



Activity 1.1. National Reviews and Panels

Country Report on implementation process of Directive 2014/67/EU in Romania

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(Text provided in English by Romanian Labour Inspection).

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1. INTRODUCTION

National peculiarities had influenced the process of transposition of *Directive 2014/67/EU* in Romania. Political developments that occurred on European level raised new concerns and increase the interest for the phenomenon of posting of workers within European market of provision of services. Expected new proposal of targeted revision of the basic *Directive 96/71/CE*, materialised in March 2016 concentrate the essential political position of some European Union Member States (*EUMS*) which is different from Romanian and other eastern *EUMS* point of view.

At national level the necessity to clarify the fiscal treatment of some parts of the remuneration package of the transnational posted workers, had determined a revision of the Law transposing *Directive 96/71/CE* one year before the expected transposition of the *new Directive*.

Employer's organisation from the road transport sector and also from temporary work agency plays a very active role in the process of defining a new law framework.

2. TRANSPOSITION PROCESS OF THE *DIRECTIVE 2014/67/EU* IN ROMANIA

From the moment of accession to the *European Union* in 2007, Romania adopted a normative package including administrative procedure for the undertakings posting workers to Romania territory. Those procedures have been enforced from that moment and include a prior declaration, the duty to provide documents regarding the labour relation and to designate a representative in Romania.

Romani choose to create a single act including entire legal provisions regarding transnational posting of workers: the already existing provisions transposing *Directive 96/71/EC* and the new provisions transposing *Directive 2014/67/EU*. Practically the transposition of the *Directive 2014/67/EU* will be made through the addition of new chapters and articles to the *Law no. 344/2006*.

Labour Inspection has taken part in the process of drafting the law transposing *Directive 2014/67/EU* within the technical commission constituted at the level of *Ministry of Labour, Family, Social Protection and Elderly*. At the moment of writing this report (September 2016) the law proposal is available on the official web page of the Ministry¹. The proposal was approved by the Government and it will be submitted to Parliament for the debates which will start in the autumn session.

¹<http://www.mmuncii.ro/j33/index.php/ro/transparenta/proiecte-in-dezbatere/4350-proiect-de-lege-privind-detasarea-salariatilor-in-cadrul-prestarii-de-servicii-transnationale>

3. MUTUAL ASSISTANCE IN THE LIGHT OF ARTICLES 6,7 AND 9 POINT 1 OF THE DIRECTIVE 2014/67/EU

In case of urgent request of information, provided by Art. 6, some cumulative conditions are necessary:

- up to a maximum of two working days from the receipt of the request;
- just in urgent cases, motivated and presented in details by requesting authority;
- requiring only the consultation of national registers (available to *Labour Inspection* - other authority could be included in *IMI* for receiving and responding to other kind of information requests - e.g. VAT, social insurance, work permits).

Regarding Art. 7 there are suggestions/practices useful to implement the provisions of this article:

- the exclusive competence of the authorities from the host *EUMS* regarding the working conditions provided by *Directive 96/71/EC*;
- at the same time continuing to monitor, control and take the necessary supervisory or enforcement measures by the *EUMS* of establishment authority (*Labour Inspection*) for the rest of the labour law provisions.

Taking into consideration the prior declaration of posting as a crucial source of information, also in the case of fraud and undeclared work, this declaration is already present in Romanian administrative procedure since the transposition of *Directive 96/71/EC*. Also the obligation to designate a person to liaise with the *Labour Inspection* has been present in Romanian administrative procedure since 2007.

Concerning the time limit to keep documents after the end of posting we consider necessary to include the obligation to deliver the documents after the end of posting, for a period of three years.

In terms of meaningful and effective bilateral specific agreements of administrative cooperation about posting it is worthwhile to mention the *Cooperation Protocol between ITALIAN MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI and ROMANIAN LABOUR INSPECTION* signed in November 2010 thanks to the *Project EMPOWER*.

Both parts are open to discuss the possibility to renew the *Protocol* considering the circumstances of *Directive 2014/67/EU*.

4. FRAUD/ABUSE AND CIRCUMVENTION IN POSTING: PROBLEMS AND SOLUTIONS AT NATIONAL LEVEL

Romanian system of workers protection and control of application of labour law cover the situations of posting in two different manners. *Labour code (Law no. 53/2003)* applies in a direct way to Romanian citizens employed by a Romanian employer that perform their work abroad. Based on the law transposing *Directive 96/71 (Law no. 344/2006)*, provisions of *Labour code* regarding working conditions that constitutes the "*hard core*", also apply to workers who are not Romanian citizens and who perform their work on Romanian territory in a posting situation.

In the area of labour law Romanian legal concepts that could apply to the cases of fake posting are those linked to undeclared work and infringement of provisions regarding minimum rights of workers. In the case of temporary work agencies the system of authorisation and the possibility to penalize those companies which perform this activity without fulfilling this procedure are also applicable (in origin *EUMS*).

Concerning abuse and fraud within posting of workers we consider three possible cases. One refers to the worker, one to the employer and the other refers to the relationship between them. First case inquiry the situation of worker, in terms of their temporary status on the Romanian territory: is he/her a foreign (other *EUMS*) worker, meaning that he/she usually performs his/her work in another *EUMS*, or it is matter of fraud with the aim to avoid the application of Romanian law (or possible any law)? In this case, Romanian law has no specific instrument to tackle this abuse.

Second case is related to the employer qualification. Is he/she a person (legal or natural) belonging to other *EUMS*, or is he/she just a fake appurtenance that hide another reality? Could the actual proportion of the activity in Romania or in the origin *EU MS* be calculated? In this case also Romanian law has no specific instrument to tackle this abuse.

Third case refers to the nature of the relationship between the worker and the service provider. The issue is to determine if this relationship exist, in terms and conditions by the origin *EUMS*? In this case, if the existence of a legal labour relation with the service provider cannot be proved, there is a possibility to use the instrument designed for tackling undeclared work.

A possibility is that that the employee has in fact a directly labour relation with the beneficiary of the activity/service provided without a written labour contract. Another possibility is to determine those fake autonomous service providers that in reality are simply workers.

Admitting a person to work without signing a labour contract can be sanctioned by imposing a fine or addressing to the prosecutor if there are more than 5 workers in this situation (*Labour code*). But the beneficiary can defend his position assuming that he has no relationship with that

person and he had a contract with the service provider which has the responsibility for labour force.

There are two main outcomes of controls realised by labour inspectors: inspection reports (findings and compulsory measures) and special reports for ascertaining and sanctioning contravention facts.

Based on sanctioning procedure Romanian labour inspectors have the competence to apply contravention sanctions only for facts which are specifically provided by law: advertisement, when the facts has a low gravity and fine, for facts with high social danger. A written contravention report must be communicated to the offender within two months after completion. The fines that are not challenged in court and/or not paid have to be sending it to the fiscal authority (enforced execution).

Posted employees on Romanian territory within the providing of transnational services, irrespective of/regardless the applicable law to the labour relationship, from the working conditions provided by the Romanian law or by the sectoral collective labour agreement. For certain infringements law provides direct possibility of sanctioning (extra work, night work, weekly rest time, minimum wage, temporary agency working, occupational health and safety) and for other breakings inspector dispose a mandatory measure and can be applied a sanction if the employers doesn't respect it.

Infringement of the legal provision regarding the work of children and young people or undeclared work of more than 5 persons is penal, so in these cases labour inspectors have to inform the penal institutions.

In case of infringement of administrative procedures there are sanctions which can be applied to the foreign enterprises which post workers on the Romanian territory. This happened when written communication regarding the posting is not sent to the territorial labour inspectorate, or the employer failing to send the declaration regarding the fact that the posted worker non EU citizen fulfils the legal conditions of employment of the sending *EUMS* to the territorial labour inspectorate and also for transmission of incomplete or incorrect data in the content of the communication or declaration. Unjustified refusal of the legal representative or designated employee in Romania of foreign companies posting workers in Romania to provide labour inspectors the documents necessary for monitoring compliance with law could be sanctioned too.

