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## **EUROPEAN SOCIAL CHARTER**

15<sup>th</sup> National Report  
on the implementation  
of the European Social Charter

submitted by

**THE GOVERNMENT OF ROMANIA**

Articles 1, 9, 10, 15, 18, 20, 24 and 25 for the period  
01/01/2011 – 31/12/2014

Report registered by the Secretariat on  
3 March 2016

**CYCLE 2016**



**THE 15<sup>TH</sup> NATIONAL REPORT**

**ON THE IMPLEMENTATION OF**

**THE REVISED EUROPEAN SOCIAL CHARTER**

**PRESENTED BY**

**THE GOVERNMENT OF ROMANIA**

**for the period of 1 January 2011 - 31 December 2014**

concerning Group 1 of articles of the Revised European Social Charter,  
“Employment, Training and Equal Opportunities”: 1, 9, 15 (paragraphs 1 and 2), 18  
(paragraphs 3 and 4), 20, 24 and 25

Pursuant to the provisions of Article C of the Revised European Social Charter and of  
Article 21 of the European Social Charter, on the measures adopted for the  
enforcement of the accepted provisions of the Revised European Social Charter,  
ratified on 7 May 1999

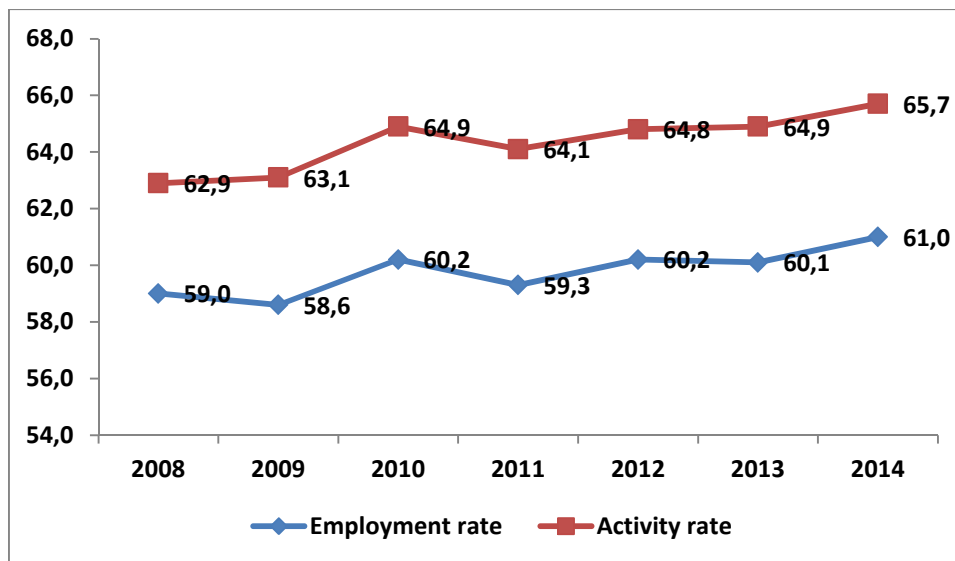
## Article 1

### Paragraph 1 - Policy of full employment

#### *Statistical developments regarding employment and unemployment*

The positive economic developments registered in the period 2011-2014, when the annual economic growth rates were high, especially in 2013 and 2014, were also reflected in the labour market. The activity rate and the employment rate had highly positive evolutions, with levels at the end of 2014 higher than during the post-crisis period (2008) values.

Fig. 1 Evolution of employment and activity rates 2008-2014

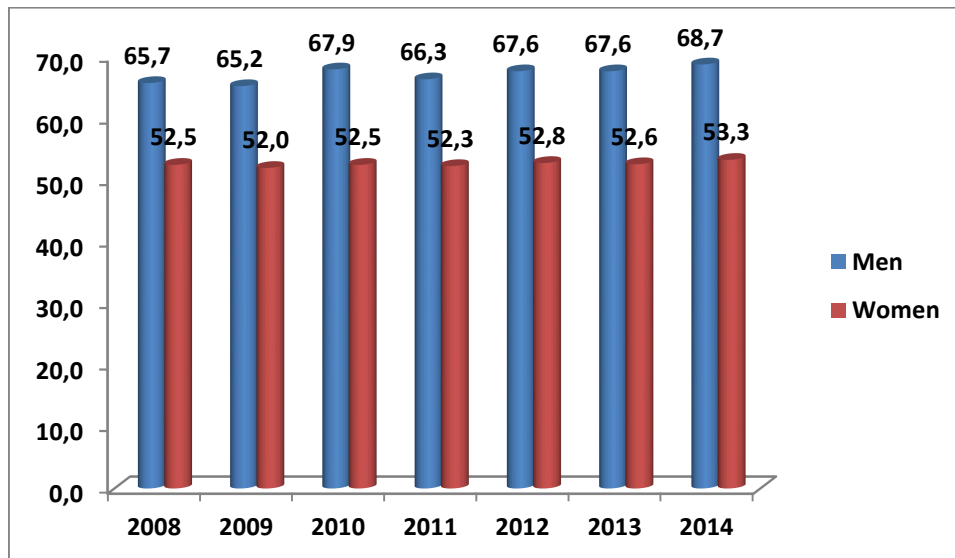


Source: EUROSTAT database, LFS data.

Thus, in 2014 the employment rate reached 61% (age group 15-64 years) and the activity rate reached 65.7%.

With regard to the evolution of the employment rate by gender, 2014 registered an improvement of the employment rate both for women (0.7 pp increase compared to 2013), and for men (1.1 pp increase compared to 2013). Romania's evolution was similar to the evolutions registered by the average European values. However, the difference between women's and men's employment rates remains high, and the short- and medium-term public policies have the role to improve women's participation in the labour market.

Fig. 2 Evolution of the employment rate by gender in the period 2008-2014



Source: EUROSTAT database, LFS data.

By age groups, the employment rate registered positive evolutions for people over 25 years. Thus, the employment rate for the age group 25-54 years increased by 0.8 percentage points in 2014 compared to the previous year, reaching 77.1%, and for the age group 55-64 years the increase was of 1.3 percentage points compared to 2013, reaching 43.1%. For young people (15-24 years), the employment rate continued its negative evolution, reaching 22.5% in 2014, with a decrease by 0.4 percentage points compared to the previous year and by 2.3 percentage points compared to 2008.

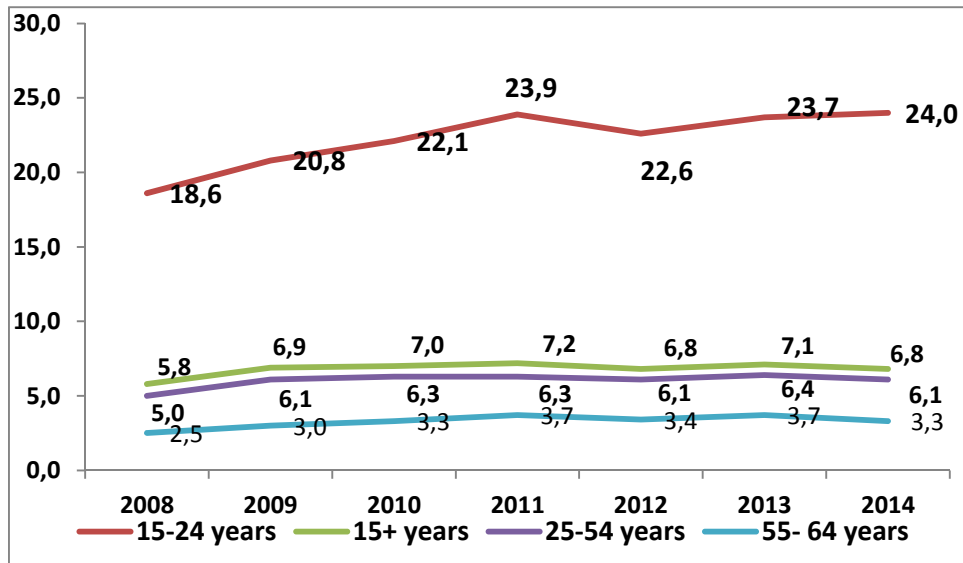
In 2014, the unemployment rate (according to ILO criteria) registered a decrease by 0.3 percentage points compared to the previous year, reaching the same value registered in 2012, namely 6.8%.

By gender, the highest level of unemployment rate among men (7.1%), compared to women (6.1%), was maintained in 2014.

By age groups, the lowest unemployment rates are still registered for the age group 55-64 years, only 3.3% in 2014.

We note a negative evolution of youth unemployment (15-24 years), which increased by 0.3 percentage points compared to the previous year, reaching 24.0%, although the total number of young unemployed (160,700 persons) decreased by 6,500 compared to 2013. The number of active young people (15-24 years) in the labour market continued the decreasing trend, as it diminished significantly - 35,700 persons in 2014 compared to the previous year, mainly with a decrease by 29,200 of young employed people (15-24 years) compared to 2013.

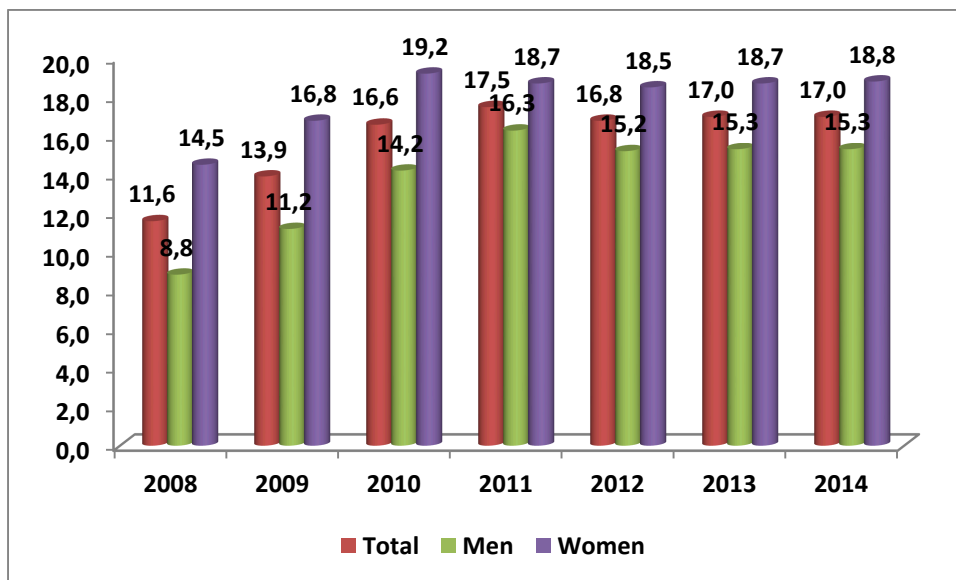
Fig. 3 Evolution of unemployment rate by age groups



Source: EUROSTAT database, LFS data.

The NEETs rate (young people aged 15-24 years who are not in education or employment or training) remained constant in 2014, compared to the previous year, registering the same value of 17%. For women, the NEETs rate was 18.8% in 2014, a slight increase by 0.1 pp compared to 2013 and by 0.3 pp compared to 2012. The value registered for women was significantly higher than the value registered for men - 16.3%.

Fig. 4 Evolution of NEETs rate (15-24 years) by gender



Source: EUROSTAT database, LFS data.

## ***Developments in the legal and strategic framework***

### **1. National Employment Strategy 2014-2020 (NES)**

The National Employment Strategy 2014-2020 is a strategic document aiming to integrate labour market interventions in the period 2014-2020; it was approved by Government Decision no. 1071/2013 and it was developed starting from the national challenges identified by the in-depth analysis of the economic and social developments in the past years, as well as from the challenges faced by Romania in the context of the economic crisis and of recovering the gaps to the EU average. Also, in developing the strategy, the authors considered the relevant European reference strategic framework, namely the Strategy Europe 2020 and the European Employment Strategy.

The vision for 2020 proposed by NES 2014-2020 is as follows: *“The labour market in Romania will be a high performance, dynamic and flexible market, where at least 70% of the persons aged 20 - 64 years will have access to a quality job, according to their capacity and competence and incomes that will ensure a decent living.”* By this strategic document, Romania intends that in 2020 the labour force potential should be optimally valorised to strengthen a competitive and innovative knowledge-based participative and inclusive economy.

To this purpose, the overall objective of the National Employment Strategy 2014-2020 is *“To reach a sustainable employment level supported by economic competitiveness, social cohesion and sustainable development.”*

The specific objectives and lines of action of NES are harmonised with the aim to reach full employment and to facilitate the labour market integration of vulnerable groups: young people, women, rural persons (especially those employed in subsistence agriculture), Roma persons, people with disabilities and elderly workers.

The measures included in the National Employment Strategy 2014 - 2020 and in the Action Plan for 2014 - 2020 support four specific objectives and nine action lines, as follows:

1. To increase youth employment and to extend the active life of the elderly, with two action lines: 1.1. To reduce youth unemployment and the number of young NEETs (not in employment, education or training) and 1.2. To increase participation of elderly in the labour market;
2. To improve the occupational structure and the labour market participation among women and people from vulnerable groups, with the following action lines: 2.1. To reduce employment in subsistence agriculture and to facilitate the relocation of these human resources to non-agricultural activities; 2.2. To increase women’s participation in the labour market, including by measures to support the reconciliation between work and family life; 2.3. To increase the participation of

persons from vulnerable groups in the labour market by developing measures which combine social support and activation;

3. To develop highly skilled human resources whose competences are adapted to the labour market requirements, with the following action lines: 3.1. To support adaptability and permanent development of the work force linked with the structural changes in the labour market; 3.2. To improve the skills of the unemployed and inactive persons who are able to work, to facilitate their reintegration in the labour market;

4. To improve the mechanism for the substantiation, implementation, monitoring and evaluation of policies with impact on the labour market, with two action lines: 4.1. To strengthen the mechanism for the substantiation, implementation, monitoring and evaluation of policies with impact on the labour market and 4.2. To strengthen social dialogue at all levels to facilitate the permit, implementation and compliance with policies with impact on the labour market.

The measures included in the Implementation Plan of the National Employment Strategy for 2014-2020 with a direct focus on specific vulnerable groups (people with disabilities and Roma) are as follows:

- To support employers to adapt/improve jobs and equipment to the needs of persons with disabilities and elderly;
- To support employers to create and maintain the jobs for people with disabilities;
- To develop employment information and counselling services for people with disabilities;
- Assistance services to seek, obtain and maintain a job, but also to return to work for people with disabilities;
- Tax incentives granted to employers to foster labour market inclusion of vulnerable persons/persons from the social assistance system/persons with disabilities / convicts registered with the probation services and those who are serving, or served in part of in whole a custodial sentence;
- Professional reintegration and vocational and professional rehabilitation programmes for people with disabilities;
- To review and amend/supplement the legal framework in order to encourage labour market participation of persons with disabilities;
- To ensure access of Roma persons to social assistance services according to their specific needs, in parallel with participation in education, training and employment programmes.

## **2. Youth Guarantee Implementation Plan 2014-2015**

This plan was developed following the Council Recommendation of 22 April 2013, approved by the Government through Memorandum and commenced implementation at the beginning of 2014. According to the document, *all young*



*people up to the age of 25 y.o. should receive a good quality offer of employment, of continued education, an apprenticeship or traineeship, within 4 months after registering with the territorial employment offices, either directly or through the youth guarantee centres.*

The plan includes:

- a) Key reforms and initiatives to ensure early intervention and activation:
  - Creation of an integrated database for registering young people with the National Agency for Employment;
  - Creating partnerships between NCTVETD, school inspectorates, schools and County Employment Agencies to promote, through campaigns, ALMPs or youth participation in vocational training and education;
  - Development of self-services and expansion by local communities, especially by rural communities;
  - Continue to implement the Second Chance programme for primary education;
  - Continue to implement the Second Chance program for lower secondary education;
  - Continue to implement the National Social Protection Programme “Professional Scholarship”;
  - Continue to implement the National Social Programme “Money for High school”.
  
- b) Supportive measures for labour market integration:
  - Apprenticeship;
  - Traineeships for higher education graduates;
  - Career counselling and guidance;
  - Boosting self-employment and youth entrepreneurship;
  - Assessment and recognition of competences acquired by non-formal and informal learning;
  - Vocational training;
  - Granting mobility bonuses;
  - Providing incentives to employers to hire young people;
  - Providing incentives to employers to hire young people at risk of social exclusion;
  - Developing entrepreneurial skills among young people and facilitating their access to funding (START);
  - Stimulating the creation and development of micro-enterprises by young entrepreneurs (SRL-D);
  - Mentorship activities for young people who access the Programme for stimulating the creation and development of micro-enterprises by young entrepreneurs;

- Growing - Up II Project financed by the European Commission (within the Erasmus Programme).

Funding for the Youth Guarantee measures 2014 - 2015 relies on the following main sources:

- Unemployment insurance budget (UIB);
- ESF (European Social Fund) and other structural and cohesion instruments;
- YEI funds (Youth Employment Initiative);
- State budget, including co-financing for the planned absorption of ESF and YEI funds.

