction is also extended to disputes on the cancellation of collective agreements, extraordinary dismissals and non-payment of contributions and wages. It is hoped, also by the trade unions, that this reform will help to overcome to have more specialized judges for labour disputes. Though the experts claim that the establishment of labour courts will not bring any major change, trade unions are persistent in their demand for the establishment of such courts in other larger cities in Croatia, as well as specialized departments in other cities, claiming this will lead to higher competencies and specialization of judges for solving labour disputes and hence to higher efficiency of the judicial system

In March 2012, and after several unsuccessful attempts of adopting an act on representativity in recent years, the new Croatian Government started once again discussing the draft Act on representativity of trade unions and employers. Six drafts of the law have been presented so far – each time with completely different criteria – drafted by the Ministry of Labour and Pension System (none of them relying on the draft Act drafted by the independent expert group established by the former government, comprising experts of the Zagreb Faculty of Law and the ILO). According to the Croatian ETUC affiliate, UATUC, the draft is highly complex and too complicated and shows a lack of understanding of basic concepts and terms (such as "area for which one bargains" and the "level on which one bargains"), Furthermore, there is no consensus on the objectives and criteria of the act and there are several major objections to the current draft Act, such as for instance, it allows that trade unions, and not only associations of a higher level, may be members of the local and national Economic and Social Councils and gives a right to employers to demand the determination of representativity of trade unions, i.e. the calculation of the number of their members, UATUC strongly opposes the draft law as the Government of the Republic of Croatia proposes that the Act on Representativity regulates the issue of the extended application of legal rules contained in collective agreements in a way that the provisions of the Representativity Act would render null the provisions of the Labour Code on the subject. The article in question (Article 262) of the Labour Code determines that, if collective agreement does not stipulate differently, after the expiry of the collective agreement, the legal provisions contained

therein are still applied until the conclusion of a new collective agreement, as a part of previously concluded employment contracts. The Article 262 was introduced with the aim of encouraging social partners, and employers in particular, whose collective agreements are expiring to start collective bargaining rounds for new collective agreement and that in the meantime, until the conclusion of a new agreement, workers are guaranteed their rights. All employment contracts with employers who signed the collective agreements are based on this agreement, so the expiry of the application of the agreement before the conclusion of a new one would lead to the expiry of the rights contained in the employment contracts. For UATUC, the abolishment of this provision would lead to blockage of collective bargaining in Croatia, with the regulation of labour relations going to be exception and not a rule, and also the latter move is a clear attempt to amend the Labour Code (without actually “opening” the Code itself and without negotiations with social partners, but through another piece of legislation. Also the employers do not consider to change the Labour Code via this Act as it will lead to legal insecurity. Although no agreement was reached on the Economic and Social Council meeting held on 5 June 2012, the Government nevertheless decided to send the draft law into the parliamentary procedure. On 13 July 2012, Parliament adopted the Representativeness Act, Apart from the abolishment of article 262 of the Labour Code, the new Act also allows for:

- determines criteria which favour “vocational” trade unions in a way that only that particular type of trade union is guaranteed automatic entry into the negotiating committee, discriminating thus other trade unions.; this will encourage the creation of a large number of professional (vocational) unions, and lead to further fragmentation of the union movement and the demolition of the current model of industrial ;
- allows employers to initiate the process of determining the representativeness of trade unions;
- prescribes a controlled (directed) model of how a union violating thus the principle of unity of the will of the negotiating committee; and
- allows unions that do not charge a membership fee to be also representative,

The different trade union confederations have submitted (separate) requests to the Constitutional Court in October 2012 requesting the Court to render all those provisions of the Act null and void. (UATUC 2012c)

It again shows the very low interest of the social democrat Government in social dialogue. And attacks have been occurring and multiplying throughout 2012, with government also abolishing the Office for Social Partnership without prior consultations with social partners and transformed into the Autonomous Service for Social Partnership, established within the Ministry of Labour and Pension System, losing thus its independence. In August 2012, Government adopted rules obliging the management of companies and institutions in majority state ownership to initiate negotiations on amending their collective agreements in order to harmonise material rights of the workers with those of the employed in state services. Trade unions warned that the Government lacks authority to adopt this kind of conclusion, as the Law on the Government allows setting tasks for bodies of state administration, while in the case of state-owned companies the rules of company law are applicable, meaning that the ownership role is exercised through appointing the Managing and/ or Supervisory boards but not through giving them direct orders. Following the demand signed by five trade union confederations, the Government withdrew the rules on 20 September. A further attack on the freedom of collective bargaining came in December 2012, when the Parliament adopted the Act on Withholding of Payment of Certain Material Rights to the Employed in Public Services which withheld the payment of Christmas bonus for 2012 and 2013, as well as holiday allowance

for 2013, for the workers in public services. The Law had the effect of suspending certain provisions of the collective agreements in the public sector currently in force and all five trade union confederations consider this an infringement of the ILO Conventions Nos. 87 and 98, the European Social Charter, Charter of Fundamental Rights of the EU, as well as the Constitution of the Republic of Croatia. They are currently considering to use all available legal remedies – national, European and international – in order to dispute the Law. (UATUC 2012a and 2012c)

In May 2012, the government adopted “The Law on Stimulating Employment” which among other, expanded already existing measure entitled “vocational training without employment relationship”, which is applied to young unemployed without previous work experience. The measure allows for the employer to engage young workers registered at Croatian Employment Service for one year (or two years for certain professions), without signing the labour contract. The employer only has to pay pension insurance, while the state would provide health insurance and a compensation of around 220 Euro for the young worker. The employer is also obliged to designate a mentor for and produce professional training scheme for each person. Both the trade unions and youth organisations objected to the fact that compensation is lower than legal minimum wage (around 285 Euro) and expressed fears of misuse in the private sector. The further problem with this measure is that it will provide strong disincentive for employers to provide regular employment for young people, since they can now get young workers almost for free. The second measure of the new law is the exemption of paying social security contributions for a period of two years in case of employing long-term unemployed persons. The principal trade union objection to this measure was that it applies for fixed-term contracts as well, meaning in effect that Government is stimulating a form of employment which the Croatian Labour Code defines as an exemption. (UATUC 2012b)

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