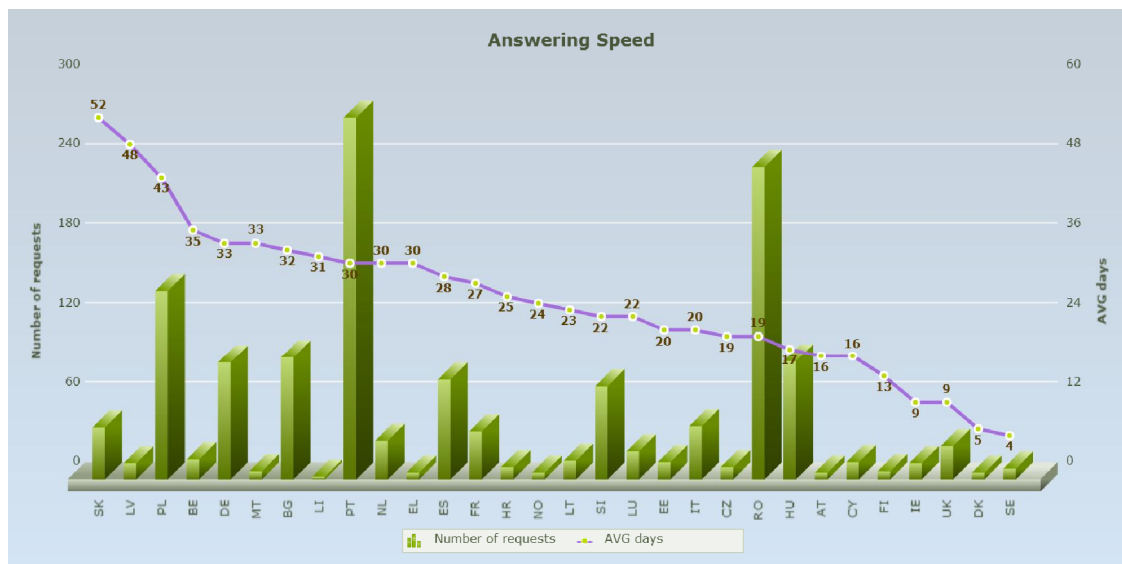
In this phase of drafting the project of transposing law the principles established in art. 4 of the *Directive 2014/67* are taken over as the main national framework. No special measures are provided at the moment but it is a possibility to transfer this task to secondary legislation (administrative procedure established by government decision).

Even if supplementary measures and criteria will be established we consider a real difficulty to draw a more precise sideline of genuine posting and to label abuse, fraud and circumvention.

5. ADMINISTRATIVE COOPERATION AT NATIONAL AND AT EU LEVEL

5.1. Urgent request of information (IMI and use of registers/databases)

Two days deadline in case of urgent request of information through *IMI* generate practical real problems in terms of internal bureaucratic management of documents. Even in those simple cases of accessing registers and electronic databases, communication trough *IMI* remains an important transnational issue which cannot shortcut the minimum multilevel hierarchical processing of the request (input and output of institutional documents).



Source: 2015 data, *European Commission*²

As a result the focus will be on compliance with deadlines and not on the comprehensiveness and matching of data relating to those requested. Aiming to solve this issue we propose a list of public source of public information accessible through internet that can be made directly available to those authorities that have this kind of urgent need of information.

On behalf of *Romanian Labour Inspection* this kind of information could be:

- Trade Register (*Office of Trade Register*);
- information from financial balance sheets (*Ministry of Finance*);
- list of authorised temporary work agencies (*Ministry of Labour*);
- Romanian legislation (*Ministry of Justice*);

² http://ec.europa.eu/internal_market/imi-net/statistics/index_en.htm.

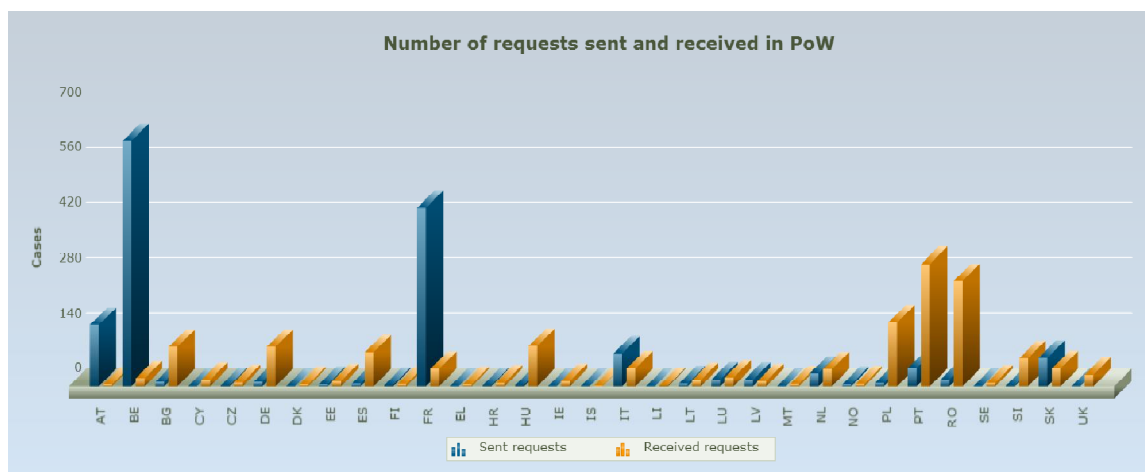
- collective agreements (*Ministry of Labour* and territorial labour inspectorates).

5.2. Practical problems in using of IMI

Lack of data regarding the posting situation provided by the requesting authority has diminished in recent years, but still remains a problem affecting the quality of information exchanged through *IMI*. Without minimum data from the requesting authority, regarding the identity of the workers, the moment and the place where they were found working in the host country and if they are still in those locations, the responses to those predefined questions are inaccurate and too general.

5.3. From real situations to opportunities for bilateral cooperation

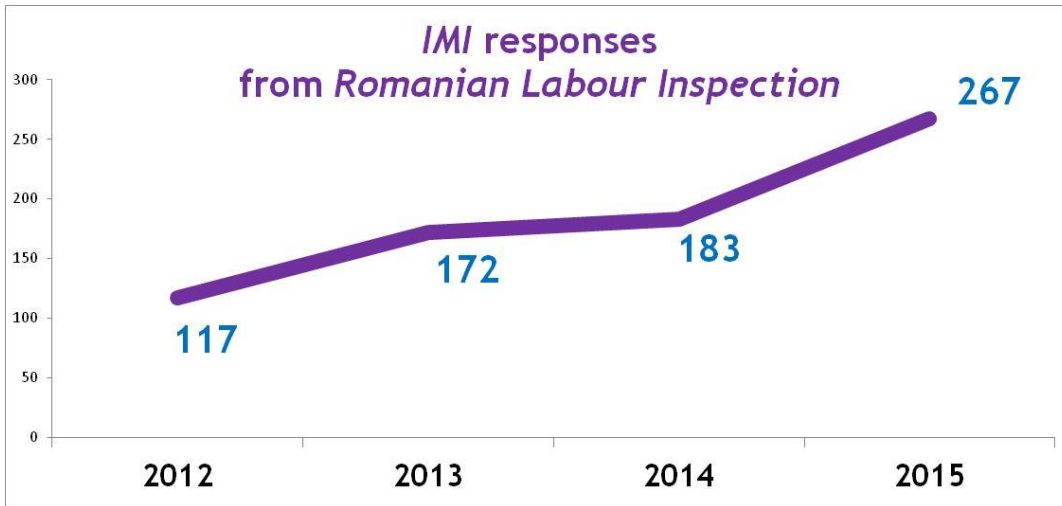
Romanian Labour Inspection is one of the most important receiving authorities of *IMI* requests regarding posting of workers.



Source: 2015 data, *European Commission*³

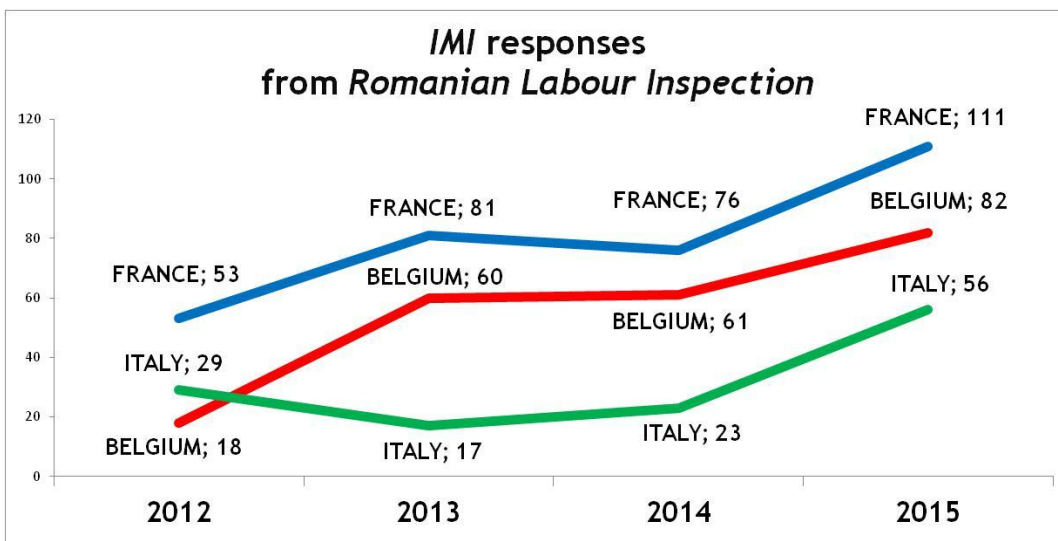
According to data supplied by *European Commission* 17% of the total requests in 2015 are addressed to *Romanian Labour Inspection*. Situation from last 4 years shows an increasing trend of the *IMI* requests.

³*Idem.*



Source: Romanian Labour Inspection.

Statistical overview of the Romanian Labour Inspection's IMI requests situation, broken down by EUMS reflects the concentration on France, Belgium and Italy and a constancy of this presence on last years.



Source: Romanian Labour Inspection.

In the general framework of IMI there are opportunities for developing bilateral or focused agreements for a better tailored system exchange of information.