The total proposed funding for the whole array of reforms and initiatives under the scheme amounts to a total of EUR 470.48 million (estimate amount for 2014 and 2015).

### 3. Legal amendments

Law no. 250/2013 amending and supplementing **Law no. 76/2002 on the unemployment insurance system and employment stimulation** and amending **Law no. 116/2002 on preventing and combating social marginalisation** was published in July 2013. The main amendments of the legal framework aimed at:

- Granting free competence assessment services for competences acquired in by non-formal and informal learning, in order to facilitate and expedite the issuance of certificates of professional competence;
- Granting mobility bonuses, including for the long-term unemployed, a measure which aims at stimulating territorial mobility for employment purposes, by granting the employment bonus (2 x reference social indicator value) and the setting-up bonus (7 x reference social indicator value);
- Reducing implementation conditionalities for certain active measures by reducing from 3 to 1.5 years and from 2 to 1.5 years, respectively, the obligation to maintain employment relationships for employers who hire graduates or unemployed over 45 years old, unemployed single parents and persons with disabilities;
- Eliminating the exemption from payment of contributions due to the unemployment insurance budget for employers who benefit from the job subsidy measure;
- Promoting the measure according to which employers who hire, pursuant to law, unemployed persons who, within 5 years from the employment date meet, pursuant to law, the requirements to apply for partial early retirement, or for old-age pension if they do not meet the requirements to apply for partial early retirement, shall benefit monthly, throughout the employment period, until those requirements are met, of an amount equal to value of the reference social indicator in force, granted from the

unemployment insurance budget, compared to the 3-year period provided previously;

- Promoting labour market participation of young people at risk of social marginalisation, by incentives provided to employers who hire young people from this category, a measure according to which these employers, called insertion employers, shall benefit monthly, on request, for each young person from this category employed, from the unemployment insurance budget, of an amount equal to the basic salary established on the date the young person was hired, but not exceeding twice the value of the reference social indicator in force on the employment date, for a period equal to the duration of the solidarity contract concluded between NEA and that young person, for a duration up to three years, but not shorter than one year. These insertion employers may also benefit for a period of maximum 2 years from a monthly amount of 50% of the unemployment benefit due according to law, which the young person would have received if she/he had been laid off on the date the individual employment contract expired, if they conclude a permanent individual employment contract directly with the insertion employer, after that date;
- Amendment of certain legal provisions related to the payment of unemployment allowances under the conditions provided by the Community regulations on the application of social security schemes to employed persons, to self-employed persons and to members of their families, moving within the European Community;
- Limiting the scope of application of the employment measures financed from the unemployment insurance budget, granted, pursuant to legal provisions, following the conclusion of contracts or agreements with employment agencies, so as they are not applicable for employers who are public institutions and authorities, as they are defined by Law no. 500/2002 on public finance, as further amended and supplemented, and as defined by Law no. 273/2006 on local public finance, as further amended and supplemented;
- Eliminating the NEA obligation to apply the enforcement measures in case of failure to pay contributions to the unemployment insurance budget, since this became the duty of the specialist bodies of the Ministry of Public Finance starting with 2004;
- Repealing the provisions on establishing the right to unemployment allowance and on the obligation to be insured with the unemployment insurance system, for military personnel, since, pursuant to Art.89 paragraph (2) of Annex no. VII to the Framework-Law no. 284/2010 on the unitary payment of personnel paid from public funds, as further amended and supplemented, the provisions related to the unemployment insurance system and employment promotion do not apply to military personnel,

police forces and civil servants with special status from the penitentiary system.

Law no. 179/2013 amending and supplementing **Law no. 279/2005 on work-based apprenticeship** represented a solution to promote youth employment. The main objectives of the legal amendment aimed at:

- Obtaining quality training and competences recognised at national level, to enable employment and further learning;
- Allowing employers to secure quality skilled workforce, according to their specific requirements;
- Simplifying the duties of employers who organise work-based apprenticeship;
- Extending the possibility to fund this type of training, including by use of European funding.

The objective of **Law no. 335/2013 on internships for higher education graduates**, as further amended and supplemented, is to facilitate learning for tertiary education graduates directly from professionals from the very beginning of their activity, in order to facilitate transition from school to work and ensure a decent level of social security and a quality job. This law aims at:

- Promoting labour market access of young higher education graduates to a decent and sustainable job, according to the studies they graduated;
- Providing good working conditions and strengthening training;
- Regulating the minimum conditions for a quality internship - defining the professional objectives; reasonable duration; social protection and proper remuneration; firm rights and obligations for all parties involved by concluding agreements involving both companies and the public employment services.

The legal framework set in place by Law no. 76/2002 on the unemployment insurance system and employment stimulation regulates various measures designed both to promote employment and to increase employability, including for young and Roma job seekers, and to prevent unemployment and to protect persons registered with the unemployment insurance system.

Pursuant to the provisions of Art.4 paragraph (1) of Law no. 76/2002, as further amended and supplemented, the enforcement of this law excludes any discrimination on grounds of political beliefs, race, nationality, ethnic origin, language, religion, social category, beliefs, gender and age.

Pursuant to Art.80 paragraph (1) of the above-mentioned law, employers who hire graduates with a permanent employment contract receive monthly, for a period of 12 months, for each graduate employed:

- a) An amount equal to the value of the reference social indicator of the unemployment insurance and employment stimulation in force on the employment date, for graduates of the lower high school cycle or of schools of arts and trades;
- b) An amount equal to 1.2 X the value of the reference social indicator of the unemployment insurance and employment stimulation in force on the employment date, for graduates of upper secondary education or post-high school education;
- c) An amount equal to 1.5 X the value of the reference social indicator of the unemployment insurance and employment stimulation in force on the employment date, for higher education graduates.

Pursuant to the provisions of paragraph (2) of the same article, employers who hire graduates with disabilities with a permanent employment contract receive monthly, for each graduate, the amounts provided by paragraph (1) for a period of 18 months.

The express provisions of Art.83 paragraph (1) of the above-mentioned law stipulate that employers who hire graduates pursuant to Art.80 of the Law have the obligation to maintain employment relationships for at least 18 months after the employment date.

As provided by Art.84<sup>1</sup> paragraph (1) of the same law, employers who, after having met the obligation provided by Art.83 paragraph (1) of the law, maintain employment relationships with the graduates hired according to the provisions of Art.80 shall receive, for each year of continued employment relationships, a financial support equal to the amount covered by the social contributions owed by employers for these persons and paid, in compliance with legal provisions.

Pursuant to the provisions of paragraph (2) of the same article, the financial support provided by paragraph (1) may be granted for a period of up to 2 years from the date the obligation provided by Art.83 paragraph (1) of the law is met.

The social contributions owed by employers mean the contribution to social insurance, insurance contribution for occupational accidents and diseases, health insurance contribution and unemployment insurance contribution, pursuant to Art.84<sup>1</sup> of the law.

In order to encourage employers to hire persons from hard-to-employ categories, Art. 85 paragraph (1) of Law 76/2002, as further amended and supplemented, provides that employers who hire with a permanent employment contract unemployed persons aged over 45 years or unemployed single parents shall receive monthly, for a period of 12 months, for each person employed from these categories, amount equal to the value of the reference social indicator of the unemployment insurance and employment stimulation in force, with the obligation to maintain employment relationships for at least 18 months.

Mention should be made that the promotion of labour market participation of young people at risk of social marginalisation is performed, as provided by Art.93<sup>1</sup> of the above-mentioned law, by the National Employment Agency, through:

- a) Personalised employment services;
- b) Information activities to promote the interests of young people at risk of social marginalisation among employers;
- c) Job subsidies.

Pursuant to Art.93<sup>2</sup> paragraph (1) of the same law, personalised employment services, as stipulated by Art.93<sup>1</sup> letter a) of the law, are provided by the National Employment Agency through the territorial employment agencies, based on a solidarity contract, and consist of a set of services provided free of charge to young people at risk of social marginalisation, namely:

- a) Information and career counselling;
- b) Job-matching;
- c) Placement with an employer whose job offer was selected as adequate for the professional training and other conditions included in the dossier created for the registration as job seeker with the employment agency.

Pursuant to the provisions of Art. 93<sup>4</sup> paragraph (1) of Law no. 76/2002, as further amended and supplemented, employers who hire young people at risk of social marginalisation benefitting from personalised employment services based on a solidarity contract, called insertion employers, benefit monthly, pursuant to law, for each person in this category, from the unemployment insurance budget, of an amount equal to the basic salary established on the date the young person was hired, but not exceeding twice the value of the reference social indicator in force on the employment date, for a period equal to the duration of the solidarity contract.

Pursuant to the provisions of Art. 93<sup>6</sup> paragraph 1) of this law, if the employer maintains the employment relationship with the young person hired pursuant to the provisions of Art. 93<sup>4</sup> after the duration of the solidarity contract expired, the employer shall benefit monthly, pursuant to legal provisions, for this person, from the unemployment insurance budget, from a monthly amount of 50% of the unemployment benefit due according to law, which the young person would have received if his/her contract had been terminated on that date for reasons not attributable to the employee.

The amount provided by paragraph (1) shall be granted to the employer for the period of maintaining the employment relationship, but not exceeding 2 years, pursuant to the provisions of Art. 93<sup>6</sup> paragraph (3) of the law.

We should also mention that Art.1 of Law no. 335/2013 on internships for higher education graduates stipulates regulations on internships for higher education graduates, with the purpose to:

- a) Ensure the transition from school to work of higher education graduates;
- b) To strengthen professional skills and competences to adapt to the practical requirements and demands of the workplace in order to facilitate labour market integration;
- c) Acquire experience and seniority;
- d) Acquire seniority in that specialisation, as appropriate.

As provided by Art. 27 of the above-mentioned law, the internship may be funded from the sources expressly mentioned by this article, including the unemployment insurance budget.

Pursuant to the express provisions of Art.28 paragraph (1) of the same law, employers who conclude an internship contract in compliance with the conditions provided by this law shall receive for that intern monthly, on request, from the unemployment insurance budget, throughout the internship duration, an amount equal to X 1.5 the value of the reference social indicator for unemployment insurance and employment stimulation in force, as provided by Law no. 76/2002, as further amended and supplemented, within the limits of the funds allocated for this purpose.

Also, Law no. 72/2007 on stimulating student employment, as further amended and supplemented, regulates through the express provisions of Art.1 the granting, from the unemployment insurance budget, of a monthly financial incentive equal to 50% of the value of the reference social indicator for unemployment insurance and employment stimulation in force, as provided by Law no. 76/2002, as further amended and supplemented, to employers who hire students during holidays, for each student employed.

Having regard to the legal provisions presented and to the provisions of Law no. 76/2002, as further amended and supplemented, of Law no. 72/2007, as further amended and supplemented, and of Law no.335/2013, as further amended, we mention that the employment stimulation measures provided by these laws, with the purpose to encourage employers to hire young and Roma persons, should ensure the prerequisites for employing such job seekers, and for creating new jobs and maintaining them in the labour market.

NEA has presented and may present only information on the outcomes of employment stimulation measures and actions undertaken pursuant to the obligations provided by law. The implementation plans for the sectoral strategies are monitored by the line ministries.

## **Monitoring the implementation and efficiency of labour market measures**

For the purposes of monitoring the implementation of active employment measures, the Ministry of Labour, Family, Social Protection and Elderly concludes every year with the National Employment Agency a *management performance contract*, pursuant to the provisions of Law no. 202/2006 on the organisation and functioning of the National Employment Agency, as republished, and of Law no. 76/2002 on the unemployment insurance system and employment stimulation, as further amended and supplemented.

Thus, Article 99 letter h) of Law no. 76/2002 on the unemployment insurance system and employment stimulation, as further amended and supplemented, provides that, in the field of employment, MLFSPE has the duty to establish management performance indicators and their level, based on which the annual management performance contract is concluded with the National Employment Agency.

Article 7 paragraph (1) of Law no. 202/2006 on the organisation and functioning of the National Employment Agency, as republished, provides the following: *“In order to achieve the quantitative and qualitative indicators resulted from measuring the measures included in the Governmental Employment Strategy, hereinafter called management performance indicators, the Minister of Labour, Family, Social Protection and Elderly and the President of the National Employment Agency shall conclude an annual management performance contract, with prior endorsement of the Board of Administration of the National Agency.”*

The management performance contract sets:

- The overall and specific objectives of the National Employment Agency (NEA);
- The main measures for the implementation of these objectives;
- The quantitative and qualitative indicators resulted from measuring the priorities included in the governmental strategic documents in the field of employment and workforce training.

For 2014, the following management performance indicators were agreed between MLFSPE and NEA - on the one hand - and between the central NEA and the County Employment Agencies - on the other hand.

**Table 1. List of performance indicators for 2014**

No	Indicator:	Expected value	Value achieved by 31/12/2014
1.	Level of occupation of vacancies communicated by employers and registered by NEA.	75%	67.56%
2.	Level of employment of all job seekers registered by		



	NEA.	35%	33.57%
3.	Unemployed participation rate in training courses	10%	9.57%
4.	Share of women participating in training courses in the total number of unemployed participating in training courses	53%	56.88%
5.	Unemployed participation in active measures	80%	84.66%
6.	Unemployed participation in active measures within the first months from registration, namely:		
6a)	Within the first 4 months after registration for young people;	100%	99.79%
6b)	Within the first 6 months after registration for adults.	75%	85.72%
7.	The share of young people below 25 years who are employed, participate in a training course, conclude a work-based apprenticeship contract or an internship contract in the total number of young people below 25 years registered	75%	43.46%
8.	Share of employed persons in the total number of participants in active measures:		
8a)	3 months after the participation in an active measure.	20%	27.25%
8b)	6 months after the participation in an active measure.	25%	27.20%
9.	Share of persons from special needs groups who benefit from information and career counselling services in the total number of persons from special needs groups registered with NEA	65%	76.76%
10.	Share of employed persons in the total number of training programmes graduates:		
10a)	6 months after the graduation exams.	25%	36.78%
10b)	12 months after the graduation exams.	50%	49.90%

Note: \* Conclusion of an internship contract shall be considered starting with the 2<sup>nd</sup> quarter

The values of the management performance indicators are negotiated between MLFSPE and NEA before the management performance contract is signed by the Minister of Labour and the President of NEA. After this contract is signed, the President of NEA concludes management performance contracts with the executive directors of the county employment agencies, indicating the specific values of the indicators, after having considered aspects related to the county's economic development, number of unemployed, administrative capacity etc.

The indicators are established considering the targets and the objectives set by the reference governmental strategic documents on employment and workforce training, whose accomplishment requires the conjugated efforts of the county employment agencies, as well as the overall economic and social context at county level.

The Ministry of Labour, Family, Social Protection and Elderly has the role:

- To support the National Employment Agency in order to ensure the necessary financial resources for the implementation of policies and measures in its field of activity, through the unemployment insurance budget as;
- To propose overall objectives based on the analysis of strategic documents and to negotiate the level of performance indicators for the current year, based on the level of achievement of management performance indicators set for the previous year;
- To monitor quarterly the NEA activity, and the accomplishment of management performance indicators, respectively, based on the report developed by NEA and submitted to MLFSPE before the end of the first month of each quarter;
- To review the reports and analyses submitted by NEA;
- To provide recommendations on the measures to improve NEA activities in order to accomplish the performance indicators.

The management performance contract and the performance indicators are an efficient tool for monitoring and evaluating the accomplishment of the objectives assumed by the public employment services.

Performance measurement is key for strengthening the institutional capacity of NEA. Failure to achieve the management performance indicators may impact on the performance review of the management staff of the agencies. However, the evaluation of the accomplishment of performance indicators becomes rather a discussion and dialogue trigger than a control and sanctioning instrument.

Moreover, in 2015, the National Institute for Scientific Research in the Field of Labour and Social Protection, in partnership with the Forecast Institute of the Romanian Academy and the Centre for Urban and Regional Sociology CURS SRL are implementing a research project to assess the impact of the active employment measures.

The ex-post evaluation of active measures impact is performed using a scientific methodology adapted to the national legislative and socio-economic specificity which combines two types of ex-post evaluation methods.

The use of two impact evaluation methods - one at micro level (evaluating the impact of active measures on individuals) and one at macro level (evaluating the impact of active measures on economic aggregates and/or on the socio-economic dynamics) enables much more complex conclusions on the significance/impact of the effects.

The comparison of outcomes provided by the microeconomic and macroeconomic models will enable the formulation of substantial conclusions, combining the outcomes provided by impact evaluation at individual level with those related to the overall economic balance.

With regard to respect for private life in the workplace, the Romanian legislation includes various provisions on the matter.

Thus, Art. 26 of the Constitution “Intimacy, family and private life” provides as follows:

(1) The public authorities shall respect and protect the intimate, family and private life.

Also, the Labour Code includes various provisions, such as:

#### ART. 5

(1) The principle of equal treatment for all employees and employers shall apply within the framework of the employment relationships.

(2) Any direct or indirect discrimination against an employee based on gender, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited.