Romanian Labour Inspection experience as a receiving requests authority can be capitalized to improve the existing cooperation mechanisms or to design those that will be created under Directive 2014/67/EU.

5.4. Practical cases from Romania

CASE 1

According to demand IMI no. 4xx, *Liaison Office of the General Directorate of Labour France* requested the *Romanian Labour Inspection* details of the four workers engaged in road transport activities on French territory, belonging to the company *CHxxx SOLUTION Lxx*. Following checks carried out at the company *CHxxx SOLUTION Lxx*, labour inspectors have found this work as temporary agency operating under the authorization issued by Ministry of Labour, Family, Social Protection and Elderly, having signed contracts for the provision of a total of 12 users in France. The four individuals identified to work in France, had established an employment relationship with that company, based on individual employment contracts concluded in compliance with Romanian legislation, and according to the contract for the provision concluded between *CHxxx SOLUTION Lxx* and *NxxxxMxxxxxx ET DEMENAGEMENTS* based in France as a user undertaking, the four people operates the user undertaking under temporary employment contracts.

Four people had signed addenda to the individual employment contract, given that in the period 03.08.2015 - 31.12.2015 they provided activity for *Nxxxxx ET Mxxxxx DEMENAGEMENTS* having a monthly gross salary of 1365.94 EURO according addendum amending the individual employment contract.

CASE 2

According to demand IMI no. 49033, *Labour Inspectorate - Federal Public Service for Employment - Belgium* requested the *Romanian Labour Inspection* details of the four workers engaged in constructions domain on Belgian territory on Belgium territory, belonging to the company *Cxxxx - Txxx LLC*. According application referred Belgium Labour Inspectorate addressed *Romania Labour Inspection* questions relating to the amount of wages for the four workers for August - October 2015 and transmit request copies of payroll for the period specified; if the employer paid the transport costs, accommodation and food for the period of posting of workers in Belgium; if the company has contributed to the social security fund related social insurance by paying of wages reported at the wage level in the construction sector in Belgium (matter falling within the competence of the *National Tax Administration Agency*).

Following checks carried out in the company *Cxxxx - Txxx LLC*, labour inspectors have found that it carries out construction works of residential and non-residential buildings, according with the main business. Four persons had established an employment relationship with that company based on individual employment contracts concluded in writing in compliance with Romanian legislation, and in their personnel files were identified addenda to change jobs (which proves *PW*). Regarding employees detach to work in Belgium they benefited from transport and

accommodation but have not received food spending. Considering that legislation in Romania provides that posted workers from Romania benefit (...) the minimum wage, including overtime compensation or payment, and the concept of "*minimum wage*" is defined by law (...) whose territory is detached employee and that "allowances specific to the posting are considered part of the minimum wage in so far as the employee is not awarded to cover the costs generated by the detachment such as transport, accommodation and meals, labour inspectors ordered the employer's compulsory measure compliance with the provisions abovementioned.

6. JOINT AND SEVERAL LIABILITY IN ROMANIA

Competition and general economical environment generate cost pressure which reflects on low-cost labour strategies. Business models like subcontracting chains are responses to the lowest price condition, most frequently used in relation with public procurement contracts.

Despite the existence of several law provisions related to joint and several liability in connection with labour, is hard to find evidence in terms of effectiveness and final result of this mechanism.

The law transposing *Directive 96/71/EC* and the draft proposal of the law transposing *Directive 2014/67/EU* do not provide specific measures for joint and several liability and due diligence.

At this stage of the draft proposal of the law transposing *Directive 2014/67/EU* there are no specific economic sectors that will be explicit included or excluded by the application.

Romanian *Civil code* established the general principle of liability of those who, under a contract or under the law shall exercise direction, supervision and control of the entities (prepositives) who fulfil certain functions or assignments.

The Public procurement contracting authority has to specify the obligation in area of labour that must be fulfilled by the contractor. General responsibilities of the general contractor of a public procurement contract include those related with the activity of the subcontracting companies.

Labour code provides norms of joint and several liability for the case of secondment of workers (temporary cession of the labour contract to another employer) and temporary work (hire out a temporary worker to a user, by a temporary work agency). Special provisions for joint and several liability in case of subcontracting chains are only in case of criminal offences, related to using undeclared work or trafficking workers which are third country nationals.

Concerning due diligence concept *Labour code* provide in one case application of this procedure as a consequence of committing one of the same criminal offences mentioned before.

In labour law framework are two other situation when due diligence mechanism is used. First is related to the procedure of authorisation of the temporary work agency and second is used in issuing hiring endorsement designated to select the employer who can employ third country nationals.

In case of criminal offences as undeclared work (more than 5 undeclared workers), hiring workers without legal right to stay in Romania, knowing that they are victims of human trafficking, or when the nature of work endanger the life, integrity or health, *Labour code* provides compensatory measures. In those cases, by judgement decision any unpaid remuneration due to people working undeclared or illegal, including transfer costs to the state of origin, can be charged to the main contractor or any intermediate subcontractor, where they knew that the employing subcontractor employed third country nationals illegally staying in Romania, jointly with the employer.

The subject of joint and several liability and due diligence are elements of the great framework of responsibility and effectiveness of the enforcement measures. Within this topic we consider of crucially importance individual responsibility and solving the fake practice of abandoning a firm with debt and bad criminal records and continuing the same business with a new clean company, eventually also with an interposed bogus legal representative. For tackle those conducts with transnational effect it is necessary to create a transnational due diligence system, based on administrative cooperation between labour inspection authorities.

On the other point of view, from the subcontracting chain perspective it is important to be able to realize an overall evaluation of fulfilment of duties regarding the dimension of the activity within a project or a period of time (not to punish the main contractor for one infringement of one subcontractor).

7. THE MINIMUM WAGE IN ROMANIA

Natural diversity of the labour relation framework within *EUMS* especially minimum remuneration mechanism, at the time of adopting of the Directive 96/71 and also now⁴, make

⁴*European Commission, Directorate-General for Employment, Social Affairs and Inclusion, "Study on wage-setting mechanisms and minimum rates of pay applicable to posted workers in accordance with Dir. 96/71/EC in a selected number of Member States and sectors", January 2016.*

impossible to establish one single rule, a unique definition and a precise scale of the minimum rates of pay.

The rate between the level of minimum wage in Romania and the average in EUMS is 1:3,5. Related to the highest minimum wage level the rate is 1:8,2⁵. This is the reality of labour economics which constitutes the base of host country minimum rates of pay principle provided by the article 3 of the *Directive 96/71/EC*.

Adding or including other wage incentives or allowances related to the host country minimum rates of pay generates complicate judicial decisions⁶. In the mean time the idea of a targeted revision of the *Directive 96/71/EC* creates heated political debates⁷.

In this complex state of the art, *Romanian Labour Inspection* continue to accomplish the primary mission - to effectively protect the effectiveness of worker rights and to ensure that the labour law principles are fully observed by every employer.

In Romania, for the persons who are working on the basis of an individual employment contract there is a minimum wage mandatory by *Labour code*⁸. For the employers it is compulsory to establish and guarantee the payment of the gross monthly minimum wage, in accordance with the working time of the employee.

The level of the minimum wage is set through government decision⁹ enacted every year, usually establishing two stages of setting (from January and from July). For the year 2016, will be a single rise since May¹⁰, on the monthly gross level of 277,57 euro.

Legally¹¹ there is the possibility of sector collective agreements universally applicable if specific conditions and procedures are fulfilled. In such an agreement theoretically a minimum rates of pay could be established. Practically, since 2011 in Romania there are no sectoral collective agreements universally applicable.

⁵Eurostat, semester I 2016, data base "*Monthly minimum wages - bi-annual data [earn_mw_cur]*".

⁶European Union Court of Justice, Decision Sähköalojen/Elektrobudowa C-396/13.

⁷<http://www.euractiv.com/section/central-europe/news/kalfin-expect-long-discussions-over-revision-of-posted-workers-directive/>; <http://www.mobilelabour.eu/5279/eurociett-no-need-to-revise-the-posting-of-workers-directive-of-1996/>;

http://www.pes.eu/pes_urges_commissioner_thyssen_to_propose_a_substantial_revision_of_the_posting_of_workers_directive; <https://www.businesseurope.eu/publications/target-revision-posting-workers-directive-announced-commission-2016-work-programme>.

⁸ Article 164 - 165 of the Law no. 53/2003 - *Labour code*, republished, with subsequent amendments and additions (*Labour code*).

⁹ 233,16 euro since 1st of June 2015 by Government Decision no. 1.091/2014 for establishing gross minimum wage (*GD 1.091/2014*).

¹⁰ Government Decision no. 1.017/2015 for establishing gross minimum wage.

¹¹ Law no. 62/2011 of the social dialogue, with subsequent amendments and additions.

The law transposing *Directive 96/71/CE*¹² provides that the minimum wage is established by law or by universally applicable collective agreement (sectoral).