(3) The acts and deeds of exclusion, distinction, restriction or preference, based on one or several of the criteria referred to in paragraph (2), which have the purpose or effect of denying, restraining or removing the recognition, enjoyment or exercise of the rights provided for in the labour legislation shall constitute direct discrimination.

(4) The acts and deeds apparently based on other criteria than those referred to in paragraph (2), but which effect to a direct discrimination, shall constitute indirect discrimination.

#### ART. 6

(1) Any employee engaged in an occupation shall enjoy working conditions adequate to the activity carried out, social protection, health and safety at work, and respect of his/her dignity and conscience, without discrimination.

(2) Any employee engaged in an occupation shall be recognized the right to collective bargaining, the right to protection of personal data, and the right to protection against unlawful dismissals.

(3) Any gender-based discrimination, as regards all elements and conditions of compensation, shall be prohibited for equal work or work of equal value.

At the same time, Government Ordinance no. 137/2000 established the following:

ART. 1\*\*\*)

(1) Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality represent supreme values and shall be guaranteed by law.

(2) The principle of equality between citizens, of exclusion of privileges and discrimination are guaranteed especially in exercising the following rights:

a) The right to equal treatment in front of a court of law and of any other jurisdictional body;

b) The right to individual safety and to obtain the state protection against violence of maltreatment from any person, group of individuals;

c) Political rights, mainly election rights, the right to participate to public life, to access to public functions and dignities;

d) Civil rights, especially:

(i) The right to free movement and to choose residence;

(ii) The right to leave and to return to the one's country;

(iii) The right to obtain and to renounce Romanian citizenship;

(iv) The right to marry and to choose a partner;

(v) The right to property;

(vi) The right to inheritance;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of assembly and association;

(x) The right to petition;

e) Economic, social and cultural rights, especially:

- (i) The right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and to join trade unions;
  - (iii) The right to housing;
  - (iv) The right to health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to participate, under equal conditions, in cultural activities and sports;
- f) The right to have access to all the public places and public services.

#### ART. 6

Pursuant to this Ordinance, conditioning any person's participation in an economic activity or his/her choice or free exercise of a profession on grounds of race, nationality, ethnical background, social category or beliefs, gender or sexual orientation, age or belonging to an underprivileged category shall be considered an offence.

#### ART. 7

Pursuant to this Ordinance, any discrimination of a person for belonging to a certain race, nationality, ethnical background, religion, social category or underprivileged category or on the grounds of beliefs, age, gender or sexual orientation, within an employment or social protection relationships, except for the cases provided by law, shall be considered an offence when manifested in the following fields:

- a) Conclusion, suspension, amendment or termination of employment relationship;
  - b) Establishment and change of professional duties, workplace or salary;
  - c) Granting other social rights than the salary rights;
  - d) Training, improvement, re-training and promotion;
  - e) Enforcement of disciplinary actions;
- f) The right to affiliate to a trade union and to access to facilities granted by a trade union;
- g) Any other work conditions, pursuant to the legislation in force.

#### ART. 8

(1) Pursuant to this Ordinance, any refusal by a natural or legal person to employ a person for belonging to a certain race, nationality, ethnical background, religion, social category or underprivileged category or on the grounds of beliefs, age,

gender or sexual orientation, except for the cases provided by law, shall be considered an offence.

(2) Pursuant to this Ordinance, conditioning the access to a job, through a job advertisement or competition launched by the employer or by their representative, on grounds of race, nationality, ethnical background, religion, social category or underprivileged category or on the grounds of age, gender or sexual orientation, or candidate's beliefs, except for the situation provided by Art. 2 paragraph (9), shall be considered an offence.

(3) Natural and legal persons responsible with job-matching and placement shall apply equal treatment to all job seekers, shall ensure all job seekers free and equal access to information on the labour market demand and supply, to consultancy on employment and training opportunities and shall refuse to support any discriminatory requests of the employers. The employers shall ensure the confidentiality of all information on the race, nationality, ethnical background, religion, gender, sexual orientation or of any other personal information related to job seekers.

#### ART. 9

Pursuant to this Ordinance, any discrimination of employees by their employers in terms of social benefits granted, on grounds of race, nationality, ethnical background, religion, social category or underprivileged category or on the grounds of age, gender or sexual orientation, or beliefs promoted by them shall be considered an offence.

#### **Paragraph 2 - Freely consented labour (non-discrimination, ban of bonded labour)**

With regard to the fact that the limitation of the right to unemployment allowance in case of refusing a job would indirectly lead to a restriction of the right to work, we believe this is a wrong assumption. Job offers proposed by employment agencies are correlated to the level of education and training of the unemployed.

#### **Legal basis**

Pursuant to Article 44 letter d of Law 76/2002 on the unemployment insurance system and employment stimulation, as further amended and supplemented, *“Payment of unemployment allowances granted to beneficiaries shall cease on the date of unjustified refusal of employment according to the level of training or education in a workplace located within a distance not exceeding 50 km from the locality of residence.”*

The notion of unjustified refusal is explained by Article of the Government Decision no. 174/2002 approving the methodological rules for the enforcement of Law no. 76/2002 on the unemployment insurance system and employment

stimulation *“By unjustified refusal, as provided by Art. 44 letters d) and e) of the law, we understand the situation when the beneficiary of the unemployment allowance does not accept the employment, training or re-training solutions provided, as appropriate, based on career counselling or job-matching services.”*

### **Paragraph 3 - Free placement services**

Pursuant to Art.1 paragraph (1) of Law no.202/2006 on the organisation and functioning of the National Employment Agency, as further amended and supplemented, the National Employment Agency is a public institution of national interest, with legal personality, placed under the authority of the Ministry of Labour, Family, Social Protection and Elderly.

As provided by Art.5 paragraph (1) letter a) of the above-mentioned law, the National Employment Agency has under its subordination the county employment agencies and the Bucharest Municipality employment agency, devolved public services.

Pursuant to the provisions of Art.26 of the same law, the county employment agencies and the Bucharest Municipality employment agency devolved public services, set up at county level and at the level of Bucharest Municipality, having mainly the duties expressly provided by this article, including the following: to ensure the registration of job seekers and unemployed persons, pursuant to law; to ensure the registration of job vacancies communicated by employers, pursuant to law; to provide career counselling and guidance for job seekers and to liaise employers and job seekers in for the purposes of establishing employment relationships; to accredit, pursuant to law, the providers of specialist employment stimulation services; to provide information and counselling services to persons who are willing to work in the Member States of the European Union and of the Agreement on the European Economic Area, as well as in other countries with whom Romania signed treaties, conventions, agreements and understandings.

Pursuant to Art.27 paragraph (1) of the same law, in order to fulfil their duties, upon approval of the Board of Administration, county employment agencies and the Bucharest Municipality employment agency may set-up local employment agencies, own training centres and working points, units without legal personality.

As stipulated by paragraph (2) of the above-mentioned article, local employment agencies may be set-up at the level of capital municipalities, of the main localities within each county, and of the Bucharest Municipality districts.

The working points shall be organised and function under the subordination of local agencies, pursuant to the provisions of paragraph (4) of the same article.

With regard to the legal provisions invoked above, we mention that the specialist services aiming at improving the employment prospects of job seekers, including career counselling and guidance for job seekers and job-matching services linking

employers and job seekers for employment purposes, shall be granted, as expressly provided by the legal provisions invoked, by the county employment agencies and the Bucharest Municipality employment agency, as well as by the local employment agencies or working points which are units without legal personality set-up under the subordination of the county employment agencies and the Bucharest Municipality employment agency, pursuant to the relevant legal provisions applicable.

In 2015, NEA had 2142 employees, of which 1521 staff working directly with clients.

With regard to the accreditation of providers of specialist employment stimulation services, we should mention that these are delivered pursuant to Law no.76/2002, as further amended and supplemented, in compliance with the Accreditation Criteria for providers of specialist employment stimulation services, approved by Government Decision no.277/2002, as further amended and supplemented.

Pursuant to the provisions of Art.2 paragraph (1) of the accreditation criteria, specialist employment stimulation services consist in:

- a) Information and counselling services
- b) Job-matching services on the domestic market.

Pursuant to the provisions of paragraph (2) of the above-mentioned article, the services mentioned at paragraph (1) of the above-mentioned article are provided by the county employment agencies and the Bucharest Municipality employment agency or by other service providers from Romania or from the Member States of the European Union and of the European Economic Area, accredited against the above-mentioned criteria or subject to the notification procedure, as appropriate.

Pursuant to the provisions of Art.2 paragraph (3) some of the accreditation criteria mentioned require that the providers of specialist employment stimulation services may be public or private legal person or natural persons authorised to undertake an independent activity, pursuant to law.

As provided by Art.4 paragraph (1) of the same accreditation criteria, the accreditation of service providers stipulated by Art.2 paragraph (1) against those accreditation criteria shall be performed by the National Employment Agency, through the county employment agencies and the Bucharest Municipality employment agency where the providers have their registered headquarters or residence, as appropriate.

Pursuant to the provisions of paragraph (2) of the article invoked, the providers of specialist employment stimulation services from the Member States of the European Union and of the Agreement on the European Economic Area who did not need to obtain an authorisation or accreditation for the delivery of these services, pursuant to the legislation of their country of origin, and are not subject to authorisation or accreditation requirements, shall comply with the same



authorisation or accreditation requirements as the providers from Romania, if they undertake such activities in Romania, except for employment services providers who intend to deliver such cross-border services on the territory of Romania, temporarily or occasionally, and who are subject to the notification procedure when they undertake such activities in Romania.

Pursuant to the provisions of Art.4 paragraph (3) of the Accreditation Criteria for providers of specialist employment stimulation services, approved by Government Decision no.277/2002, as further amended and supplemented, the providers of specialist employment stimulation services from the Member States of the European Union and of the Agreement on the European Economic Area who had been subject to such requirements in their country of origin or provenance shall not be subject to accreditation.

As provided by Art.4<sup>1</sup> paragraph(1) of the accreditation criteria invoked, in order to deliver permanent specialist employment stimulation services in Romania, as provided by Art.2 paragraph (1), the service providers from the Member States of the European Union and of the Agreement on the European Economic Area who are accredited or authorised pursuant to the legislation in their country of provenance have the obligation to notify the county employment agency or the Bucharest Municipality employment agency within the administrative-territorial unit in which they permanently establish in Romania, pursuant to law, where they have their permanent headquarters or, as appropriate, their domicile/residence, prior to commencement of delivery, within 5 working days after the date of issuance of the document attesting their permanent residence Romania.

The providers of specialist employment stimulation services established in another Member State of the European Union and of the Agreement on the European Economic Area, who are legally entitled to provide such services pursuant to the legislation of their country of provenance, whether they are subject or not, as appropriate, to an accreditation or authorisation procedure for delivering those services, if they intend to deliver such cross-border services on the territory of Romania, temporarily or occasionally, have the obligation to notify the county employment agency or the Bucharest Municipality employment agency within the administrative-territorial unit in which they intend to undertake such activities on their intention to deliver such services on the territory of Romania, pursuant to the provisions of Art.4<sup>2</sup> paragraph (1) of the above-mentioned accreditation criteria.

Pursuant to the provisions of Art.4<sup>3</sup> paragraph (1) of the same accreditation criteria, the providers of services mentioned by Art.2 paragraph (1) who are subject to the accreditation procedure against the above-mentioned accreditation criteria, as well as the providers mentioned by Art.4<sup>1</sup>, except for natural persons authorised to undertake an independent activity and for providers established in another Member State of the European Union and of the Agreement on the European Economic Area who deliver cross-border services on the territory of Romania, temporarily or occasionally, have the obligation to notify the county

employment agency or the Bucharest Municipality employment agency on setting-up in Romania any branches or other secondary headquarters whose activities fall under the scope of the accreditation regime regulated by these accreditation criteria.

Pursuant to the provisions of paragraph (2) of the same article, the notification on setting-up any branches or other secondary headquarters provided by paragraph (1), shall be made prior to the commencement of such activities within these entities of the provider, within 5 working days after the issuance of the document attesting the setting-up.

Pursuant to the provisions of Art.10 paragraph (1) and paragraph (2) of the Accreditation Criteria for providers of specialist employment stimulation services, approved by Government Decision no.277/2002, as further amended and supplemented, the accreditation shall be granted on permanent basis, and the provider shall be accredited from the date of issuance of the accreditation certificate provided by Art.7 paragraph (1) of the accreditation criteria.

The notification obligation provided by Art.4<sup>1</sup> and 4<sup>2</sup> shall be considered fulfilled when the notification has been submitted together with all the necessary documents, as provided by paragraph (3) of the invoked article.

Pursuant to the provisions of Art.15 of the accreditation criteria invoked, service providers accredited against those accreditation criteria and the providers mentioned by Art.4<sup>1</sup> of these accreditation criteria may deliver specialist employment stimulation services, financed from the unemployment insurance budget, based on contracts concluded with the county employment agency or the Bucharest Municipality employment agency, pursuant to Art.32 of the methodological rules for the enforcement of Law no. 76/2002, as approved by Government Decision no.76/2002, approved by Government Decision no.174/2002, as further amended and supplemented, following the selection performed in compliance with the procedures provided by the legislation on public procurement in force.

Pursuant to the provisions of Art.10 paragraph (2) of Law no.76/2002, as further amended and supplemented, the accredited providers of specialist employment stimulation services have the obligation to communicate monthly data on the number of unemployed persons whom they provided job-matching services and who were employed to the employment agencies within the administrative-territorial unit in which they have their headquarters.

Having regard to the legal provisions invoked, we mention that service providers from Romania or from the Member States of the European Union and of the Agreement on the European Economic Area who are accredited against the Accreditation Criteria for providers of specialist employment stimulation services, approved by Government Decision no.277/2002, as further amended and supplemented, or who are subject to the notification procedure provided by these

accreditation criteria may provide, in compliance with the relevant legal provisions in the field, career information and counselling services, as well as job-matching services on the domestic market.

We also mention that the providers who are accredited against the accreditation criteria, as well as the providers from the Member States of the European Union and of the Agreement on the European Economic Area who are accredited or authorised pursuant to the legislation of their country of provenance and who notified the county employment agency or the Bucharest Municipality employment agency from the administrative-territorial unit where they are permanently established, may deliver specialist employment stimulation services, financed from the unemployment insurance budget, based on contracts concluded with the county employment agency or the Bucharest Municipality employment agency, following the selection performed in compliance with the legal provisions.

NEA concluded cooperation protocols with representative associations for certain fields of activity, for example the protocol concluded with the Romanian Association of Temporary Work Agents (January 2015), ASSOC from February 2015.

#### **Paragraph 4 - Career guidance, training and professional rehabilitation**

Pursuant to the provisions of Art.57 paragraph (1) of Law no.76/2002, as further amended and supplemented, law applicable in the field of activity of the National Employment Agency, the National Employment Agency fosters employment opportunities for job seekers mainly by:

- a) Career information and counselling;
- b) Job-matching;
- c) Training;
- d) Assessment and certification of competences acquired by non-formal and informal learning;
- e) Consultancy and assistance to begin an independent activity or to set up a start-up.

As provided by Art.63 paragraph (2) of the law invoked, training programmes ensure, pursuant to law, the initiation, qualification, re-training, improvement and specialisation of job seekers.

Pursuant to the provisions of Art.66 paragraph (2) of Law no.76/2002, as further amended and supplemented, training services are provided free of charge, on request of the employees, upon employer's agreement, or on request of the employer, and for persons who are in the following situations:

- a) They re-commence activity after the parental leave granted until the child is 2 years old, or 3 years old or 7 years old in case of children with disabilities;

b) They re-commence activity after having completed the active military service;

c) Or they re-commence activity after having recovered their working capacity after invalidity retirement.

Having regard to the legal provisions invoked, we mention that training services are delivered free of charge, from the unemployment insurance budget, to employed persons who fall under the situations expressly regulated by Art.66 paragraph (2) of Law no.76/2002, as further amended and supplemented, on request of the employees, upon employer's agreement, or on request of the employer.

The participation rate of the unemployed in training programmes decrease in 2010, as expected, due to the effects of the economic and financial crises.

In 2011 there were attempts to include more persons in training programmes, ensuring access to training programmes without any discrimination, only checking whether they meet the access requirements imposed by the legislation in force.

According to the Government Programmes, the Government of Romania took actions to re-launch the economic growth and support the creation of new jobs, including in rural areas. The objectives of the Government Programme aimed at balancing the labour market and increasing the employment rate, and the flexibility of the labour market, at strengthening social dialogue at all levels in order to increase its contribution to the economic and social development. The legal framework was amended in 2014, by introducing free assessment and certification of competences acquired by non-formal and informal learning for the persons registered with NEA.

For the period of 2011-2014, the unemployed participation rate in training programmes had a positive trend. Thus, in 2011 it was 10.89% compared to 8%, as provided by the management performance contract, in 2012 it was 10.46% compared to 8% provided and 9.57%, and in 2014, it was 9.57% compared to 10% provided.

Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, as republished, and further amended and supplemented, dedicated an entire chapter to career guidance, training and employment. Thus, pursuant to this law, any disabled person willing to be employed or re-employed has free access to assessment and career guidance, regardless their age, and disability type and level. The disabled person participates actively in the process of assessment and career guidance, and has access to information and to choosing the activity, according to their wishes and skills.

The disabled persons who are in education and have the necessary age for employment, the unemployed persons, those who have no professional experience

or those who, although already employed, wish to change their professional pathway, benefit from career guidance, as appropriate.

The disabled person or, as appropriate, their family or legal representative, is the main decision-maker with regard to career guidance.

### **Article 9**

The guidance and counselling activities to promote the local vocational education provision, as provided by the Methodologies on the organisation and functioning of this type of education, approved by OMERYS no. 3168/03.02.2012 and OMNE no. 3136/20.02.2014 are as follows:

#### **a) Information by the County School Inspectorate / Bucharest Municipality School Inspectorate (CSI/BMSI) to lower secondary education schools on further study opportunities in vocational education and training for 8<sup>th</sup> grade graduates**

CSI/BMSI shall ensure that all lower secondary education schools are informed on the provisions of the following documents:

- Methodology on the organisation and functioning of vocational education and training;
- Methodology on the organisation of admission to vocational education and training;
- Admission calendar in vocational education and training.

The information shall also include the opportunities of further study after vocational education and training.

#### **b) Counselling for ALL 8<sup>th</sup> grade students from lower secondary education, on further study opportunities in 3-year public vocational education and training programmes**

Each school with 8<sup>th</sup> grade students following lower secondary education studies the current year shall organise and undertake career guidance and counselling activities with these students, with a focus on raising awareness on the labour market requirements and on career and further study opportunities provided by vocational education and training.

The career guidance and counselling activities shall be undertaken with the support of school counsellors from the County Resource and Educational Assistance Centre (CREAC) / Bucharest Municipality Resource and Educational Assistance Centre (BMREAC) and have the role of preparing student enrolment in vocational education and training.

All lower secondary education schools shall organise information sessions with 8<sup>th</sup> grade students and their parents, to present the pre-selection and/or admission procedures and the education plan for vocational education and training.

**c) Organising “Professions Week” in the period dedicated to student counselling and guidance**

Each school which intends to provide vocational education and training shall organise the “Professions Week” when they organise activities to promote vocational education and training in general and especially the organisation and functioning of vocational education and training, provide information on the access requirements for vocational education and training and on the benefits of this pathway.

**d) Organising “Professions Fair” to present the regional/county offer;**

CSI/BMSI organise the education offer fair - “Professions Fair”, with the involvement of VET schools and employers. The Fair shall include a section for the regional education offer.

**e) Promotion of vocational education and training and of the number of places available in the local media.**

At national level, NCTVETD promotes vocational education and training through the website [www.alegetidrumul.ro](http://www.alegetidrumul.ro), posting the education offer and updated information on the number of places for vocational education and training occupied.

At county level, CSI/BMSI shall ensure the visibility of the education offer through the written and audiovisual media and in all public events organised for this purpose.

Details on the career guidance and counselling activities are indicated and updated on yearly basis in the Admission Calendar for vocational education and training.

Pursuant to the provisions of Art.4 paragraph (1) of Law no.76/2002, as further amended and supplemented, law applicable in the field of activity of the National Employment Agency, any discrimination on grounds of political beliefs, race, nationality, ethnical origin, language, religion, social category, beliefs, gender and age shall be banned in the enforcement of this law.

According to Art.16 of the law invoked, the beneficiaries of these legal provisions are job seekers who are in one of the following situations:

- a) They became unemployed in the meaning of Art. 5 point IV letter c) of this law;
- b) They could not get employment after graduating an education institution;
- c) They have a job and, for various reasons, intend to change their job;
- d) They have obtained the refugee status or any other type of international protection, pursuant to law;
- e) They are foreign citizens or stateless persons who were employed or earned income in Romania or who have the right to work in Romania, pursuant to law;
- f) They could not get employment after repatriation or release from custody.

As provided by Art.57 paragraph (1) of the same law, the National Employment Agency fosters employment opportunities for job seekers mainly by the specialist employment stimulation services expressly provided by this article, which include career information and counselling services.

Pursuant to the provisions of Art.58 paragraph (1) of the same law, career information and counselling are a set of services provided free of charge for job seekers, with the purpose:

- a) To provide information on the labour market and on the evolution of occupations;
- b) To provide personality assessment and self-assessment for career guidance purposes;
- c) To develop the job seekers' skills and self-confidence, so as to enable them to make career choices and decisions;
- d) To provide training on job seeking methods and techniques.

Having regard to the legal provisions invoked, we believe that career information and counselling services are provided without discrimination, pursuant to Law no.76/2002, as further amended and supplemented, to job seekers who are in one of the situations expressly provided by Art. 16 of Law no.76/2002, as further amended and supplemented.

The National Employment Agency develops yearly the *National Training Plan*, in compliance with the duties provided by the legislation in force.

The principles underpinning the development of the National Training Plan take into consideration the principles promoted by the EU institutions and are harmonised with the strategic objectives of the European Union as promoted by the Europe 2020 Strategy, which mentions that Europe may compete globally only if it promotes the development of a strong and sustainable industrial base, adaptable to changes.

The training policy is at the centre of European concerns, and is included in the Treaty on the functioning of the European Union. Also, the right to education is reiterated by the EU Charter of Fundamental Rights, which states that “*Everyone has the right to education and to have access to vocational and continuing training*”.

For the period of 2011-2014, the National Training Plan provides an increase in the number of persons participating in training courses (while also ensuring the necessary funds), as follows:

- 2011: 47,816 persons planned to be included in training services;
- 2012: 41,130 persons planned to be included in training services;
- 2013: 43,880 persons planned to be included in training services;
- 2014: 44,292 persons planned to be included in training services.

The number of persons included in training courses in the period of 2001-2014 is presented below:

- 2011: 48,321 persons
- 2012: 38,881 persons
- 2013: 36,949 persons
- 2014: 40,265 persons.

## **Article 15**

### **Paragraph 1**

In 2010, through *Law no. 221/2010 Romania ratified the UN Convention on the rights of persons with disabilities, adopted in New York by the General Assembly of the United Nations on 13 December 2006, open for signature as of 30 March 2007 and signed by Romania on 26 September 2007*, this representing the commitment assumed by the Government of Romania on the importance granted to the promotion, protection and ensuring full exercise by all persons with disabilities of all human rights and fundamental freedoms, under equal conditions, as well as to increasing the quality of life of people with disabilities in Romania.

The National Authority for Persons with Disabilities was appointed as central authority coordinating the implementation of the Convention.

According to the statistical newsletter published on the webpage of the Ministry of Labour, Family, Social Protection and Elderly (source of data: Directorates General for Social Assistance and Child Protection at county and Bucharest Municipality districts level), the total number of persons with disabilities registered with certificates on 31.12.2014 is 737,885 persons, of which 720,683 in their families.

- The share of people with disabilities in the total population of Romania is 3.47%.
- In terms of living environment, the shares are 51% urban, 49% rural.
- The female population reaches 53.34% of the total number of persons with disabilities.
- The situation for the age segment over 65 years old in the total number of adults with disabilities is: 264,711 persons with disabilities, representing 39.4% of the total number of persons with disabilities.

### **Anti-discrimination legislation**

Also, the National Employment Strategy 2014-2020, approved by GD 1071/2013 published in the Official Journal no. 75/2014, includes the specific objective “*To increase youth employment and extend the active life of the elderly*”, *Action Line 1.1. “To reduce youth unemployment and the number of young NEETs”*, which



proposes the development of programmes, actions and measures to foster the participation of children and young people with special needs in education and training and labour market integration of young people with disabilities, including by the setting-up and development of sheltered workshops.

One of the overall objectives of the National Strategy for the protection and promotion of children's rights 2014-2020 approved by GD 1113/2014, is *To observe the rights and promote the social inclusion of children in vulnerable situations*, and its main aim is to eliminate the attitude and environmental barriers in order to achieve the rehabilitation and the social integration of children with disabilities, through the following measures:

- Development of an integrated system for the early identification and complex assessment of the children with disabilities;
- Provision of friendly and accessible integrated social, health care and education services for the children with disabilities and their families;
- Supporting families of children with disabilities to enable their raising and development in the family;
- Development of positive attitudes towards children with disabilities in the family and society;
- Increasing the inclusion in the mainstream education of children with disabilities and/or with special educational needs.

Also, the Strategy develops priority action lines to include and maintain in education all children/students/young people with special educational needs, in general, and of those with disabilities in particular:

1. Beginning of school for all children in the mainstream school which is nearest to the child residence;
2. Maintaining children/students in the mainstream school by providing educational services, speech therapy and psycho-pedagogical counselling to those who have learning, adaptation, integration difficulties or behavioural disorders;
3. Transfer from special schools to mainstream schools of students who should not be part of this type of education or of students who either were wrongly diagnosed or show obvious progress following educational activities.
4. Guidance to special schools only when the students cannot integrate in the mainstream school, so as these students may benefit from education as well.

A new Education Law was passed in 2011, Law no. 1/2011, which formed the basis of the subsequent legislation for all fields of the education system.

In Romania, children with special educational needs have access to various types of education and may be included, depending on the type and the severity of their disability, either in special schools, or in the mainstream education, integrated in groups/classrooms or individually. Special and integrated special education is organised at all levels of pre-university education, depending on the type and the

severity of the disability, as follows: mental, hearing, visual, motor or associated impairment. Special and integrated special education is an integral part of the Romanian national education system and provides all children/students/young people educational programmes adapted to their impairments and to their development needs. The education legislation, in general, and the special education legislation in particular, comply with the provisions of the UN Convention on the rights of persons with disabilities, adopted in New York by the General Assembly of the United Nations on 13 December 2006, and signed by Romania on 26 September 2007. The Romanian Constitution and legislation do not limit the access to education of children/students/young people with disabilities, at any level.

Compulsory education comprises 11 grades, and the obligation to attend the full-time mode ceases at 18 years old. Special primary and lower secondary education is compulsory. The age of enrolment in special education may be 2-3 years older than for the mainstream education. Part-time special education may be organised for SEN students who exceed by more than 4 years the age of their grade. Such education modes may also be organised for people with special educational needs which cannot leave their house, until the age of 30 years old, covering the compulsory education. A student with special educational needs /other types of educational needs, aged 16 years old, who could not graduate compulsory education, either mainstream or special, may be enrolled in a special vocational school, full-time mode, and, in parallel, may complete the 9 grades by part-time mode.

In order to ensure access to education, especially for young children, the Ministry of Education, school inspectorates and public authorities have the obligation to organise pre-school, primary and lower secondary education units in the locality of residence of the children. If this is not possible, children shall be provided, as appropriate, with transport, accommodation and meals services.

The Teachers' Council of each school may decide what educational plan they should apply, depending on the type and severity of the impairment. Some special schools may use the mainstream school educational plan - either adapted or differently structured.

Special schools for students with sensory disorders use the mainstream school educational plan. These schools maintain only the structure and the mode of organisation of the special education, but the contents, curricula and specialisation are similar to those of the mainstream schools.

Special technological high schools, special vocational schools, special high school and post-high schools classes are organised following the mainstream model (contents, profiles, specialisations, goals, objectives and/or competences). The specificity of these schools consists in the teaching/learning strategies, means and methods.

Upon graduation, the students of these special schools sit national examinations (tests, baccalaureate or graduation exam) just like all other graduates of mainstream education. Facilities and adaptations are stipulated for them in the methodologies on the organisation of examinations.

A personalised intervention plan shall be developed for each student with serious, severe, profound or associated impairments, including specific objectives for their needs and psycho-individual development possibilities.

In order to include in the preparatory grade and in the first grade all students of appropriate age, the county school inspectorates (CSI) and the Bucharest Municipality School Inspectorate (BMSI), in cooperation with the local public administration authorities perform a census for each school jurisdiction.

School enrolment is permanently monitored by periodic reports to school inspectorates and MESR.

Students who cannot leave the house, with chronic conditions, neurologic disorders or diseases requiring hospitalisation exceeding 4 weeks shall benefit from home or hospital instruction.

Students with special educational needs benefit from adaptations of the examination procedures in case of ongoing assessments as well.

According to the Nomenclature of occupations, professions and specialisations, in special education children with disabilities, regardless the school they attend (special or mainstream school), may learn a profession which is compatible with the type and severity of their disability. For certain professions, the type of education is determined by the recommendation of the Medical Commission analysing work capacity.

Inclusive education was adopted in Romania starting with the '90s, by respecting diversity, initiation and availability of access and participation in education and social life for all categories of children. Nowadays, approximately half of the children with disabilities attend mainstream education. Many special schools were converted into centres for inclusive education. Students with special educational needs from mainstream education benefit from specialist services provided by the support/travelling teacher, and from specific therapies provided by psychopedagogues in the resource centres.

In Romania there are special schools for young people with special educational needs, who are trained to acquire qualifications according to the labour market demands and adapted to the characteristics of their disability or impairment/learning difficulty, and benefit from complex assistance (health care, social, educational etc.).

The statistical data presented below are processed based on the data submitted by each county school inspectorate, which centralises the data provided by schools.

Data collection is performed on annual basis and reflects the actual situation on the data collection date.

Number of special schools for special education*	Number of students enrolled in special education	Number of mainstream schools integrating students with disabilities (SEN)-integrating schools.	Number of SEN students in the mainstream education included in the support educational services	Number of special integrated groups /classrooms within mainstream education	Number of students included in the special integrated groups /classrooms within mainstream education
167	25902	1941	22579	258	2007

\* Schools for students with hearing impairment - 14 (pre-school, primary, lower secondary and high school education)

Schools for students with visual impairment - 7 (pre-school, primary, lower secondary and high school education)

Children with disabilities in kindergartens - 1954

## Paragraph 2

Pursuant to the provisions of Art.4 paragraph (1) of Law no.76/2002, as further amended and supplemented, law applicable in the field of activity of the National Employment Agency, any discrimination on grounds of political beliefs, race, nationality, ethnical origin, language, religion, social category, beliefs, gender and age shall be banned in the enforcement of this law.

According to Art.16 of the law invoked, the beneficiaries of these legal provisions are job seekers who are in one of the following situations:

- a) They became unemployed in the meaning of Art. 5 point IV letter c) of the law;
- b) They could not get employment after graduating an education institution;
- c) They have a job and, for various reasons, intend to change their job;
- d) They have obtained the refugee status or any other type of international protection, pursuant to law;
- e) They are foreign citizens or stateless persons who were employed or earned income in Romania or who have the right to work in Romania, pursuant to law;

f) They could not get employment after repatriation or release from custody.

Pursuant to Art.17, paragraph (2) of the same law, the persons who are in the situations provided by Art. 16 letter b) are assimilated to the unemployed if they meet the following conditions:

- a) They are graduates of an education institution, aged at least 16 years, who could not get employment according to their training, within 60 days after the graduation ;
- b) They are graduates of special schools for persons with disabilities, aged at least 16 years, who could not get employment according to their training;

Pursuant to the provisions of Art.57 paragraph (1) of the above-mentioned law, the National Employment Agency fosters employment opportunities for job seekers mainly by:

- a) Career information and counselling;
- b) Job-matching;
- c) Training;
- d) Assessment and certification of competences acquired by non-formal and informal learning;
- e) Consultancy and assistance to begin an independent activity or to set up a start-up.

Pursuant to the provisions of Art.63 paragraph (1) of Law no.76/2002, as further amended and supplemented, job seekers may participate in training programmes for the development and diversification of their professional competences in order to ensure their mobility and re-integration in the labour market.

According to paragraph (2) of the same article, training programmes ensure, pursuant to law, the initiation, qualification, re-training, improvement and specialisation of job seekers.

According to Art.63 paragraph (3) of the same law, training of job seekers shall be provided taking into account the current and future labour market demand and the individual options and skills of the respective persons.

As provided by paragraph (4) of the article invoked, training of job seekers is provided by means of: courses, internships and traineeships, and other means, pursuant to law.

Pursuant to the provisions of Art.64 paragraph (2) of the above-mentioned law, training programmes for job seekers shall be organised separately by training level and specialisation, as well as by categories and groups of persons.

Pursuant to the provisions of Art.66 paragraph (1) of the law invoked, the persons provided by Art.16 letters a), b), d), e) and f) of the law, and the persons who undertake activities in rural areas and do not earn monthly incomes or earn

monthly incomes lower than the value of the reference social indicator of the unemployment insurance and employment stimulation in force and who are registered by the county employment agencies or by the Bucharest Municipality employment agency shall benefit from free training services.

Having regard to the legal provisions invoked, we believe that the provisions of Law no.76/2002, as further amended and supplemented, provide the prerequisites so as job seekers, including persons with disabilities, who are in one of the situations expressly provided by Art.16 letters a), b), d), e) and f) of this law, should benefit free of charge from training programmes for the development and diversification of their professional competences in order to ensure their mobility and re-integration in the labour market.