Allowances specific to posting are considered part of the minimum wage, unless they are granted to cover expenses related to employee relocation, such as transport, accommodation and meals.

| | | | | | |
|----------------------|----------------|---|---|---|----------------------------------|
| Host wage | country | + | Allowances specific to posting <i>(not for cover transport, accommodation or meals)</i> | ≥ | Romanian minimum wage |
|----------------------|----------------|---|---|---|----------------------------------|

The *Labour code* states that it is an offense to not guarantee the payment of the gross minimum wage¹³. Setting wages below gross minimum wage is also an offense¹⁴. Labour inspectors investigate offenses and impose the penalties or, where appropriate, refer the matter to the prosecuting authorities.

In the case of non-compliances on gross minimum wages¹⁵, labour inspectors may order mandatory compliance measures to the employer.

8. CONCLUSION

In this dynamic context of the issue of labour mobility within the European Union, *Romanian Labour Inspection* is committed to actively evolves in a wide range of actions to shape international cooperation with authorities and organizations in other Member States of the *European Union*. *Romanian Labour Inspection* is determined to be prepared to better answer to the needs of the European labour market in order to protect workers' rights and ensuring fair treatment of employers.

¹² Law no. 344/2006 concerning the posting of employees in the transnational provision of services, with subsequent amendments and additions.

¹³ Admonition or fine between 66 and 444 euro, under article 260 paragraph (1) letter a) of the *Labour code*.

¹⁴ Admonition or fine between 222 and 444 euro, under article 3 paragraph (1) of the *GD 1.091/2014*.

¹⁵ Article 19 of the Law no. 108/1999 on the establishment and organization of the Labour Inspection, republished, with subsequent amendments and additions.

ANNEX(JULY 2016)

Draft ROMANIAN Law on the posting of workers in the transnational provision of service

Chapter I General Provisions

Article 1

- (1) This law establishes a common framework of rules, measures and controls applicable in Romania to posting of workers in the transnational provision of services, including measures to prevent and sanction any abuse and circumvention of them.
- (2) The provisions of this law aim to guarantee an adequate level of protection of posted workers in the transnational provision of services, especially ensuring compliance with clauses and conditions of employment under national law under Art. 6, while facilitating the freedom to provide services for service providers, promoting a climate of fair competition between the latter and thus supporting the functioning of the internal market.
- (3) This law does not affect the exercise of fundamental rights as recognized in national legislation and EU level, including freedom and the right to strike or to take action related to labor relations, in accordance with national legislation.
- (4) This law does not affect the right to negotiate, conclude, implement collective agreements and take collective action in accordance with national legislation.

Article 2

- (1) For the purposes of this law, terms and expressions have the following meanings:
 - a) Member State - any Member State of the European Union or the European Economic Area
 - b) posted employee in Romania - The employee of an employer established in a Member State other than Romania or on the territory of the Swiss Confederation, which normally working in a state other than Romania, but is sent to work for a period limited time in Romania, where the employer has one of the measures provided for in art. 5 paragraph. (1);
 - c) employee posted by Romania - The employee of an employer established in Romania, which normally works in Romania, but that is sent to work for a limited time on the territory of a Member State other than Romania or territory Switzerland, where the employer has one of the measures provided for in art. 5 paragraph. (2);
 - d) posting transnational - where an undertaking established in a Member State or in the territory of the Swiss Confederation in the transnational provision of services, post in

another Member State employees that have established employment relationships in situations governed by art. 5 of this Law;

- e) minimum wage - the minimum wage applicable in Romania for the posted employee in Romania, namely the minimum wage applicable in the territory of a Member State or the Swiss Confederation for employees posted by Romania;
- f) expenses incurred from posting - any transport costs, accommodation and meals incurred for the purpose of posting;
- g) posting specific allowance - allowance paid to compensate for the inconvenience of posting;
- h) competent authority - an authority or body designated by a Member State or of the Swiss Confederation to perform functions and duties with respect to national legislation on the posting of workers in the transnational provision of services;
- i) requesting authority - the competent authority of a Member State which makes a request for assistance, information, notification or recovery of a financial administrative penalty, as referred to in art. 29-46.
- j) requested authority - the competent authority of a Member State to which it is addressed a request for assistance, information, notification or recovery of a financial administrative penalty, as referred to in art. 29-46.
- k) host Member State - Member State or the Swiss Confederation in which an employee is posted within a transnational provision of services by an undertaking established in another Member State;
- l) Member State of establishment - the Member State or the Swiss Confederation undertaking is established that, within transnational provision of services, post workers in another Member State that has established relationships;
- m) Information system (IMI) - the electronic tool provided by the European Commission to facilitate administrative cooperation between competent authorities of Member States and between the competent authorities of the Member States and the Commission, as defined in accordance with Regulation (EU) No .1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Decision 2008/49 / EC ("the IMI Regulation"), hereinafter, IMI ;
- n) administrative sanction financial - any pecuniary, including taxes and surcharges imposed on an undertaking referred to in Article 3 b), in accordance with regulations and procedures of the Member State other than Romania on the territory which it operates, the competent authorities of other Member States or confirmed by administrative or judicial bodies or, where appropriate, arising from decisions of

courts, which are non-compliance provisions of Directive 96/71 / EC or Directive 2014/67 / EU;

a) subcontracting chain - civil contractual relationship between a legal entity called a legal entity called the contractor and subcontractor which have direct legal provision of services.

(2) For the purposes of this Act, the term "employee" is regulated by the Romanian legislation.

(3) Throughout the period of posting posted employee will retain direct employment relationship with the employer which posted him.

CHAPTER II. Field of application

Article 3

The provisions of this law shall apply:

- a) undertakings established in a Member State other than Romania or on the territory of the Swiss Confederation in the transnational provision of services, posted workers on Romanian territory with employees who have established labor relations in terms of art.5 paragraph. (1);
- b) undertakings on the Romanian territory, in the transnational provision of services, posting workers on the territory of a Member State other than Romania or on the territory of the Swiss Confederation, with employees who have established labor relations in terms of art. 5 paragraph. (2).

Art. 4

This law does not apply to crews of merchant navy undertakings.

Art. 5

(1) This Law shall apply where the undertakings referred to in art.3 letter a) decide to implement one of the following transnational measures:

- a) the posting of an employee in Romania, on behalf of the company and under their direction, under a contract concluded between the undertaking making the posting and the beneficial provision of services operating in Romania, where there is an employment relationship, while deployed between the employee and the undertaking making the posting;

- b) posting of an employee in an establishment located in Romania or from an undertaking belonging to the group of companies, located in Romania, where there is an employment relationship, while deployed, between the employee and the undertaking posting;
 - c) the provision of an employee by a temporary work agency to a user undertaking established or operating in Romania, where there is an employment relationship, while deployed between the employee and the temporary employment agency.
- (2) This Law shall apply where the undertakings referred to in art. 3 letter b) decide to implement one of the following transnational measures:
- a) the posting of an employee of Romania, on behalf of the company and under their direction, under a contract concluded between the undertaking making the posting and the beneficial provision of services operating in the territory of a Member State other than Romania or territory Switzerland, where there is an employment relationship, while deployed, between the employee and the undertaking posting;
 - b) posting an employee of Romania from an establishment or an undertaking owned by the group of companies located in the territory of a Member State other than Romania or on the territory of the Swiss Confederation, whether there is an employment relationship, while deployed, between the employee and the undertaking posting;
 - c) the provision of an employee by a temporary work agency to a user undertaking established or operating in the territory of a Member State other than Romania or on the territory of the Swiss Confederation, whether there is an employment relationship, while deployed between the employee and the temporary employment agency.

Art. 6

- (1) The employees posted in Romania within the transnational provision of services shall, whatever the law applicable to the employment, working conditions established by Romanian law and/or collective agreement concluded at the sectoral level, applicable extended to the whole sector, according to legal provisions concerning:
- a) the maximum working time and minimum rest periodically;
 - b) minimum paid annual holidays;
 - c) minimum wage, including overtime compensation or payment;
 - d) provide for the provision of employees by temporary work agencies;
 - e) health and safety;
 - f) protective measures with regard to working conditions for pregnant women or those who have recently given birth, and for children and youth;
 - g) equality of treatment between men and women and other provisions on non-discrimination.

- (2) For the purposes of this law, the concept of minimum wage in para. (1) c) is provided in Romanian law and/or collective agreement concluded at the sectoral level, applicable extended to the whole sector, as required by law.

Article 7

- (1) In order to identify situations representing a detachment transnational purposes of this law, and to prevent abuse and circumventions of its Labour Inspection, through labor inspectorates, make an overall assessment of all the factual elements considered necessary, in particular:
- a) factors which characterize the activities of undertakings referred to in article 3 a) in the Member State where it is established and where necessary, in Romania;
 - b) the factual elements that characterize the work and position of the employees posted in Romania.
- (2) The factual mentioned in para. (1) a) and b) have the following characteristics:
- a) are intended to assist labor inspectorates in monitoring and controls;
 - b) are indicative factors in the overall assessment which is carried out by labor inspectorates of checking and control and can not be considered separately;
 - c) not be met for each case of posting transnational adapting their assessment of each case and taking into account the particular situation.
- (3) Failure of one or more elements referred to in paragraph factual. (1) should not automatically lead to a false conclusion that there transnational postings.
- (4) factual elements provided in par. (1) a) are designed to determine whether an undertaking effectively exercises significant activities, other than purely internal management and / or administrative action in Member State of establishment, taking into consider a minimum period of one year.
- (5) factual elements provided in par. (1) b) are designed to assess whether an employee who routinely operates in the territory of a Member State other than Romania or on the territory of the Swiss Confederation is temporarily on Romania.
- (6) The items listed in para. (1) may be taken into account by labor inspectorates and to determine whether a person has the status of employee under national law, including to identify possible cases of false self-employment .
- (7) In the assessment under par. (6), labor inspectorates also take into account aspects related to execution, subordination and remuneration of the employee, regardless of how characterized the employment relationship by provisions, contractual or no, that was eventually agreed by the parties.