For the period of 2011-2014, we present below the situation of persons with disabilities who participated in free training programmes:

- 2011: 283 persons;
- 2012: 91 persons;
- 2013: 114 persons;
- 2014: 93 persons.

The special legal framework in the field of disability, Law no. 448/2006, regulates the right of persons with disabilities to be provided with the necessary conditions to choose and practice their profession, trade or occupation, to find and maintain a job and to be promoted. In order to achieve this, public authorities have the obligation to take the following specific actions:

- a) To promote the concept that an employed person with disabilities is added-values to society and, especially, to the community she/he belongs to;
- b) To promote an open and inclusive work environment, accessible by persons with disabilities;
- c) To create the necessary conditions and services so as a person with disabilities may choose the type of qualification/requalification and a job, according to his/her functional potential;
- d) To set up and support complex services, consisting in authorised sheltered units and sheltered housing;
- e) To initiate and develop incentives for employers, so as to employ and retain persons with disabilities;
- f) To provide support for organising a market for the goods produced by persons with disabilities;
- g) To diversify and support various social services, namely counselling services for persons with disabilities and their families, information services for employers, supported employment and others;
- h) To promote job-matching services for persons with disabilities;
- i) To create/permanently update the database, to reflect the job supply for persons with disabilities;

j) To cooperate with mass-media, in order to raise community awareness on the potential, skills and contribution of persons with disabilities on the labour market;

k) To develop, in cooperation or in partnership with public or private legal entities, programmes and projects to increase the employment rate;

l) To initiate and support campaigns to raise employers' awareness on the skills of persons with disabilities;

m) To initiate specific programmes fostering labour market participation of groups subject to major risk of social exclusion.

With regard to the share of persons with disabilities employed, in the total number of adults with disabilities aged 18 - 60 years, in family care (except for adults retired for invalidity class I and II), it reached 14.69% on 31 December 2014, compared to 7.57% registered in 2005.

The annual evolution of the number of persons with disabilities employed is presented below:

Year	Total
2003	9,640
2004	11,782
2005	13,684
2006	16,225
2007	21,906
2008	25,705
2009	28,420
2010	28,196
2011	27,861
2012	28,756
2013	29,842
2014	30,556

In the past years we note positive dynamics of the employment rate for persons with disabilities. It doubled in the period 2003-2014, and the number of persons with disabilities who have a job increased by 3 times (this was also generated by the salary tax exemption for persons with severe and accentuated disabilities and by the possibility to keep the disability allowance and the personal complementary budget for persons with disabilities employed, as regulated by the Fiscal Code of Romania).

Also, Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, as republished, and further amended and supplemented, provides for the obligation of public authorities and institutions and public or private entities with at least 50 employees to employ persons with disabilities in a share of at least 4% of their total number of employees.

Public authorities and institutions and public or private entities which do not employ persons with disabilities as provided above may choose to fulfil one of the following obligations:

a) To pay monthly to the state budget an amount representing 50% of the minimum national gross salary x the number of jobs for which they did not employ a person with disabilities;

b) To purchase products or services produced by persons with disabilities employed by authorised sheltered units, based on partnerships, in an amount equivalent to the amount owed to the state budget.

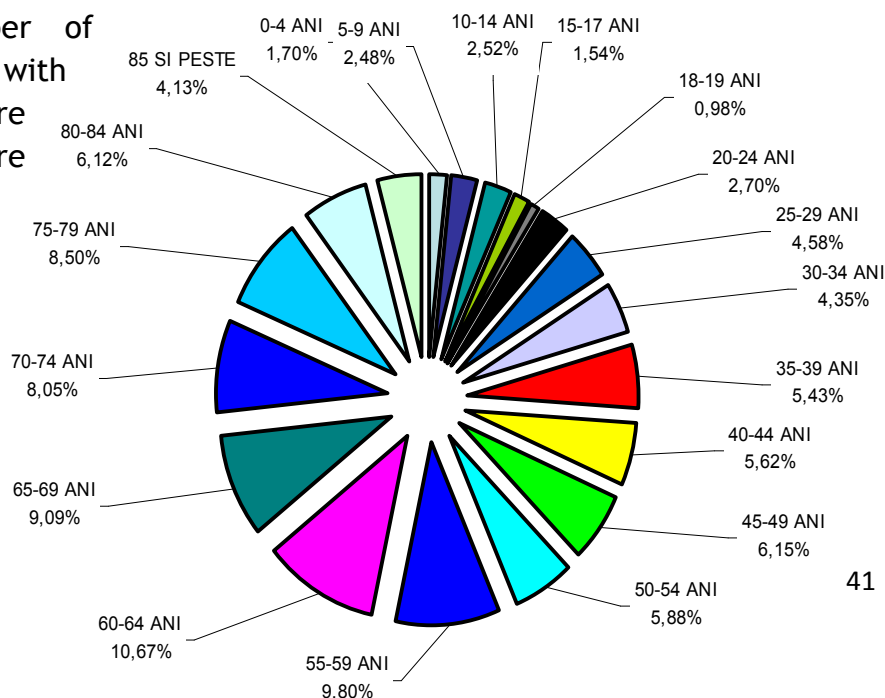
Pursuant to Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, as republished, and further amended and supplemented, an authorised sheltered unit is a public or private economic operator, having own administration, where at least 30% of the total number of employees with individual employment contracts are persons with disabilities.

The setting up and development of authorised sheltered units (ASU) contributed to the increase in the number of persons with disabilities employed, as follows:

- year 2008 - 282 ASU: 1,027 employees
- year 2012 - 604 ASU: 1,644 employees
- year 2013 - 656 ASU: 1,755 employees
- year 2014 - 691 ASU: 1,790 employees

### National Strategy "A barrier-free society for people with disabilities", 2016-2020

Of the total number of 737,885 persons with disabilities, 678,110 are adults and 59,775 are children. The figure below illustrates the distribution of persons with disabilities by age groups, on 31 December 2014:





Following the end of the implementation period of GD no. 1175/2005 - *National Strategy for the protection, integration and social inclusion of persons with disabilities in the period of 2006 - 2013 "Equal opportunities for persons with disabilities - towards and discrimination-free society"*, in the period October 2012 - June 2013, the Directorate for the Protection of Persons with Disabilities (DPPD) within MLFSPE proposed and undertook a consultation action on the implementation of the Strategy whose outcome consisted in the development of a Report on continuing/development under the new strategic framework of the measures provided by the Action Plan of the *Strategy*.

Among the overall conclusions suggested for the development of a new strategic document, we mention the need to develop a concrete set of measures for preparation for work, development of enabling/rehabilitation services, especially in the field of health care, employment, education and social services, setting-up/development of job seeking/maintaining services, promotion of measures to raise awareness in the society, including at family level, on persons with disabilities and to promote respect for their rights and dignity, as well as to combat stereotypes, biases and prejudicial practices against people with disabilities.

Thus, Romania developed the National Strategy "A barrier-free society for people with disabilities ", 2016-2020, hereinafter called the *National Strategy*, which intends to ensure the implementation of the provisions of the *UN Convention on the rights of persons with disabilities* and of the strategic European documents in the field of disability, continuing the *National Strategy for the protection, integration and social inclusion of persons with disabilities in the period of 2006 -*

2013 “*Equal opportunities for persons with disabilities - towards and discrimination-free society*”, whose implementation period ended.

The *National Strategy* is in the endorsement stage and represents the commitment of the Romanian state to mobilise the necessary resources to eliminate barriers so that no person with disabilities should be marginalised, excluded, abused or discriminated, and their choices and aspirations should be respected and supported.

The *National Strategy* intends to ensure coherence of policies on disability and among the various governance levels and mechanisms, and their compliance with the principles and objectives set by the international treaties and conventions to which Romania is party.

The Communication from the European Commission, COM(2010) 636 final, “*European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*” whose overall aim is to empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy, notably through the Single market, was an important landmark in the development of the *National Strategy*.

Also, the planning of priorities set in the Partnership Agreement 2014 - 2020 in order to ensure the necessary European funds in the fields of social protection, education and health, justice and internal affairs indicates clear, assumed and responsible signals of direct and multi-sectoral intervention in the policies targeting vulnerable persons, including persons with disabilities.

One of the action lines of the National Strategy is education and training for persons with disabilities, whose overall objective is to promote education and training favouring inclusion at all levels and lifelong learning for people with disabilities.

### **Specific objectives:**

**SO.1** - To ensure the access of people with disabilities to education and training, in adapted modes and contexts, in the communities in which they live.

**SO.2** - To develop the necessary competences of people with disabilities to enable their full and equal participation in education and training, as active members of their community.

**SO.3** - To ensure quality education and training services, adapted to the needs of people with disabilities and relevant for inclusion.

**SO.4** - To increase awareness in the family, school, community and society on the importance and the need to respect the right to education and training for all persons with disabilities.

Another action line is employment, **with the following overall objective:** To ensure access of people with disabilities to an open, inclusive and accessible

working environment, both in the public and in the private sectors, while ensuring their effective access to support services to foster employment.

### **Specific objectives**

**SO.1** - To ensure the access of people with disabilities to an open, inclusive and accessible working environment.

**SO.2** - To ensure the access of people with disabilities to vocational training programmes, to entrepreneurial and independent life training programmes.

**SO.3** - To promote the valuable contributions people with disabilities may bring to the community, by employment.

**SO.4** - To coordinate and monitor the promotion and protection of the right to independent life and work of people with disabilities.

Social dialogue monitoring (consultation topics in the social dialogue commissions, dominating topics in collective bargaining) indicated a prioritisation of trade unions interests, which does not target sheltered employment and its transition to “formal” employment.

The role assumed by trade unions in the management of challenges for social economy and of integration by work of people from vulnerable categories depends in part on understanding the stakes and on the real involvement capacity of the organisations.

Usually, the interests of people with disabilities are represented by the NGOs in the field, both in the Economic and Social Council, a structure for dialogue between trade unions, employers’ associations, NGOs, with advisory role for the Government and the Parliament, and in the consultations organised by the NGOs Forum, to improve social action partnerships and measures aiming at social and employment policies.

In view of social dialogue, governmental measures aimed at encouraging stronger involvement of economic and social actors in the management of the employment issue and in building an inclusive labour market, both by strengthening the tripartite social dialogue structures to foster cooperation within governmental strategies, and by strengthening the action capacity of representative organisations, by training social partners under EU-funded programmes.

Also, in order to respond to the comments of the European Committee of Social Rights, the National Council for Combating Discrimination submitted its Report for 2014. At the same time, NCCD made available its activity report for 2014 ([www.cncd.org.ro](http://www.cncd.org.ro)), and various projects/programmes (Annexes 3, 4 and 5) implemented in the reporting period, as well as a number of decisions on disability, employment and education.

## **Article 18**

### Paragraph 3

Romania's accession to the European Union has triggered, in the past years, significant amendments of the legal provisions regulating the legal regime of foreigners in our country, in order to ensure compliance with the Community legislation in the field and with other international legal instruments to which the Romanian state is party.

In this context, Romanian authorities should undertake various actions to align the national legislation to the *acquis* in the field of migration and asylum. This complex process of legal harmonisation involved successive amendments of the national legislation and led to the adoption of new legislation replacing the old regulations on the employment and secondment of foreigners on the territory of Romania, namely *GEO no. 56/2007 on the employment and secondment of foreigners on the territory of Romania, as further amended and supplemented*, and ensuring compliance of the national legal framework with the new Community regulations in the field.

Thus, when *GE 25/2014 on the employment and secondment of foreigners on the territory of Romania, amending and supplementing certain legislative acts on the regime of foreigners in Romania* was approved, *GEO no. 56/2007* was repealed and *GEO no. 194/2002* was amended and supplemented.

The current legal framework regulating the employment and secondment of foreigners on the territory of Romania, the legal regime of foreigners in Romania and asylum in Romania, includes the following:

- Government Ordinance no. 25/2014 on the employment and secondment of foreigners on the territory of Romania, amending and supplementing certain legislative acts on the regime of foreigners in Romania;
- Government Emergency Ordinance no. 194/2002 on the status of foreigners in Romania, republished, as further amended and supplemented;
- Law no. 122/2006 on asylum in Romania, as further amended and supplemented.

In view of the harmonisation of the domestic legislation with the *acquis* in the field of migration and asylum, Government Emergency Ordinance no. 194/2002 was amended to ensure that the national legislation transposed the following Community documents:

1. **Council Directive 2001/40/EC** of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, published in the Official Journal of the European Communities series L 149 of 2 June 2001;
2. **Council Directive 2001/51/EC** of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, published in the Official Journal of the European Communities series L 187 of 10 July 2001;

3. **Council Directive 2003/86/EC** of 22 September 2003 on the right to family reunification, published in the Official Journal of the European Communities series L 251 of 3 October 2003;
4. **Council Directive 2003/109/EC** of 25 November 2003 concerning the status of third-country nationals who are long-term residents, published in the Official Journal of the European Communities series L 16 of 23 January 2004, as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, published in the Official Journal of the European Communities series L 132 of 19 May 2011;
5. **Council Directive 2003/110/EC** of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, published in the Official Journal of the European Communities series L 321 of 6 December 2003;
6. **Council Directive 2004/114/EC** of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, published in the Official Journal of the European Communities series L 375 of 23 December 2004;
7. **Council Directive 2005/71/EC** of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, published in the Official Journal of the European Communities series L 289 of 3 November 2005;
8. **Directive 2008/115/EC** of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, published in the Official Journal of the European Communities series L 348 of 24 December 2008;
9. **Council Directive 2009/50/EC** of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, published in the Official Journal of the European Communities series L 155 of 18 June 2009;
10. **Directive 2009/52/EC** of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, published in the Official Journal of the European Communities series L 168 of 30 June 2009, except for Art. 9-12;
11. **Directive 2011/98/EU** of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, published in the Official Journal of the European Communities series L 343 of 23 December 2011.

The new legal framework aims at a procedural simplification whose result should be a more efficient procedure both for migrants and for employers, and the verification of the legality of their residence and employment should be simplified. In this context, GD no. 25/2014 introduced a single application procedure leading to the issuance of a sole administrative document, which includes both the residence permit and the work permit.

Thus, Art. 2 letters k) and k<sup>1</sup>) of GEO no. 194/2002 on the status of foreigners in Romania (as amended and supplemented by GD no. 25/2014) stipulate the following:

*„k) sole permit - identification document issued to the foreigner by the General Inspectorate for Immigration, pursuant to this emergency ordinance, attesting his/her right to residence and work on the territory of Romania;*

*„k<sup>1</sup>) residence permit for secondment purposes - identification document issued to the foreigner by the Romanian Immigration Office, pursuant to, attesting his/her right to residence and secondment on the territory of Romania;”*

With regard to the Committee’s question related to the legal procedures employers should observe to fill a vacancy, by recruiting a foreign citizen, we mention the provisions of Art. 4 to Art. 16 of GO no. 25/2014 (Annex 1), regulating the general and the special conditions employers should meet, depending on the type of worker.

With regard to the Committee’s request to be informed on the grounds for refusal of work permits, we mention that Art. 44, Art. 44<sup>1</sup>, Art. 51, Art. 52, Art. 56 and Art. 56<sup>1</sup> of GEO no. 194/2002 (Annex 2) regulate the general and the special conditions foreigners should meet in order to be admitted on the national territory and to extend their right to residence in Romania. Consequently, failure to meet these conditions leads to the refusal to grant the long-term stay visa for the purposes of employment/secondment respectively, the refusal to extend the right to temporary stay for the purposes of employment/secondment.

With regard to the information requested by the Committee on the number of applications/work permits, we indicate below statistical on the number of employment/secondment authorisations, employment /secondment permits, stay permits issued for employment/secondment purposes, and stay permits for employment purposes, for the period of **2011 - 2014**, by year:

YEAR	2011	2012	2013	2014
Employment/secondment authorisations <sup>1</sup>	2744	2719	2181	-
<i>Employment/secondment authorisations + permits<sup>2, 3</sup></i>	-	-	-	2515

<sup>1</sup> Source: SIMS/ANALIZA/StatisticiServiciulANALIZA/StatisticiNationale/StatisticiBAI\_AM/Solutia: AM

Stay permits issued for employment/secondment purposes <sup>4</sup>	1971	1656	1542	1803
Stay permits with the right to work <sup>5</sup>	6592	5009	4814	5416
<b>Total</b>	<b>11307</b>	<b>9384</b>	<b>8537</b>	<b>9734</b>

With regard to the rule of “worker priority”, we mention that the new regulation in force, GO 25/20014, maintained the same condition included in the provisions of Art. 7 paragraph (2) lit a) “*a) the employer made due diligence to fill the vacancy by a Romanian citizen, a citizen of another Member State of the European Union or of the European Economic Area, a citizen of the Swiss Confederation or a foreign holder of the long-term stay right on the territory of Romania*”. Here, we mention the fact that the employment of a foreigner in Romania is subject to certain conditions expressly provided by law, in order to protect the national workforce and to provide foreigners access to the labour market only in sectors of activity with scarce workforce, where Romanian citizens cannot be employed. By imposing a gross national average salary in case of admission of a foreigner on the Romanian labour market, the intention is to attract workers in the activity fields and sectors which require adequate skills for the gross national average salary.