(8) factual elements provided in par. (1) a) and b) are established by Government Decision approving the methodological norms for the application of this law.

Art. 8

(1) The employees posted from Romanian territory in the transnational provision of services shall, whatever the law applicable to the employment, working conditions established by laws, regulations, administrative provisions, collective agreements or arbitration awards to be universally applicable, available in the Member State other than Romania or the Swiss Confederation, on whose territory the services are provided, on:

- a) the maximum working time and minimum rest periodically;
- b) minimum paid annual holidays;
- c) minimum wage, including overtime compensation or payment;
- d) provide for the provision of employees by temporary work agencies;
- e) health and safety;
- f) protective measures with regard to working conditions for pregnant women or those who have recently given birth, and for children and youth;
- g) equality of treatment between men and women and other provisions on non-discrimination.

(2) For the purposes of this Act, the term "minimum wage" in para. (1)

c) is defined by law and/or practice of the Member State other than Romania or Switzerland, on whose/which territory is posted employee.

Art. 9

Staff employers established in Romania, performing international transport operations and was sent to work for a limited time on the territory of a Member State other than Romania or on the territory of the Swiss Confederation and which are not within the situations provided in art. 5 paragraph. (2) and the provisions of Art. 43 of Law no.53/2003 - Labour Code, republished, with subsequent amendments and enjoy the rights provided in Art. 44 para. (2) of the same law.

Art. 10

(1) The provisions of art. 6 letter b) and c) shall not apply in the case of initial assembly and / or first installation of a thing, which form part of a contract for the supply of goods, are required to carry the goods supplied and are executed skilled employees and / or specialist supplier enterprise, if the duration of posting is 8 days.

- (2) The duration of transnational posting is calculated based on a reference period of one year from its commencement date. When calculating the duration of transnational posting prior periods are taken into account in the post was occupied by a posted employee.
- (3) The exemption provided by paragraph. (1) shall not apply to activities in the construction sector, which includes the construction, repair, maintenance, alteration or demolition of buildings listed in Annex 1 to this law.

Art. 11

Specific allowances related to transnational posting of workers are considered part of the minimum wage, unless they are granted to cover expenses related to employee posting, such as transport, accommodation and meals.

Art. 12

- (1) The provisions of this Act does not limit the application of more favorable working conditions for employees posted by companies that are established in a Member State other than Romania or on the territory of the Swiss Confederation, to undertakings established in the territory of Romania.
- (2) The provisions of this Act does not limit the application of more favorable working conditions for employees posted by companies that are established in Romania in enterprises that are established in a Member State other than Romania or on the territory of the Swiss Confederation.

Art. 13

Enterprises not established in the territory of a Member State or in the territory of the Swiss Confederation, posting employees in Romania, can not benefit from more favorable treatment than undertakings established in a Member State or in the territory of the Swiss Confederation.

CHAPTER III. Competent authorities and administrative cooperation

Art. 14

- (1) In order to implement the provisions of this Law, the Labour Inspection is the competent authority having powers liaison office that the exchange of information with the competent authorities in the Member States or Switzerland.

- (2) Labour Inspection notify the competent authorities of other Member States or the Confederaate Swiss and European Commission information regarding its quality of competent authority in charge of the liaison office.

Art. 15

- (1) In this cooperation, the Labour Inspection respond to requests motivated by informing the competent authorities of other Member States and the Swiss Confederation and conduct checks and control actions on transnational posting situations referred to in art. 5 paragraph. (2) of this Act, including any breach or abuse in terms of transnational rules on posting.
- (2) Requests for information provided in par. (1) can target and providing information on the establishment in Romania, good conduct and breach of the undertakings referred to in Article 3 letter b) applicable rules on the posting of transnationalempleyees.
- (3) Where there is difficulty in meeting a request for information or to make checks and control actions, the Labour Inspection immediately inform the requesting competent authority in order to find a solution.
- (4) If the Labour Inspection experiencing repeated problems in the exchange of information or a permanent refusal to provide information from competent authorities from other Member States, it shall inform the European Commission via IMI.

Art. 16

Labour Inspection information required by the competent authorities of the Member States or the Commission by electronic means, subject to the following terms:

- (a) within two working days of receiving the request, in particular to verify the existence of a determination of the company mentioned in Article 3 b) in Romania, in urgent cases, reasoned and detailed application and requires only consultation national registers;
- (b) maximum 25 working days of receiving the application, if all other inquiries, unless the competent authorities shall agree on a shorter response.

Art. 17

- (1) The information requested and submitted by the Labour Inspection under the administrative cooperation with competent authorities of other Member States and the Swiss Confederation are used only for the purpose for which it was requested.
- (2) The exchange of information and mutual assistance is performed free of charge.

(3) Records of registered undertakings referred to in article 3, letter b) which can be consulted by the Labour Inspection and are listed in IMI can be found under similar conditions and by the equivalent competent authorities of other Member States.

Art. 18

- (1) Depending on the types of information requested in the applications motivated by informing the competent authorities of other Member States or the Swiss Confederation, by Government Decision approving the methodological norms for the application of this law may be designated and other national bodies as competent authorities to participate in administrative cooperation and exchange of information on transnational posting of employees.
- (2) The institutions referred to in para. One designated competent authorities in the IMI system and provide administrative cooperation and providing information in its field of competence, observing the provisions, conditions and limits for replies set out in Articles 15, 16 and 17.
- (3) can be designated as competent authorities in accordance with paragraph 1 national institutions that are personal data operators registered with the National Supervisory Authority for Personal Data Processing under the law.
- (4) Labour Inspection notify the competent authorities of the other Member States and the Swiss Confederation and the European Commission the list of national competent authorities designated under par. 1, participating in administrative cooperation and exchange of information.
- (5) The national competent authorities of each Member State respects the choice of option the Swiss Confederation concerning the designated competent authorities.

Art. 19

Requests for information under administrative cooperation between Member States shall also include information on the recovery of amounts arising as a result of the application of administrative sanctions or financial communication of a decision imposing such a penalty, as referred to in art. 29-46.

Art. 20

- (1) Administrative cooperation including in the event of reasoned request or communication and transmission of documents.
- (2) Disclosure of documents other than imposing a financial administrative penalties by the undertakings referred to in art. 3 letter b) the responsible authorities in other Member

States is performed by the Labour Inspection, through labor inspectorates, as determined by the Government's decision to approve the application methodology of this law.

Art. 21

Exchange of information and administrative cooperation does not restrict the competent national authorities in taking action in accordance with the powers set out in national legislation in order to check, control and prevent violations of this law.

Art. 22

- (1) Labour Inspection, through labor inspectorates, is the competent national authority to monitor compliance by undertakings referred to in art. 3 lit. a) the terms and conditions of employment provided for in art. 6.
- (2) the checks referred to in para. (1) Labour Inspection, through administrative cooperation, calls when necessary, assist the competent authorities of the Member State of establishment of the undertakings referred to in art. 3 letter a).
- (3) The power to undertake inspections and checks on compliance with the undertakings provided for in art. 3 letter b) the terms and conditions of employment provided for in art. 8 during the transnational posting of an employee of Romania in the territory of a Member State or in the territory of Switzerland, returns the competent authorities of that State.
- (4) Labour Inspection, through labor inspectorates, responsible for monitoring and enforcing the national legislation on posted workers from Romania by undertakings referred to in art. 3, letter b), for all aspects of the employment relationship, except as provided in article 8.
- (5) Under the administrative cooperation, the Labour Inspection respond to requests for support received from competent authorities from other Member States or the Swiss Confederation, on the undertakings referred to in art. 3 letter b).
- (6) Labour Inspection communicated automatically, as soon as any relevant information concerning possible violations of this law, the competent authorities of other Member States and the Swiss Confederation, with responsibilities for verifying and, where appropriate, impose sanctions.

CHAPTER IV. Administrative requirements, control measures and inspections

Art. 23

- (1) Labour Inspection, through labor inspectorates, check implementation of this law in order to respect the rights of employees posted in Romania in the provision of transnational services.
- (2) Labour Inspection, through labor inspectorates, effective and adequate inspections carried out in Romania in order to control and monitor compliance with this law.
- (3) Without prejudice to the possibility of carrying out random checks by the Labour Inspection, through labor inspectorates, inspections are based primarily on a risk assessment carried out annually.
- (4) The risk assessment procedure will be regulated by Government Decree approving the rules for the application of this law.
- (5) Labour Inspection, through labor inspectorates, shall ensure that inspections and checks carried out under this law are not discriminatory and / or disproportionate.

Art. 24

- (1) To allow effective monitoring of compliance with obligations under this law, the Labour Inspection impose administrative requirements and control measures are justified and proportionate.
- (2) administrative requirements and control measures include the following obligations on undertakings referred to in art. 3 letter a) of this law, namely:
 - a) the obligation to submit a communication in Romanian on the posting of workers own territorial labor inspectorate in whose jurisdiction is to be carried out no later than the business day preceding the commencement of work and containing the relevant information needed to enable checks factual workplace;
 - b) the obligation to hold and provide the labor inspectors at their request, whenever necessary and / or keep in an accessible and clearly identifiable in Romania, while deployed transnational copies in paper or electronic copies of documents or the equivalent of:
 - (i) the employment contract or equivalent, and if necessary or relevant, information on the duration of employment, the currency in which the payment is salary, benefits in kind or in money benefiting the employee during the transnational posting the conditions governing the employee's repatriation,
 - (ii) salary and proof of payment thereof;
 - (iii) the duration of working time and attendance sheet;

- c) the obligation to provide the documents referred to (b) after the period of posting, at the request of the Labour Inspection and labor inspectorates within the 10 working days from receipt of the request;
 - d) the obligation to provide a translation of the documents referred to in subparagraph (b) in Romanian;
 - e) the obligation to appoint a person to liaise with the national competent authorities and to send and receive documents and / or approvals, if applicable;
- (3) The undertakings referred to in art. 3 letter a) have an obligation to respond to requests for supply of documents provided in par. (2) c) for 3 years after termination of transnational posting period.
- (4) administrative requirements and control measures referred to in para. (2) offenses and the penalties applicable to undertakings referred to in art. 3 letter a) for non-compliance are set by Government Decree approving the rules for the application of this law.
- (5) To allow effective monitoring of compliance with obligations under this Act, if new facts determined by the evolution of transnational posting and that the existing requirements are not sufficient or effective, Ministry of Labor, Family, and Social Protection, the proposal of the Labour inspection, may, by decision of the Government for approving the rules for application of this law, administrative requirements and control measures additional to those mentioned in para. (2), provided they are justified and proportionate and that sanctions applicable to undertakings referred to in art. 3 letter a) for non-compliance.
- (6) Ministry of Labor, Family, and Social Protection notified to the Commission measures referred to in paragraphs (2) and (5) they apply or that it has implemented.
- (7) Labour Inspection inform undertakings referred to in article 3 paragraph a) of this law on administrative requirements and control measures which they apply in accordance with paragraphs (2) and (5), including publication on the websites your own.
- (8) The procedures and formalities relating to the transnational posting of workers under the provisions of this Article are fulfilled by undertakings referred to in article 3, letter a) by filing at the headquarters of labor inspectorates documents or remotely, via mail or email.

ART. 25

The provisions of art. 24 not affect the obligations under European Union law, in particular those under the provisions of Law no. 319/2006 - safety and health law and Regulation (EC) No. 883/2004 on the coordination of social security systems or those arising from national legislation on employment of employees, provided the latter is equally applicable to undertakings established in Romania and are justified and proportionate.

CHAPTER V. Protection of the rights, responsibility in terms of subcontracting, access to information

ART. 26

- (1) If the employees posted in Romania under this law consider that their rights have been violated with regard to working conditions or have suffered loss or damage as a result of failure to comply with the law and may contact the Labour Inspection and / or courts in Romania or courts of another state, according to existing international conventions on jurisdiction and may lodge a complaint against their employers directly.
- (2) Para. (1) apply after termination of the posting transnational Romania, in compliance with national law on limitation periods or time limits for bringing similar actions.
- (3) Para. (1) shall apply without prejudice to the powers of national courts, as provided by national and / or international conventions.
- (4) Trade unions, associations, organizations and other legal entities that, in accordance with the criteria established in law, legitimate interests regarding compliance with this law, may engage, on behalf or in support of posted workers or their employer with written consent of their administrative or legal action, in order to implement this law.
- (5) Para. (1) and (4) shall apply without prejudice to:
 - a) other duties and collective rights of social partners and employees' representatives, under national law;
 - b) national legal provisions of procedure concerning representation and defense before the courts.
- (6) Employees posted under this law be protected against any unfavorable treatment from their employer if they initiate court action or administrative action against their employer under par. (1).
- (7) For the purposes of paragraph. 6, do not change unilaterally by the employer relations or working conditions, including dismissal posted employee who filed an administrative action or filed a complaint with the competent courts, the application of this law after the judgment final, except for reasons and unrelated cause.
- (8) The employer posted employee responsible for granting all its rights stipulated in the individual employment contract and / or applicable collective agreement.
- (9) The employer has the following obligations towards the employee posted to it:
 - a) pay any outstanding net remuneration due pursuant to Art. 6 and art. 8 of this law;

- b) to pay any retroactive amounts or redemption fees, taxes or social security unduly withheld from the salaries of posted employees;
 - c) pay reimbursement excessive in relation to the net salary of the posted employee or the quality of accommodation, withheld or deducted from wages for accommodation provided by employer;
 - d) pay contributions to common funds or institutions of social partners unduly withheld from employee wages posted as appropriate.
- (10) Para. (8) applies where the posted workers have returned to the Member State which took place transnational posting.

ART. 27

- (1) chains of subcontracting activities listed in Annex 1 of this law, the contractor whose company mentioned in article 3, subparagraph a) it is a direct subcontractor, jointly and severally liable with it for any pay overdue net minimum wage and / or contributions due to common funds or institutions of social partners, in accordance with art. 6.
- (2) responsibility under par. (1) is limited to the posted employee rights acquired under the contractual relationship between the contractor and its subcontractor.
- (3) The Contractor shall be relieved of any liability if it proves that it has fulfilled all obligations concerning the request of the subcontractor means of documents attesting the compliance by the subcontractor working conditions established in accordance with Article 6 for posted employees .
- (4) The documents referred to in para. (3) must contain at least the following:
 - a) proof of payment of wages of posted workers under Art. 6 letter c);
 - b) compliance with applicable rules on the maximum length of working time and minimum rest periodically, according to Art. 6 letter a);
 - c) an affidavit of subcontractor that he undertakes to respect the rights of posted workers, in accordance with art. 6 of this law.
- (5) Ministry of Labor, Family, and Social Protection of the European Commission communicates measures taken under this article.
- (6) Labour Inspection published on its website, in Romanian and English, the measures adopted in accordance with this Article.

Art. 28

- (1) Labour Inspection provides information widely on the terms and conditions of employment enjoyed by employees posted in Romania, in accordance with Art. 6.

- (2) information shall be made freely available in a clear, transparent, unambiguous and easily accessible at a distance and by electronic means, in formats and standards information web accessibility which provides access including people with disabilities.
- (3) In order to improve access to information and clarity of their labor inspectorate ensure publication and updating on its website, at least the following information:
- a) the terms and conditions of employment provided for in art. 6;
 - b) specific procedure for assigning employees in Romania in the provision of transnational services;
 - c) information on administrative and control measures applicable to undertakings referred to in article 3 a) in accordance with Art. 24;
 - d) list and contact details of labor inspectorates;
 - e) information on collective agreements concluded at sectoral level, applicable extended to the whole sector, under the law, and on the terms and conditions of employment applicable to posted workers in Romania under that contract collective work and, where appropriate, links to the websites of the social partners;
 - f) information on procedures for complaints.
- (4) The information provided in par. (3) are available in Romanian and English.
- (5) Labour Inspection annually evaluates the need to provide information in other official languages of the European Union, according to information requests received.
- (6) Labour Inspection designate contacts within the liaison office responsible for dealing with requests for information and publish on the website the contact details of their institution.
- (7) Ministry of Labor, Family, and Social Protection and Labour Inspection shall update the information provided in the country sheet on transnational posting of workers in Romania, annually or whenever necessary.
- (8) The Ministry of Labour, Family and Social Protection for the Elderly and the Labour Inspection are the national authorities providing general information posted workers and companies in connection with national legislation and practice applicable to them as regards their rights and obligations in Romania.

CHAPTER VI. Cross-border recovery of revenues obtained from the administrative financial penalties and / or fines

Art. 29

- (1) Without prejudice to other legal provisions established by special laws, the principle of mutual assistance and mutual recognition, and the measures and procedures provided in

this Chapter shall apply as regards cross-border recovery of administrative penalties for financial and / or fines applied:

- a) an undertaking referred to in Article 3, letter a) for breaching the law by this Law;
- b) an undertaking referred to in Article 3, letter b) for failure to comply with applicable rules on transnational posting of workers in the host Member State.

Art. 30

This Chapter shall apply:

- (1) financial administrative sanctions defined in art. 2 lit. n);
- (2) penalties by the Labour Inspection, the labor inspectorates undertaking, companies referred to in Art. 3 letter a) for failure to provisions established by this law.