In light of the above, we mention that the principle of preference for EU citizens with regard to access to the labour market in the Member States is expressed in the relevant provisions of the accession documents.

With regard to the fact that, pursuant to GEO no. 56/2007, the termination of the work authorisation for the foreign worker involves the termination of the right to stay in Romania, thus forcing the worker to leave the country, we mention that, in light of the new amendments to GEO no. 194/2002, art. 56 paragraph (9) stipulates as follows:

*„(9) If the employment relationship of the foreigner is terminated before the expiry of the period for which the sole permit or the Blue Card of the EU was issued, they shall remain valid until their validity period expires, but no longer than the period for which the foreigner benefits of unemployment allowance, pursuant to the provisions of Law no. 76/2002, as further amended and supplemented, or no longer than 60 days after registration of the termination of the employment relationship, if the foreigner does not benefit from unemployment allowance.”*

Thus, the law invoked above allows the foreigner the possibility to find a new job with another employer and, implicitly, to obtain the right to stay, without the need to leave the Romanian territory. The deadline of *60 days after registration of*

<sup>2</sup> Source: Idem 1

<sup>3</sup> Pursuant to the provisions of GO no.25/2014, on the employment and secondment of foreigners on the territory of Romania

<sup>4</sup> Source: EUROSTAT

<sup>5</sup> Source: Idem

*the termination of the employment relationship considers the necessary time for the new employer to obtain the employment permit (30 days) plus the deadline for the issuance of the stay permit (30 days).*

Also, Art. 17 of GO no. 25/2014 expressly regulates the possibility for the foreigner to take a new job, stipulating as follows:

*„ART. 17*

*(1) The foreigner employed based on the employment permit, except for the permit for seasonal workers, may take a new job with the same employer or with another employer, anytime during the validity period of the sole permit or of the Blue Card of the EU. The foreigner shall be employed in the new job based on a new employment permit obtained by the employer in compliance with the conditions provided by this ordinance.*

*(2) The new employment permit shall be issued without meeting the general conditions provided by Art. 4 paragraph (2) letters b), e) and f) and, as appropriate, without meeting the special conditions provided by Art. 7 paragraph (2) letter a) or by Art. 9 paragraph (2) letter a).*

*.....”*

With regard to the Committee’s comment on the prospects of a foreigner to find employment in a well-paid and attractive occupation, we mention the provisions of Art. 56 paragraph (1) of GEO no. 194/2002:

*“ART. 56 Extension of the temporary stay right for employment purposes*

*(1) Foreigners entered in Romania for employment purposes, holding a valid work authorization for permanent workers, season workers, trainee workers, sportsmen, nominal, for cross-border workers or for highly qualified workers shall be extended the temporary right of stay if they present the individual full-time employment contract, registered with the general register of employees, attesting to the fact that the salary is at least at the level of the average gross salary. In case of highly qualified workers, it shall be at the level of at least 4 times the average gross salary.”*

Here, we mention the fact that the employment of a foreigner in Romania is subject to certain conditions expressly provided by law, in order to protect the national workforce and to provide foreigners access to the labour market only in sectors of activity with scarce workforce, where Romanian citizens cannot be employed.

Pursuant to Art.3 paragraph (1) of the Government Emergency Ordinance no.56/2007 on the employment and secondment of foreigners on the territory of Romania, as in force prior to being repealed by the provisions of Art.44 of the Government Ordinance no.25/2014 on the employment and secondment of foreigners on the territory of Romania, amending and supplementing certain



legislative acts on the regime of foreigners in Romania, foreigners may be employed on the territory of Romania by legally established employers, while simultaneously satisfying the following conditions:

- a) vacancies cannot be filled by Romanian citizens or citizens of other EU Member States, of the signatory countries of the Agreement on the European Economic Area, or by permanent residents of Romania;
- b) they fulfil special conditions regarding professional qualifications, experience and authorisation, required by the employer pursuant to legal provisions;
- c) they may prove they are medically able to carry out the activity and have not been convicted for crimes which are incompatible with the activity they carry out or intend to carry out on the territory of Romania;
- d) they are within the limits of the yearly quota approved by Government Decision;
- e) employers have paid their contribution to the state budget for the last quarter;
- f) The employer actually carries out the activity for which the issuance of the work authorisation is requested;
- g) The employer has not been sanctioned for undeclared work or for illegal employment.

Pursuant to Art.7 paragraph (1) letter e) of the emergency ordinance invoked, in order to obtain the work authorisation for permanent workers, the employer, a legal entity from Romania or a branch or office of a legal entity having its headquarters abroad, shall lodge with the Romanian Immigration Office a grounded application on the need to employ the foreigner, together with the documents provided by this paragraph, including the certificate issued by the relevant employment agency for the area where the employer's headquarters are registered, regarding the workforce available for the vacant position communicated by the employer pursuant to the legal provisions, with 60 days at the most before lodging the application.

We also mention here the provisions of Art.7 paragraph (2) and of Art.8 paragraph (2) letter b) of the Government Ordinance no.25/2014, repealing the provisions of the Government Emergency Ordinance no.56/2007, approved with amendments by Law no.134/2008, as further amended and supplemented.

With regard to the legal provisions invoked, we mention that the county employment agencies and the Bucharest Municipality employment agency, pursuant to the legal provisions applicable in the field, issue certificates for employers regarding the workforce available for the vacant position communicated by the employer pursuant to the legal provisions, with 60 days at the most before lodging the application.

## Procedure of employment and secondment of foreigners on the territory of Romania

The procedure for the employment of foreigners by employers - natural or legal persons - from Romania involves the following stages:

- Obtaining the employment permit;
- Obtaining the long-stay visa;
- Obtaining the right to stay;
- Issuance of a stay permit for employment/secondment purposes.

### ➤ *Necessary conditions to employ a foreigner on the territory of Romania*

Employment of foreigners on the territory of Romania is regulated by the provisions of the Government Ordinance no. 25/2014 on the employment and secondment of foreigners on the territory of Romania, amending and supplementing certain legislative acts on the regime of foreigners in Romania and of the Government Emergency Ordinance no. 194/2002 on the status of foreigners in Romania, republished, as further amended and supplemented (this legislation repealed GEO no. 56/2007 on the employment and secondment of foreigners on the territory of Romania).

Government Ordinance no. 25/2014 stipulates, as a general rule for employers, the obligation to obtain an employment permit in order to employ a foreigner and, at the same time, provides the situations when foreigners may be employed or transferred on the territory of Romania without an employment/secondment permit.

The employment permit is the document issued by the General Inspectorate for Immigration, attesting the right of an employer to employ a foreigner for a certain position

- A foreigner may be employed by only one employer, natural or legal person from Romania, based on the employment permit issued by the General Inspectorate for Immigration, attesting the right of an employer to employ a foreigner for a certain position.
- The employer shall obtain the employment permit from the territorial units of the General Inspectorate for Immigration in the county where they have their registered headquarters or residence.

### ➤ *Conditions to be fulfilled for employment in Romania, based on an employment permit:*

- Vacant jobs cannot be filled by Romanian citizens, by citizens of the Member States of EU/EEA or by permanent residents on the territory of Romania;

- Special conditions regarding professional qualifications, experience and authorisation have been fulfilled;
- Evidence is presented to demonstrate that the foreigner is medically fit to carry out that activity;
- The foreigner has not been convicted for crimes which are incompatible with the activity they carry out or intend to carry out on the territory of Romania;
- They are within the limits of the yearly quota approved by Government Decision;
- The employer has paid their contributions to the state budget;
- The employer actually carries out the activity for which the issuance of the work authorisation is requested;
- The employer has not been sanctioned for undeclared work or for illegal employment in the past 3 years.

In order to certify that the vacancies declared by the employer cannot be filled by Romanian citizens, by citizens of the Member States of EU/EEA or by permanent residents on the territory of Romania, one of the necessary documents for the General Inspectorate for Immigration in order to obtain favourable approval for the employment and secondment of foreigners on the territory of Romania is the certificate related to the available workforce. This document is issued by relevant employment agency for the area where the employer's headquarters are registered, regarding the workforce available for the vacant position communicated by the employer pursuant to the legal provisions.

The provisions related to vacancies which cannot be filled by Romanian citizens, by citizens of the Member States of EU/EEA or by permanent residents on the territory of Romania, mentioned by the previous paragraph, need not be fulfilled if the foreigner belongs to the following categories:

- Holds of position of administrator in a company with foreign ownership and is the only person appointed in this position;
- Is a professional sportsperson and has evidence that he/she has carried out a similar activity in another country;
- Requests an employment permit for cross-border workers;
- Requests an employment permit for seasonal workers;

The employment permit is necessary in order to be employed on the territory of Romania even if the foreigner is in the following situations:

- Comes from a country whose nationals do not need a visa to enter Romania;
- Has the right to stay for family reunification;

- Is transferred on the territory of Romania.

➤ *Categories of workers*

Depending on the type of activity they intend to carry out in Romania, a foreigner may be employed as:

- Permanent worker - the foreigner employed on the territory of Romania under an individual permanent or fixed-term employment contract, concluded with an employer based on the employment permit;
- Intern - the foreigner employed on the territory of Romania based on the employment permit, for a fixed-term internship in order to obtain a qualification or to improve their training and linguistic and cultural knowledge;
- Seasonal worker - the foreigner employed on the territory of Romania in a sector where activities are carried out depending on seasons, under an individual fixed-term employment contract which may not exceed 6 months in an interval of 12 months, concluded with an employer based on the employment permit;
- Cross-border worker - the foreigner, citizen of a state bordering Romania who lives in the border area of that state, employed in a border locality on the territory of Romania, under an individual permanent or fixed-term employment contract, concluded with an employer based on the employment permit;
- Highly qualified worker - the foreigner employed on the territory of Romania for a highly qualified job, under an individual permanent employment contract or under an individual fixed-term employment contract of at least 1-year duration, concluded with an employer based on the employment permit;
- Seconded worker - the skilled foreigner, employed by a legal entity having its registered headquarters abroad, who may carry out a professional activity in Romania in one of the following situations:
  - They are transferred on the territory of Romania, under a contract concluded by the company making the transfer and the beneficiary of services who carry out their activities in Romania;
  - They are transferred to a branch or office of a foreign legal entity in Romania;
  - They are transferred to an enterprise owned by a group of enterprises, recognised pursuant to the national legislation, located on the territory of Romania;

The General Inspectorate for Immigration shall solve the application for issuing the employment permit within 30 days from its registration.

In case additional verifications are necessary, the deadline may be extended by 15 days at the most.

After having obtained the work permit, the employer shall submit this document to the foreigner, who shall obtain the long-stay visa for employment purposes from the diplomatic mission and consulates of Romania.

➤ *Costs to obtain the employment permit - the employer shall pay:*

- For the employment permit for a permanent, transferred, cross-border, intern employee, the employer - shall pay the equivalent in RON of EUR 200;
- For the employment permit for a seasonal worker - the employer shall pay the equivalent in RON of EUR 50;
- In case the employer intends to employ a foreigner holding the right of temporary stay after graduation or holding the right of temporary stay from family reunification - the equivalent in RON of EUR 50;
- The proof of payment shall be presented in originals, signed and stamped by the treasury unit.

➤ *Long-stay visa*

In order to obtain a long-stay visa, a foreigner should submit the following documents:

- Copy of the employment permit, issued by the General Inspectorate for Immigration or, as appropriate, documents attesting that the applicant falls under the categories of foreign citizens who may be employed without an employment permit;
- Proof of subsistence means at the level of the gross minimum guaranteed salary for the entire period mentioned in the visa;
- Criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence;
- Health insurance throughout the visa validity period.

➤ *Secondment*

In order to obtain a long-stay visa for secondment purposes, a foreigner should submit the following documents:

- Copy of the secondment permit issued pursuant to the special legislation on the employment and secondment of foreigners on the territory of Romania;
- Proof of subsistence means at the level of the gross minimum guaranteed salary for the entire period mentioned in the visa;
- Criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence;
- Health insurance throughout the visa validity period.

Categories of foreigners who may be employed or perform professional activities for natural or legal persons in Romania without an employment permit:

- Foreigners whose free access to the Romanian labour market is established by treaties signed by Romania with other countries;
- Foreigners who will carry out teaching or scientific activities or other categories of specific activities of a temporary nature in specialised accredited or provisionally authorised institutions in Romania, under bilateral agreements or as holders of a temporary right to stay for performing scientific research and highly skilled staff, under the order of the minister of national education, as well as the foreigners who perform artistic activities in cultural institutions in Romania, under the order of the minister of culture;
- Foreigners who will carry out on the territory of Romania temporary activities required by ministries or other institutions or bodies of the central public or local administration or by autonomous administrative authorities;
- Foreigners who are appointed as head of a branch, representation or subsidiary in Romania of a company based abroad, pursuant to the documents provided by Romanian legislation to attest this;
- Foreigners holding the long-stay right on the territory of Romania;
- Foreigners holding the temporary stay right for family reunification as family members of a Romanian citizen;
- Foreigners holding the temporary stay right for studies;
- Foreigners holding the temporary stay right granted pursuant to the provisions of Art. 130 of the Government Emergency Ordinance no. 194/2002, republished, as further amended and supplemented;
- Foreigners who benefitted previously from the right to stay on the territory of Romania for at least 3 years, as family members of a Romanian citizen and who fall under one of the situations provided by Art. 64 paragraph (2) of the Government Emergency Ordinance no. 194/2002, republished, as further amended and supplemented;

- Foreigners who were granted a form of protection in Romania;
- Asylum seekers on the date they are granted the right to access on the Romanian labour market pursuant to Law no. 122/2006 on asylum in Romania, as further amended and supplemented, if they are still under the procedure of establishing a form of protection;
- Tolerated foreigner, for as long as they were granted tolerance of the stay on the territory of Romania.

The following categories of foreigners may be transferred in Romania, without having obtained the secondment permit by the beneficiary of their activities:

- Foreigners employed by legal entities having their registered headquarters in a Member State of the European Union or of the European Economic Area or in the Swiss Confederation, transferred in Romania, provided that they show proof of a stay permit in that state;
- Foreigners who carry out teaching or scientific activities or other categories of specific activities of a temporary nature in specialised accredited or provisionally authorised institutions in Romania, under bilateral agreements or as holders of a temporary right to stay for performing scientific research and highly skilled staff, under the order of the minister of national education, as well as the foreigners who perform artistic activities in cultural institutions in Romania, under the order of the minister of culture;
- Foreigners who will carry out on the territory of Romania temporary activities required by ministries or other bodies of the central public or local administration or by autonomous administrative authorities;
- Foreigners who will carry out on the territory of Romania professional activities based on the international agreements or conventions signed by Romania.

The visa fee is EUR 120 and shall be paid in the state where the foreigner applies.

➤ *Cancellation of the employment/secondment permit*

The General Inspectorate for Immigration shall cancel the employment/secondment permit when:

- It is later on found that on the date of issuance of the employment/secondment permit the conditions provided by this ordinance were not fulfilled;
- It is later on found that the employment/secondment permit was obtained based on false or forged documents;

- The employer/beneficiary of services does not go to the General Inspectorate for Immigration to take the employment/secondment permit, within 30 days from the date scheduled for the application resolution;
- It is found that until obtaining the long-stay visa for employment or secondment the conditions for issuing the employment/secondment permit are no longer fulfilled.

The General Inspectorate for Immigration shall issue, on request of the holder, a copy of the employment/secondment permit which was lost, damaged or destroyed.

The employment/secondment permit shall be kept by the employer/service beneficiary throughout the employment or secondment period.

The employer/service beneficiary shall keep, at least for the employment/secondment period, a copy of the stay permit or of the travel document attesting the legality of the foreigner's stay on the territory of Romania.

For the categories of foreigners who carry out professional activities without the need to obtain an employment permit, the visa shall be granted with the permit of the General Inspectorate for Immigration.

The long-stay visa shall be granted for a period of 90 days, with one or several entries.

#### ➤ *Sole permit*

After having entered the territory of Romania, the foreigner must obtain a sole permit.

The documents shall be lodged by the foreigner in person - they shall also be photographed - with the territorial units of the General Inspectorate for Immigration in his/her county of residence, at least 30 days prior the expiry of the right to stay granted by the visa.

In order to obtain a sole permit for employment purposes or for the first extension of the right to stay, the foreigner must present the following documents:

- Application;
- Border-crossing documents - passport, travel document, etc. - in original and in copy;
- Proof of legal ownership of the housing space in original and in copy;
- Individual employment contract;
- Salary;



- Medical certificate;
- Fees.

➤ *Renewal/extension of sole permit*

The sole permit shall be renewed at least 30 days prior the expiry of the previous permit.