Art. 31

This law is without prejudice to the provisions of Law no. 302/2004 on international judicial cooperation in criminal matters, republished, with subsequent amendments and rules of international law and relevant European judicial cooperation in criminal matters nor the Law no. 191/2007 approving Government Emergency Ordinance no.119/2006 on some measures necessary for the implementation of EU regulation from the date of accession to the European Union.

Art. 32

- (1) designates the Labour Inspection as a national authority for application of this chapter, responsible for sending administrative requests for access to an official report finding sanctioning the misdemeanor or administrative reception of applications for communication of a decision imposing a financial administrative penalties.
- (2) The National Agency for Fiscal Administration designates as national authority for application of this chapter, responsible for sending requests to recover administrative fines for minor offenses and administrative reception of applications for financial recovery of an administrative penalty.
- (3) For the purposes of this Chapter, the Labour Inspection and the National Agency for Fiscal Administration has requested authority and demanding role, as appropriate for the application of this Chapter in accordance with the powers under par. (1) and (2).
- (4) Labour Inspection inform the European Commission via IMI, competent national authorities designated to implement the provisions of this Chapter.

Art. 33

- (1) The Labour Inspection Authority as requested, following a request received from a requesting authority in another Member State, subject to Articles 40 and 42, communicate enterprise established in Romania within the meaning of art. 3 letter b decision imposing a financial administrative penalty as well as other relevant documents as appropriate.
- (2) Labour Inspection recognizes the demand for communication without any further formalities expeditiously take all necessary measures for its implementation, unless they are invoked grounds for refusal laid down in Article 42.
- (3) Communication administrative decision imposing a financial sanction by the undertaking established in Romania subject to the application of communication is in accordance with procedures established by national law to communicate the minutes of finding sanctioning the offense.
- (4) Communication in para. (3) is performed by territorial labor inspectorate in whose jurisdiction the registered company and has the same effect as if they had been made directly by the requesting Member State.
- (5) Notwithstanding the provisions of Government Ordinance no. 2/2001 on the legal regime of misdemeanors, as amended and supplemented, the procedure for communicating the decision imposing a financial administrative penalty shall be in within 30 days of receipt of the application by the Labour Inspection communication.
- (6) The procedure and terms of communication established by Government decision to approve the application methodology of this law.
- (7) Labour inspection inform the requesting authority as soon as possible on:
 - a) measures taken as a result of the application of communication received and especially on the day the decision to impose an administrative penalty was communicated financial company established in Romania
 - or
 - b) the grounds for refusal of communication of the decision to impose an administrative financial penalty, in accordance with Article 42.

Art. 34

- (1) National Agency for Fiscal Administration, as requested authority, following a request received from the requesting authority in another Member State, subject to art. 41 and 42, take measures for the recovery of an administrative penalty Financial has been imposed in accordance with the regulations and procedures of the requesting Member State by a competent authority or confirmed by an administrative or judicial body or, where appropriate, by a court competent in labor law and not subject to appeal.

Art. 35

- (1) National Agency for Fiscal Administration, as requested authority receives a request for recovery of a financial administrative sanctions passed in accordance with Art.34, admits that request without the necessary additional formalities.
- (2) National Agency for Fiscal Administration by central fiscal bodies subordinated without delay take all necessary measures in accordance with Law no. 207/2015 regarding the Fiscal Procedure Code, as amended and supplemented, for the implementation of the request received par recovery. (1), unless it decides to invoke one of the grounds for refusal set out in art. 42.
- (3) tool that allows recovery of such financial administrative penalties is replaced with an enforceable enforcement in Romania, according to Art. 226 of Law no. 207/2015 regarding the Fiscal Procedure Code as amended and supplemented.
- (4) National Agency for Fiscal Administration by tax bodies subordinated central converts debt representing administrative sanction financial national currency of the Member State requesting the Romanian currency at the official exchange rate published by the National Bank of Romania at the time the sanction was imposed.

Art. 36

The recovery of an administrative penalty Financial National Agency for Fiscal Administration, as the authority claimed by the tax authorities subordinated central act in accordance with the laws, regulations, administrative provisions and practices applicable for breaches or identical decisions with those concerned or, in the absence of identical categories, violations or similar decisions.

Art. 37

- (1) National Agency for Fiscal Administration, as requested authority shall take all necessary measures to inform, within 30 days of receipt of the request, the undertaking established in Romania, referred to in art. 3 b), on the request for recovery of a financial administrative sanctions and the relevant documents, as appropriate, in accordance with national legislation.
- (2) National Agency for Fiscal Administration, as requested authority expeditiously inform the requesting authority to:
 - (A) actions taken in response to its request for recovery;
 - b) the grounds for refusal, if the National Agency for Fiscal Administration refuses to grant the request for recovery of a financial administrative penalties in accordance with art. 42.

Art. 38

- (1) Where verbal communication process of finding the misdemeanor sanction territorial labor inspectorate carried out in accordance with Art. 50 fails, the territorial labor inspectorate Labour Inspection transmitted electronically scanned copy of the minutes of finding the misdemeanor sanction imposed on an undertaking specified in Art. 3 letter a) for breaching the law by this Law, certified for compliance with the original, the Labour Inspection to carry out a request for communication.
- (2) Sending the minutes of finding the contravention sanctions mentioned in par. (1) shall be within 5 working days on:
 - a) receipt by the territorial labor inspectorate of a document that proves or communication failure
 - b) meet the deadline of 30 days from the sending of an official report, a misdemeanor sanction by the territorial labor inspectorate in accordance with Art. 50, the situation is not received by the territorial labor inspectorate of a document confirming or communication failure, as appropriate.
- (3) The Labour Inspection can not submit an application for communication of the minutes of finding the misdemeanor sanction if and as long as the fine is contested by the organization in Romania.
- (4) Labour Inspection communication request is made within 5 working days of receipt of the minutes of finding the misdemeanor sanction from the local labor inspectorate.
- (5) Labour Inspection is required to complete the request with all communication elements under art. 40 and attach this request the minutes of finding sanctioning the offense.
- (6) Service of a report of finding sanctioning the contravention made by the requested authority of the Member State of establishment of the company, at the request of the Labour Inspection is regarded as having the same effect as if it had been made directly by the Labour Inspection .
- (7) Within 5 working days of receipt of the requested authority of the Member State of establishment of the undertaking to report on measures taken to communicate the minutes of finding sanction the offense and the date on which it was communicated offender Labour inspection territorial labor inspectorate forward by this information.
- (8) If the requested authority's refusal to grant the request for notification, the Labour Inspection resolves issues invoked the refusal and send the documents referred to in para. (5) within 5 working days of receipt of refusal.

Art. 39

- (1) labor inspectorates submit the minutes of finding punishing offense, the tax authorities of central subordination of the National Agency for Fiscal Administration, on condition that the minutes of finding sanctioning contravention communicated and not disputed in Romania .
- (2) National Agency for Fiscal Administration, as the requesting authority shall ensure that the application of a fines recovery is performed in accordance with national law.
- (3) The wording of the request for recovery of fines shall be done only if the National Agency for Fiscal Administration by central tax authorities subordinate is unable to recover debts, according to national legislation in this regard.
- (4) National Agency for Fiscal Administration does not make a request for recovery of fines if and as long as the fine and corresponding claim and / or the enforcement questioned in Romania.
- (5) National Agency for Fiscal Administration shall ensure that the submitted request for recovery
It contains all the elements referred to in art. 41.
- (6) The request for recovery of the administrative fine shall be prepared by National Agency for Fiscal Administration by central fiscal bodies subordinated without undue delay by a uniform instrument.
- (7) National Agency for Fiscal Administration, as the authority requesting the central tax authorities subordinate will not pursue recovery of the fine shall after receiving acceptance of processing the application for recovery of the requested authority.

Art. 40

The request for communication of a decision on an administrative sanction and / or an administrative fine shall be made by the requesting authority through IMI, and at least the following elements:

- a) name and address and any other data or information relevant to identifying the addressee;
- b) a summary of the facts and circumstances of the breach of applicable law, the nature of the offense which led to a sanction and / or fine and relevant legal rules applicable;
- c) the instrument permitting enforcement in the requesting State and all other relevant information and documents, including judicial, of the corresponding receivable or administrative sanction and / or administrative fine;
- d) name, address and other contact details on the competent authority responsible for assessing the penalty and / or fine and, if different, the competent body that can provide additional

information regarding the penalty and / or fine or the possibilities to contest payment obligation or decision imposing.

e) purpose of communication;

f) the term to be carried out.

Art. 41

(1) The application requesting authority for recovery of a financial administrative penalties / fines shall be made without undue delay by a uniform instrument and include at least the following:

(A) name and address and any other data or information relevant to identifying the addressee;

(B) a summary of the facts and circumstances of the breach, the nature of the crime / offense and the relevant rules;

(C) the instrument permitting enforcement in the requesting State and all other relevant information and documents, including judicial, of the corresponding receivable or the financial administrative sanction;

(D) the name, address and other contact details on the competent authority responsible for assessing administrative sanction financial and, if different, the competent body that can provide additional information regarding sanction or whether to contest the payment obligation or decision which requires;

(E) the date on which the judgment or decision has become enforceable or final;

(F) description of the nature and value of financial administrative sanction any relevant data in the context of recovery;

(G) if the judgment or decision was communicated to the parties and / or taken in their absence, indicate how it was communicated and / or taken;

(H) confirmation of the applicant authority that the penalty is not subject to appeal;

(I) description of the corresponding receivable for which the request is made, and its various components.

Art. 42

(1) National Agency for Fiscal Administration and Labour Inspection, as appropriate, respectively requested authorities in other Member States are not obliged to act on a request for recovery or communication of a financial administrative penalty if the request:

a) does not contain the information specified in art. 40 or 41 as appropriate;

b) is incomplete, or

c) there is a clear lack of consistency between the application and the underlying decision.

(2) National Agency for Fiscal Administration by central fiscal bodies subordinated or requested authorities in other Member States, as appropriate, may refuse to act on a request for recovery in the following situations:

(A) the investigations requested authority is evident that the expected resources and costs necessary to take measures for the recovery of financial administrative sanction is disproportionate to the amount to be recovered or are likely to generate significant difficulties;

(B) the total financial penalty and / or fine has a total value of less than equivalent to 350 euro in national currency;

(C) the parties' rights and fundamental freedoms and the principles of law that applies, as provided in the Constitution of the requested Member State are not observed.

Art. 43

(1) If, during a recovery procedure, initiated in accordance with Art. 35 National Agency for Fiscal Administration is informed through IMI to the requesting authority that the administrative sanction financial and / or claim the corresponding subject of an appeal or an appeal by the undertaking concerned or by an interested party, the National Revenue will notify the central fiscal bodies subordinated to suspend the recovery procedure, pending the decision of the competent body or the competent authority of the requesting Member State.

(2) If the minutes of finding a contravention sanction applied in Romania undertaking referred to in art. 3 letter a) subject to an appeal or an appeal by the undertaking concerned or an interested party, the Labour Inspection, through labor inspectorates, expeditiously notify subordinated central fiscal authorities of the National Agency for Fiscal Administration.

(3) National Agency for Fiscal Administration informs expeditiously competent authority of the requested Member State to suspend the recovery procedure by it, pending resolution of the appeal or the appeal, where it was sent that State a request for recovery in accordance with art.

Art. 44

(1) the companies referred to in art. 3 letter b) make any appeal or request for action on financial administrative sanction and / or claim the corresponding competent authority of the host Member State in which the posted employees.

(2) the companies referred to in art. 3 a) addressing any complaint or notice of appeal on the application of fines by the Labour Inspection / territorial labor inspectorate in accordance with this law, the court of Romania.

(3) Disputes about the recovery measures or on the validity or the embodiment of a statement made by the competent national authorities in accordance with Art. 33 and art. 34-36 are introduced by companies referred to in Art. 3 letter b) the courts of Romania, in accordance with national legislation.

Art.45

- (1) Amounts recovered relating to financial penalties or administrative sanctions as appropriate, returning the requested authority.
- (2) National Agency for Fiscal Administration, as requested authority by central fiscal bodies subordinated recover amounts due under Romania's national currency, in accordance with Law no. 207/2015 regarding the Fiscal Procedure Code, as amended and supplemented.
- (3) Amounts recovered in accordance with paragraph. (2) are revenues to the state budget.
- (4) The fines imposed on the undertakings referred to art. 1, letter a), for violation of this law shall be paid in cash at any branch of the State Treasury or by transfer to the respective income account of state budget opened at the Public Treasury and Accounting Bucharest in code with the identification code Regional tax Directorate General of Public Finance Bucharest or in an account at a credit institution.

Art. 46 national competent authorities designated by Member States shall not require each other the refund of costs resulting from mutual assistance which they grant in accordance with this chapter or arising out of its implementation.

CHAPTER VII. the contraventional

Art. 47

Undertakings referred to in Article 3 lit. a) respond contravention under national law for failure to comply with employment conditions laid down in Art. 6.

Art. 48

Considered misdemeanors and are punishable by a fine from 3,000 lei to 100,000 lei breach of art. 26, para. 7.

Art. 49

The contraventions and penalties provided for in article 24, paragraph 4 and paragraph 5, art. 47 and art. 48 is made by labor inspectors.

Art. 50

- (1) Minutes of finding sanctioning misdemeanor and the penalty, established according to the law, for offenses committed under article 24, paragraph 4 and paragraph 5 provided for in art. 47 and art. 48 shall notify the undertaking referred to in art. 3, point a), under this article.
- (2) Communication from the minutes of finding sanctioning misdemeanor and the penalty is made by labor inspectorates in within 5 working days from the date of issue, by mail, by letter containing declared receipt, in a sealed envelope to the address of the establishment of the undertaking in the Member State or the Swiss Confederation.
- (3) In the situation provided in par. (2) if the correspondence is returned in situations other than those referred to in para. (4) c) or if, within 30 days of the mailing date of the minutes is not received an acknowledgment of receipt of its territorial labor inspectorate will submit to the Labour Inspection documents required for submission of requests for communication of an official report and sanction the offense in accordance with art. 38, without the need for communication published at the headquarters of the foreign enterprise or other means of advertising.
- (4) The procedure for communicating the minutes of finding sanctioning misdemeanor and the penalty is reckoned met:
 - a) the date shown on the receipt or proof certifying receipt of the undertaking;
 - b) the communication of the minutes of the misdemeanor sanction finding confirmed by the requested authority of the Member State of establishment of the undertaking, following the submission by the Labour Inspection of the request for disclosure of the minutes in accordance with Art. 38.
 - c) the date of the deposit by the staff of the postal service provider, as appropriate, refusal to sign the acknowledgment of receipt, of refusal of receipt of correspondence or inability to sign any valid reason, the confirmation of receipt, regardless of whether the recipient personal correspondence received or not.

ART. 51

Notwithstanding the provisions of art. 14 para. (1) of the Government Ordinance no. 2/2001 on the legal regime of sanctions, as amended and supplemented, the enforcement of sanctions imposed for offenses committed offenses under the terms of art. 24, para. (4) and paragraph. (5) art. 47 and art. 48 is prescribed if the minutes of finding sanctioning misdemeanor and the penalty the offender was not communicated within four months of the sanction.

CHAPTER VIII. Final and Transitional Provisions

Art. 52

The provisions of this chapter are completed properly with the Government Ordinance no. 2/2001, approved with amendments by Law no. 180/2002, as amended and supplemented, except art. 14 para. (1).

Art.53

- (1) The administrative cooperation and mutual assistance between the competent authorities in Romania and the competent authorities of the Member States as provided for in Chapter IV in Chapter VIII of this law are implemented through Information System (IMI), established by Regulation (EU). 1024/2012.
- (2) Administrative cooperation and mutual assistance between the competent authorities in Romania and the competent authorities of the Swiss Confederation provided for in Chapter IV of this Act shall be implemented through bilateral agreements or arrangements.
- (3) the Labour Inspection and / or Ministry of Labor, Family, and Social Protection may conclude bilateral agreements or arrangements with competent authorities of Member States or the Swiss Confederation on administrative cooperation and mutual assistance in the implementation and monitoring of the terms and conditions employment applicable to posted workers, provided that such bilateral agreements or arrangements do not prejudice the rights and obligations of employees or undertakings.
- (4) Ministry of Labor, Family, and Social Protection informs the European Commission on the agreements and / or bilateral agreements which they apply and provide it therein.
- (5) Under the bilateral agreements or arrangements referred to in paragraph (2), except those concluded with the Swiss Confederation of Labour Inspection use IMI as much as possible.

Art. 54

- (1) This Law shall enter into force 60 days after its publication in the Official Gazette of Romania, Part I.
- (2) Upon the entry into force of this Law, the Law # 344/2006 concerning the posting of workers in the transnational provision of services, published in the Official Gazette of Romania, Part I, nr.636 of 24 July 2006, as amended and supplemented.

Art. 55

Within 60 days of the publication of this law in the Official Gazette of Romania, Part I, Ministry of Labour, Family and Social Protection for the Elderly will develop rules for the application, which will be approved by Government decision.

Art. 56

After the entry into force of this law, the specific procedure concerning the posting of workers in the provision of transnational services in Romania, approved by Government Decision no. 104/2007 remains valid until the entry into force of the Government decision referred to in

Art. 55.

This law transposes:

- Directive 96/71 / EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers to provide services;
- Directive 2014/67 / EU of the European Parliament and of the Council of May 15, 2014 to ensure respect for the Council Directive 96/71 / EC on the posting of workers to provide services and amending Regulation (EU) no.1024/2012 on administrative cooperation through the Internal Market Information System ("IMI Regulation")

Appendix 1

Activities aimed at building construction, repair, maintenance, alteration or demolition of buildings:

- a) excavation;
- b) embankment;
- c) construction;
- d) installation and removal of prefabricated elements;
- e) fittings or equipment;
- f) transformation;
- g) renovation;
- h) repair;
- i) dismantling;
- j) demolition;
- k) maintenance;
- l) maintenance, painting and cleaning works;
- m) improvements.