For the subsequent extension of the right to stay or in order to obtain a new sole permit, the foreigner must submit the following documents:

- Application;
- Border-crossing documents - passport, travel document, etc. - in original and in copy;
- Proof of legal ownership of the housing space in original and in copy;
- Individual employment contract;
- Salary;
- Medical certificate;
- Fees.

### **Recognition of diplomas and qualifications in Romania**

In Romania, the National Centre for Recognition and Equivalence of Diplomas - CNRED, an institution subordinated to the Ministry of Education and Scientific Research, is the competent authority for the recognition of qualifications acquired abroad, in order to obtain the employment permit issued by the General Inspectorate for Immigration.

Pursuant to Law no. 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania, as further amended and supplemented, CNRED issues certificates of compliance of studies, necessary for the recognition of professional qualifications in the Member States of the European Union, of the European Economic Area and of the Swiss Confederation for teaching professions and for all other non-regulated professions in Romania, which are regulated professions in the above-mentioned states.

For the regulated professions mentioned by Law no. 200/2004, as further amended and supplemented, such a certificate is issued by the relevant competent authorities.

For example, the Body of Chartered Accountants of Romania shall perform the recognition for the profession of chartered accountant, the Ministry of Justice - for the professions of sworn translator-interpreter, legal counsellor, forensic expert, technical judicial expert, the National Office for Historical Monuments - for the

profession of restorer, the Romanian College of Physicians - for doctors, the Romanian Order of Architects for architects, the Ministry of Education, Research, Youth and Sport - for teachers.

With regard to access to training for persons who were granted a form of protection on the territory of Romania and who do not hold study documents, pursuant to the provisions of Government Ordinance no. 44/2004 on the social integration of foreigners who were granted a form of protection or the right to stay in Romania, as well as of citizens of Member States of the EU and EEA, as further amended and supplemented, foreigners who were granted a form of protection in Romania benefit both from access to the labour market and from work conditions equivalent to those stipulated by law for Romanian citizens. Thus, they have access to the unemployment insurance system, to unemployment prevention and employment stimulation measures, under the conditions provided by law for Romanian citizens, and the National Employment Agency decided on the necessary measures to adapt the services provided to the specific needs of the beneficiaries of integration programmes.

Pursuant to the provisions of Law no.76/2002 on the unemployment insurance system and employment stimulation, as further amended and supplemented, job seekers (including foreigners who were granted a form of protection or the right to stay in Romania and who are registered with the county employment agencies or the Bucharest Municipality employment agency, respectively) may participate free of charge in training programmes to ensure their access on the labour market.

Also, pursuant to the provisions of the Government Ordinance no. 129/2000, republished, on adult training, as further amended and supplemented, assessment and certification of professional competences acquired by non-formal and informal learning may be performed by the assessment centres authorised by the National Qualifications Authority.

The certification of pre-university education studies of foreigners who were granted a form of protection in Romania is performed pursuant to the provisions of the Government Ordinance no. 44/2004, as further amended and supplemented, stipulating that the Ministry of Education and Scientific Research, in cooperation with the Ministry of Administration and Internal Affairs shall develop a special methodology for the certification of pre-university education studies of foreigners who were granted a form of protection in Romania and who do not hold documents attesting their studies or who, for objective reasons, do not fall under the scope of the current legal provisions in the field of recognition and certification of foreigners' studies in Romania, in order to facilitate access on the labour market or further study.

#### **Paragraph 4**

No amendments of the Romania legislation have been registered during the reference period.

## **Article 20**

In the context of providing similar information at Articles 4 and 20, we mention that the information included in this report covers the period of 1 January 2013 - 31 December 2014.

Law no. 53/2003 on the Labour Code, republished in the Official Journal of Romania, Part I, no. 345 of 18 May 2011, as further amended and supplemented, provides at Art. 5 the following:

- (1) The principle of equal treatment for all employees and employers shall apply within the framework of the employment relationships;
- (2) Any direct or indirect discrimination against an employee based on gender, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, trade union affiliation or activity shall be prohibited.
- (3) The acts and deeds of exclusion, distinction, restriction or preference, based on one or several of the criteria referred to in paragraph (2), which have the purpose or effect of denying, restraining or removing the recognition, enjoyment or exercise of the rights provided for in the labour legislation shall constitute direct discrimination.
- (4) The acts and deeds apparently based on other criteria than those referred to in paragraph (2), but which effect to a direct discrimination, shall constitute indirect discrimination.

Article 6 paragraph (3) specifies that any gender-based discrimination, as regards all elements and conditions of compensation, shall be prohibited for equal work or work of equal value.

We mention here that for the employees paid from public funds, the salary laws did not include either in the period of 2011-2014 (reference period), or now any regulations related to gender-based discrimination.

Equality of opportunities and treatment between women and men is a fundamental principle of human rights transposed in Romania both in the legislation and in public policies.

The principle is enshrined in the framework legislation, namely Law no. 202/2002, republished in June 2013, regulating measures to promote equality of opportunities and treatment between women and men and to eliminate all types of gender-based discrimination applied in the public and private sectors, in the fields of labour, education, health, culture and information, politics, decision-making, supply and access to goods and services, regarding the setting up,

equipment or extension of an enterprise or the start-up or extension of any other type of independent activity, as well as in other fields regulated by special laws, in all spheres of public life in Romania.

Under the terms defined by this law, work of equal values “means the paid activity which, following comparison with another activity, based on the same indicators and measurements, reflects the use of similar or equal professional knowledge and skills and of equal or similar intellectual and/or physical effort”.

Moreover, Art. 7 paragraph (1) stipulates that equality of opportunities and treatment between women and men in employment relationships means non-discriminatory access to:

- “a) Free choice of practise of a profession or activity;
- b) Employment in all vacant positions or jobs at all levels of the professional hierarchy;
- c) Equal pay for work of equal value;
- d) Career information and counselling, initiation, training, improvement, specialisation, and re-training programmes, including apprenticeship;
- e) Promotion at any hierarchical and professional level;
- f) Employment and working conditions compliant with the health and safety rules, pursuant to the legislation in force, including the employment termination conditions;
- g) Benefits, other than the salary, as well as access to public and private social security systems;
- h) Employers’ associations, trade unions and professional bodies, and the benefits provided by them;
- i) Social benefits and services granted pursuant to the legislation in force.”

All workers shall benefit from all of the above, including self-employed workers, as well as the spouses of self-employed workers who are not employed by or associates to an enterprise, when, in compliance with the domestic legislation, they participate regularly in the activity of the self-employed worker and carry out either the same tasks or complementary tasks.

Pursuant to the provisions of Law no. 202/2002 republished, the employer has the obligation to ensure equality of opportunity and treatment for all employees, under all types of employment relationships, to include disciplinary sanctions in the internal regulations, pursuant to law, to permanently inform employees on their rights with respect to equality of opportunity and treatment between women and men in employment relationships.

The position of women in employment and training and measures to promote equality of opportunity

The study “*Femei și bărbați. Parteneriat de muncă și viață*” [Women and Men. Work and Life Partnership] (2014 edition) of the National Institute of Statistics, provides updated information, comparative to the period of 2011-2013, regarding employment, unemployment, and incomes for women and men in Romania.

In 2011, active population included 8,528 thousand people, the lowest level since the outburst of the economic crisis in 2008, when the active population was 9,259 thousand people. 2012 showed a slight improvement, namely 8,605 thousand people, which was lost the next year, in 2013, when a decrease was registered again, namely 8,549 thousand people.

The number of unemployed fluctuated, but maintained an overall increasing trend. The peak value was reached in 2011, with 660 thousand people, and the lowest was registered in 2008, namely 549 thousand people. In 2012 the number of unemployed decreased by 5.1%, then it increased again in 2013, reaching 653 thousand unemployed, an increase by 18.9%, compared to 2008. The gender distribution of unemployment shows that, from the total number, the highest percentage is registered for men, namely 61.3%. Women are predominant in the inactive population aged 15 and older. Of the total number of 7,672 thousand inactive persons (in 2008-2013), 61.4% are women.

The employment rate for the working age population (aged 15-64 years) registered the lowest value in 2011, namely 59.3% (a decrease by 3 percentage points compared to 2008). In 2012 it increased by 0.9 percentage points, and in 2013 the share reached 60.1%. In 2013, the employment rate for women was lower by 15.0 percentage points than the employment rate for men, 52.6% for women and 67.6% for men, respectively.

In 2013, 21.1% of the total female employed population were higher education graduates, compared to only 16% of the men. 53.6% of women had graduated secondary education, compared to 62.7% of the men. Both for women and men, the best represented segment among employed persons consists of high school graduates: **31.7% men and 35.0% men**. In 2013, women accounted for 70.1% of the unpaid family workers, 44.0% of the employed workers and 29.2% of the self-employed workers. The largest difference between women and men was registered among business owners, as the number of women in this category was 2.6 times lower than the number of men in 2014. Also in 2013, female-dominated activities were in the fields of health care and social assistance (80.5%), education (75.5%), financial brokerage (65.7%), hotels and restaurants (60.9%), scientific and technical professional activities (54.1%), trade (54.0%) and performative, cultural and leisure activities (51.9%). The number of men decreased more obviously in the following fields: financial brokerage (-14.1%), health care and social assistance (-12.5%) energy supply and production (-9.4%).

In 2008, when the economic crisis started, the actual salary income registered the highest value, exceeding by 30.3 percentage points the level of 1990. Among the

first effects of the crisis, in 2009 the actual salary income decreased by 2 percentage points compared to the previous year, and in 2011 it decreased further by 9% compared to 2008. The actual salary income index in 2013 registered an increase by 0.9 percentage points compared to 2011 and by 2.1 percentage points compared to 2012. In 2013, the average gross salary for men was RON 2,246, while for women it was RON 2,070. In 2012, women earned on average 9.9% less than men. In the period of 2012-2013 the lowest salary incomes were earned by women from private companies with less than 50 employees, as opposed to the salaries of men in public enterprises with at least 250 employees.

From an institutional development perspective, starting with August 2013, pursuant to the provisions of GD no. 517/24.06.2013 amending certain legal provisions in the field of labour, family, social protection and elderly, the activity in the field of equality of opportunity between women and men was carried out within the Directorate for Employment and Equality of Opportunities, Unit for Equality of Opportunities between Women and Men (UEOWM), which also took over the duties of the former Directorate for Equality of Opportunities between Women and Men.

In April 2014, the Department for Equality of Opportunities between Women and Men (DEOWM) was established (by GEO no. 11/2014 adopting certain re-organisation measures at the level of the central public administration and amending and supplementing certain legal provisions) in order to strengthen the capacity of enforcing Governmental public policies in the field of equality of opportunity between women and men and to initiate new actions in the field, as a result of the efforts for the operationalisation of strong institutional structures, able to face the complex challenges accumulated and generated in time by the actions minimising the importance of this problem.

DEOWM, as national body for equality between women and men is a specialist institution of the public central administration, a legal entity subordinated to the Ministry of Labour, Family, Social Protection and Elderly, financed from the state budget through the budget of the Ministry of Labour, Family, Social Protection and Elderly (MLFSPE), led by a secretary of state appointed by Prime Minister Decision.

Government Decision no. 250/2014 on the organisation and functioning of DEOWM set the main roles and duties of the Department. The mission of the Department is to promote the principle of equality of opportunity and treatment between women and men in order to eliminate all gender-based types of discrimination, in all national policies and programmes, and its role is to ensure the substantiation, development and implementation of the Governmental strategies and policies in the field of equality of opportunity and treatment between women and men and to monitor the enforcement and compliance with the provisions of Law no.202/2002 on the equality of opportunity and treatment between women and men, as republished.

In this context, the main action lines of DEOWM are as follows:

- Analysis and review of the current legal framework in the field of equality of opportunity and treatment between women and men.
- Ensuring planning, development and implementation of Governmental strategies and policies in the field of equality of opportunity and treatment between women and men.
- Harmonisation of legislation on equality of opportunity and treatment between women and men with the European/international rules and ensuring compliance with these.
- Collection of statistical data, development of reports, studies, analyses and forecasts on the implementation of the principle of equality of opportunity and treatment between women and men in all field of activity.

The Chapter “Labour” of the Government Programme 2013-2016 proposed several action lines which include the gender dimension. Thus, this chapter provides for supporting equality of opportunity, including by eliminating salary differences between women and men in the labour market and by including the principles of social cohesion and gender equality in all public policies and by strengthening the capacity to monitor them, all being common objectives, fully compliant with the spirit of this strategy.

Among the measures to promote equality of opportunity between women and men to improve the position of women in employment and training, implemented in the period of 2012-2014 by the Directorate for Equality of Opportunities between Women and Men and by the Department for Equality of Opportunities between Women and Men, we mention:

- Development of the Government Ordinance no. 83/December 2012 amending and supplementing Law no. 202/2002 on equality of opportunity and treatment between women and men, transposing mainly the specific provisions of Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.
- Completion in September 2012 of the project “*Roma Women Empowerment in the Labour Market*”, funded by the European Social Fund, whose overall objective was to strengthen the capacity of trade union organisations to promote equality of opportunity in the labour market for women belonging to vulnerable groups. Among the main outcomes of the project we mention: study “*Roma Women in the Labour Market: interests, representation and trade union participation*” developed; 20 public participation projects implemented by the social actors at the workplace; 58 multiplication events organised in 40 counties; more than 1,500 people informed at their workplace

on their rights in the labour market, of which 948 women and 452 men; 1,700 people informed on Roma women's participation and rights in the labour market; 20 Roma women presented in the local or national media as positive role models for their communities.

- A round table on "*Reducing gender differences in salaries*" was organised in September 2012 with the purpose to debate policies and actions to reduce the salary differences between women and men and to identify actions which might lead to eliminating gender-based stereotypes and discriminations in the salary systems. The meeting gathered together decision-makers from the Ministry of Labour, Family, Social Protection and Elderly and representatives of the National Institute in the field of Labour and Social Protection, trade unions, employers' associations and non-governmental organisation in the field of gender equality.
- Completion in May 2013 of the project "*National public awareness campaign on gender equality and equal opportunities in the labour market and institutional support for developing stakeholder activities in the field of gender equality and equal opportunities*" - S.A.N.S.A. The overall objective was to raise awareness at social level, for the long-term promotion of the principle of gender equality and equal opportunities in the labour market and the target group consisted in: mass-media, central and local public authorities, employers, organisations of the civil society, social partners, citizens.
- In 2013, 9 notifications regarding an alleged direct or indirect discrimination were submitted, of which only 3 were related to a breach of legal provisions on equality of opportunities and treatment between women and men. The claims were solved pursuant to the legal provisions, by submitting them for resolution and sanction enforcement to the competent institutions (Labour Inspection and the National Council for Combating Discrimination).
- Introduction in the Classification of Occupations in Romania of the occupation "*Expert in equality of opportunity*" by Joint Order of MLFSPE and of the National Institute of Statistics no. 1419/328/2014 amending and supplementing the Classification of Occupations in Romania. The measure has a positive impact on promoting action in the field, both by recognising the professional nature of the field work and of the research activity carried out mostly by the civil society, and by supporting and encouraging academic training of professionals in the field.
- Development of the National Strategy in the field of equality of opportunity between women and men for 2014 - 2017, adopted in December 2014. This national strategy does not intend an exhaustive approach on the topic of equality of opportunity between women and men, interventions in all fields of the economic and social life, but to tackle those critical and sensitive fields which prove most vulnerable or less open to gender issues. The measures



considered for the labour market are as follows: to promote the gender perspective in employment, mobility and workforce migration policies; to increase awareness of labour inspectors on the legal provisions in the field of equality of opportunity between women and men; to increase awareness on the salary differences between women and men.

A special chapter is dedicated to the cooperation throughout this period, 2012-2014, with the County Commissions and with the Bucharest Municipality Commission for Equality of Opportunity between Women and Men (CCEO). Thus, the quarterly meetings of CCEOs included debates and presentations on the following topics:

- Information on the activity of the County Employment Agency in order to promote the principle of equality of opportunity between women and men;
- Implementation of joint actions for labour market integration of marginalised women or of women at risk of marginalisation;
- Organisation of joint events in order to promote employment opportunities measures for female job seekers;
- Joint organisation of Job Fairs and of training programmes for marginalised women and women at risk of marginalisation, statistical data on the job fair;
- The activity of the Territorial Labour Inspectorates regarding the verification of the enforcement of measures on equality of opportunities and treatment between women and men in the field of employment relationships;
- Presentation of projects implemented by some NGOs, members of CCEOs, whose objective is to facilitate access to employment for persons from vulnerable groups and to provide integrated employment stimulation services in order to reduce social exclusion, marginalisation, discrimination and poverty risk.

In the period of 1 January 2011 - 31 December 2014, the control actions performed by the Labour Inspectorate had the objective to verify compliance with the provisions of Law no. 202/2002 on equality of opportunities and treatment between women and men, as republished, with the following results:

INDICATORS	1 January 2011 - 31 December 2014
Number of verifications performed	148,300
Total number of sanctions applied, of which:	9,261
- <i>number of fines</i>	20
- <i>number of warnings</i>	9,241
Total amount of fines (RON)	34,500

In general, the verifications to check compliance with legal provisions on equality of opportunities and treatment between women and men have a preventive nature, and most often the sanctions consist in warnings.

The verifications found breaches of the legal provisions related to:

- Introduction of provisions banning gender-based discrimination in the Internal Regulation of the company;
- Permanent information of employees on their rights related to equality of opportunity;
- Enforcement of provisions on maternity protection at the workplace;
- Introduction of disciplinary sanctions in the Internal Regulation for employees who do not respect the personal dignity of other employees.

#### **Article 24**

Pursuant to the provisions of Law no.53/2003 - Labour Code, republished, as further amended and supplemented, dismissal (termination of the individual employment contract initiated by employer) may be decided for reasons pertaining to the person of the employee (Art. 61 letters a-d) and for reasons not pertaining to the person of the employee (Art. 65 paragraph 1). Dismissal of employees based on discriminatory grounds is prohibited; mention should be made that the exercise of the right to strike and of trade union rights, pursuant to law, may not constitute reasons for dismissal.

If the employer has not complied with the procedure provided by law for dismissals or if the reason for dismissal is not grounded and/or legal, the dismissed employee may go to the competent court of law to have it annulled. Pursuant to the civil procedure rules, the competent court of law is the tribunal having jurisdiction in the area of domicile or residence of the dismissed employee.

If the court finds that the employee's claim is grounded, the court shall annul the dismissal and shall oblige the employer to compensate the employee with an amount equal to the indexed, increased and updated salaries and all other rights he/she would have benefited from if he/she had not been dismissed.

Consequently, the court may decide, having analysed the case, whether the dismissal was ungrounded or illegal.

We also mention that the national legislation does not provide for a maximum amount of compensation payable to the employee, on which the court may decide, and the employer has the obligation to pay such compensation starting from the dismissal date until the date of the judicial decision.

We also mention that the termination of the individual employment contract on the date when the standard age and the minimum contribution conditions are cumulatively fulfilled is not initiated by the employer therefore is not dismissal in the meaning provided by the Labour Code.

The provisions of the Labour Code achieve efficient protection against possible abuse by employers. Regardless the reasons for dismissal, it may not be decided during temporary work incapacity, as established by medical certificate, pursuant to law.

We also mention that there is no statute of limitation for these provisions.

Pursuant to the provisions of the Labour Code, participation in strikes and organisation of strikes in compliance with legal provisions shall not be considered a breach of the employee's obligations and may not be followed by disciplinary sanctions for the employees who participate in or organise the strike.

In order to protect the employee against abusive dismissals, for this dismissal situation the Labour Code provides for a mandatory measure the employer should take prior to the dismissal decision, namely prior investigation.

Also, if the employer does not observe the procedure provided by law for dismissals or if the reason for dismissal is not grounded or legal, the dismissed employee may go to the competent court to have it annulled.

If the court finds that the employee's claim is grounded, the court shall annul the dismissal and shall oblige the employer to compensate the employee with an amount equal to the indexed, increased and updated salaries and all other rights he/she would have benefited from if he/she had not been dismissed.

Moreover, the provisions of the Labour Code ban dismissal while holding an eligible position in a trade union, except for the situation when the dismissal is decided for severe breach of discipline or for repeated breach of discipline by that employee.

Therefore, the provisions of the Labour Code achieve efficient protection against possible abuse by employers. Thus, "subjective" dismissals are greatly limited and there is a specific sanction (absolute nullity) for those dismissals which are not compliant with legal provisions or grounded.

## **Article 25**

Pursuant to Art.1 paragraph (1) of the Council Directive no.80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive no.2002/74/EC of the European Parliament and of the Council, Directive shall apply to employees' claims arising from contracts of employment or

employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2 (1) of the same Directive.

Pursuant to Art.2 paragraph (1) of the same Directive, the purposes of this Directive, an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings based on insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a Member State, and involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and the authority which is competent pursuant to the said provisions has:

- (a) either decided to open the proceedings, or
- (b) established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

Pursuant to the provisions of Art.1 paragraph (2) letter c) of Law no.85/2006 on insolvency procedure, as further amended and supplemented, as in force prior to repealing by the provisions of Law no.85/2014 on insolvency prevention procedures and on insolvency procedure, the simplified procedure provided by this law applies to the debtors provided by paragraph (1) of the article invoked, namely companies, cooperative companies and organisations, agricultural companies, groups of economic interest and any other private legal entity which carry out economic activities and which fulfil one of the following conditions:

1. they have no assets in their patrimony;
2. Their articles of association or accounting documents cannot be found;
3. Their administrator cannot be found;
4. Their headquarters no longer exist or no longer corresponds to the address registered with the Trade Register.

Also, the simplified procedure mentioned above applies, pursuant to paragraph (2) letters d) and e) of the article invoked to debtors falling under the categories provided by paragraph (1) of the same article, who did not present the documents provided by Art.28 paragraph (1) letters a)-f) and h) of the law, within the deadline provided by law, and to companies dissolved prior to submission of the request to initiate insolvency.

Pursuant to Art.3 point 25 of Law no.85/2006, as further amended and supplemented, the simplified procedure is the procedure provided by this law, whereby the debtor who fulfils the conditions provided by Art.1 paragraph (2) of the law shall undergo directly the bankruptcy procedure, or when the insolvency procedure is open or after an observation period of maximum 50 days, to analyse the elements provided by Art.1 paragraph (2) letters ) and d).

As provided by Art.107 paragraph (2) letter a) of the law invoked, with the bankruptcy decision, the syndic judge shall rule on the dissolution of the debtor and on withdrawing the debtor's right to manage its business.

Pursuant to the express provisions of Art.131 paragraph (1) of the same law, in any stage of the procedure provided by this law, if it is found that the debtor owns no assets or the debtor's assets are insufficient to cover the administrative expenses and no creditor is willing to advance the necessary amounts, the syndic judge shall rule on closing the procedure, and on the removal of the debtor from the register he is registered with.

We mention that the provisions of Art.38 paragraph (2), Art.5 point 47, Art.145 paragraph (2) letter a) and Art.174 paragraph (1) of Law no.85/2014, repealing Law no.85/2006, as further amended and supplemented, had the same meaning.

In Romania, the legal framework on the establishment, management, use and control of the Guarantee Fund for the payment of employees' claims was created when Law no.200/2006 on the establishment and use of the Wage Guarantee Fund entered into force, a law transposing the Council Directive no.80/987/EEC, as amended by Directive no.2002/74/EC of the European Parliament and of the Council.

Pursuant to Art.2 of Law no.200/2006, as further amended and supplemented, the Wage Guarantee Fund shall ensure payment of employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency ruled by a final judicial decision and who were withdrawn in whole or in part the right to manage their business, called insolvent employers.

Pursuant to Art.20 paragraph (2) of the law invoked, in establishing the state of insolvency of the transnational employer, pursuant to Art.4 letter b) of the same law, of the employer - natural or legal person who carries out activities on the territory of Romania and of at least another Member State of the European Union or of the European Economic Area, the decision adopted by the competent authority from a Member State of the European Union or of the European Economic Area, to initiate the procedure or, as appropriate, to find that the debtor owns no assets or that his assets are insufficient to justify the initiation of the insolvency procedure shall be taken into consideration and shall lead to a decision on the removal of the debtor from the register he is registered with.

Pursuant to Art.10 and art.11 of the law invoked, the National Employment Agency shall manage the Wage Guarantee Fund, through the county employment agencies and the Bucharest Municipality employment agency, which have the following duties:

a) To receive, examine and solve the employees' claims arising from individual and/or collective employment contracts;

- b) To establish the amount of wage debts due and to make the payments;
- c) To recover the debts created pursuant to this law, other than those generated by the contributions to the Wage Guarantee Fund;
- d) To represent the interests of the Wage Guarantee Fund in relation with the central and local public administration institutions, courts of law, companies or organisations;
- e) To exchange information with the competent institutions of the Member States of the European Union and of the European Economic Area.

Pursuant to Art.13 paragraph (1) of the same, the resources of the Wage Guarantee Fund shall cover, within the limits and conditions provided by this law, the following claims:

- a) residual wages;
- b) outstanding holiday payments owed by employers, but only for maximum 1 year of employment;
- c) outstanding payments under the collective agreement and/ or individual employment contracts in the event of termination of employment;
- d) outstanding payments under the collective agreement and/ or individual employment contracts related to work accidents or occupational diseases;
- e) outstanding payments the employers are obliged to pay employees, pursuant to law, during temporary interruptions of work.

Pursuant to Art.15 paragraph (1) of Law no.200/2006, as further amended and supplemented, the wage claims provided by Art.13 paragraph (1) letters a), c), d) and e) shall be covered for a period of 3 calendar months.

As provided by paragraph (2) of the article invoked, the period indicated by paragraph (1) is prior to the date when the claim is lodged and prior to or after initiating the insolvency procedure.

Pursuant to paragraph (3) of the same article, another wage claim may be lodged only if the period provided by paragraph (2) has not exceeded 3 months.

Pursuant to Art.5 paragraph (1) of the methodological rules for the enforcement of Law no.200/2006, approved by Government Decision no.1850/2006, as further amended, the claims provided by Art.13 paragraph (1) letters a), c), d) and e) of the law are related to the period of 3 calendar months provided by Art.15 paragraph (1) of the law, a period which is prior to the month when the rights are claimed.

As provided by paragraph (2) of the same article, the claims provided by Art.13 paragraph (1) letter b) of the law arise on the of the termination of the individual employment contract and are related to the last 12 months of employment prio to that date.

Pursuant to Art.7 paragraph (1) of the methodological rules invoked, in the event the employees' claims relate to a period prior to the month in which the insolvency procedure was initiated, the period of 3 calendar months provided by Art.15 paragraph (1) of the law shall precede the date of the initiation of the procedure.

Pursuant to Art.7 paragraph (2) of the same methodological rules, in the event the employees' claims relate to a period subsequent to the month in which the insolvency procedure was initiated, the period provided by Art.15 paragraph (1) of the law shall be subsequent to the date of the initiation of the procedure.

As provided by Art.8 of the methodological rules for the enforcement of Law no.200/2006, approved by Government Decision no.1850/2006, as further amended and supplemented, the employees' claims requested pursuant to Art.15 paragraph (3) of the law shall be covered for the remaining period until the expiry of the period provided by Art.15 paragraph (1) of the law.

Pursuant to Art.14 of Law no.200/2006, as further amended and supplemented, the total amount of the wage claims paid from the Wage Guarantee Fund may not exceed the amount of 3 average gross national salaries, where the average gross salary considered is communicated by the National Institute of Statistics for the month in which the insolvency procedure was initiated.

Pursuant to Art.19 paragraph (1) and (2) of the law invoked, determination of the amounts and the payment of outstanding claims are carried out by county employment agencies and by the Bucharest Municipality employment agency, on written request of the administrator or liquidator of the insolvent employer or, as appropriate, on written request of the relevant employees of the insolvent employer or of legally constituted organizations representing their interest.

The express provisions of paragraph (3) of the article invoked stipulated that the claims provided by paragraphs (1) and (2) shall be joined by documents to attest that a final judicial decision was passed against the employer ordering the initiation of the insolvency procedure and the measure of withdrawing in whole or in part the debtor's right to manage its business.

As provided by paragraph (4) of the same article, before filing a claim with a territorial agency, the employees or their legal representatives must notify, in writing, the administrator or liquidator of the insolvent employer to enable them to take the necessary steps to pay the employees' claims, pursuant to paragraph (1). A copy of this notification shall be attached to the claim filed with the territorial agency, pursuant to paragraph (2).

Pursuant to Art.9 paragraph (1) of the methodological rules for the enforcement of Law no.200/2006, approved by Government Decision no.1850/2006, as further amended and supplemented, the claims provided by art.19 of the law shall be drafted using the template provided by Annex 1 to the methodological rules invoked and shall be submitted to the county employment agencies and to the

Bucharest Municipality employment agency, in whose jurisdiction the employer has its headquarters, domicile or residence.

Pursuant to the express provisions of Art.12 of the same methodological rules, the claims provided by Art.19 of the law shall be solved within 45 days after their registration with the competent county employment agency or with the Bucharest Municipality employment agency, established pursuant to the provisions of Art.9 of the methodological rules.

Pursuant to Art.21 paragraph (1) of Law no.200/2006, as further amended and supplemented, in the event when, following the examination of the documents provided by Art.19 paragraphs (1) and (3), it is found that the conditions provided by Art.2 of the law are fulfilled, the county employment agency or the Bucharest Municipality employment agency shall issue the decision on the amount of wage claims paid from the Wage Guarantee Fund for the claims lodged by the employees insolvent employer.

As provided by Art.21 paragraph (3) of the law invoked, it is found that the conditions provided by Art.2 of the law are not fulfilled, the claim provided by Art.19 paragraph (1) of the same law shall be rejected by motivated decision of the county employment agency or of the Bucharest Municipality employment agency, communicated to the persons provided by Art.19.

Having regard to all of the above, we mention that in Romania, a request to initiate a collective procedure grounded on the insolvency of the employer, as considered by Art.2 paragraph (1) of the Council Directive no.80/987/EEC, as amended by Directive no.2002/74/EC of the European Parliament and of the Council, shall be solved pursuant to the legal provisions applicable in case of insolvency.

As stipulated by the legal provisions mentioned above, which the National Employment Agency may not interpret and enforce, pursuant to its legal competence, the conclusion that the debtor owns no assets or the debtor's assets are insufficient to cover the administrative expenses and no creditor is willing to advance the necessary amounts, which is a similar situation to that provided by Art.25 of the revised European Social Charter, shall be pronounced at the same time with the initiation of the insolvency procedure, regulated by the same law or after a period of observation of maximum 50 days, in which case the syndic judge shall pass a decision on bankruptcy including, among others, the withdrawal of the debtor's right to manage its business.

Also, pursuant to these legal provisions, this situation may be pronounced at any stage of the procedure, in which case the syndic judge shall rule on closing the procedure, and on the removal of the debtor from the register he is registered with.

Having considered all of the above, we appreciate that the employees of the debtors falling under the situations described above may benefit from the payment



of their wage claims, of the claims arising from contracts of employment or employment relationships concluded by those employees with the respective employers, from the Wage Guarantee Fund, insofar as the condition provided by Art.2 of Law no.200/2006, as further amended and supplemented, and all other conditions provided by law have been fulfilled.

All employees' claims shall be satisfied within the guarantee system, and the amounts due are fully paid. The minimum period between filing the claim and payment of amount dues is of approximately 1 month.

## APPENDICES

ORDINANCE no. 25 of 26 August 2014  
on the employment and secondment of foreigners on the territory of Romania,  
amending and supplementing certain legislative acts on the regime of foreigners in  
Romania

#### ART. 4

(1) The employment permit shall be issued by permit the General Inspectorate for Immigration on request of the employer provided that the general conditions stipulated by paragraph (2) and the special conditions stipulated by this ordinance are fulfilled for each type of worker.

(2) The general conditions for the issuance of the employment permit as follows:

a) The employer, a legal entity, authorized natural person or individual enterprise actually carries out the activity carries out the activity for which they request the employment of the foreigner;

b) The employer has paid their contribution to the state budget for the last quarter, prior to filing the application;

c) The employer has not been given a final sentence for an offence provided by the [Labour Code](#) or for an offence against the person committed intentionally, as stipulated by [Law no. 286/2009](#) on the Criminal Code, as further amended and supplemented, hereinafter called the Criminal Code;

d) The employer has not been sanctioned pursuant to [Art. 36](#) paragraph (1) of this ordinance, [Art. 260](#) paragraph (1) letter e) of the Labour Code or pursuant to [Art. 9](#) paragraph (1) letter a) of Government Decision no. 500/2011 on the general record of employees, as further amended, in the past 3 years prior to filing the application;

e) They are within the yearly quota of by type of workers newly admitted in the labour market established pursuant to the provisions of [Art. 29](#) paragraph (1);

f) The foreigner the employer intends to hire meets the conditions provided by [Art. 6](#) paragraph (1) letters a), e), g) and h), [Art. 11](#) and [Art. 27](#) paragraph (2) letters c) and e) of the Government Emergency Ordinance no. 194/2002, republished, as further amended and supplemented, and is not under any of the situations for refusing entry in Romania provided by [Art. 8](#) paragraph (1) letter b) - d) of the Government Emergency Ordinance no. 194/2002, republished, as further amended and supplemented.

#### ART. 5

(1) In order to obtain the employment permit, the employer shall file an application with the General Inspectorate for Immigration, together with:

a) A copy of the valid border-crossing document of the foreigner they intend to employ and, as appropriate, a copy of his/her temporary stay permit in Romania;

- b) Two photographs type 3/4 of the foreigner;
- c) Foreigner's statement on own responsibility that he/she is medically fit to be employed and has minimum knowledge of Romanian;
- d) Job description for the vacancy;
- e) Documents attesting the general conditions provided by [Art. 4](#) paragraph (2) letters a) - c) are fulfilled;
- f) Documents attesting the special conditions provided by this ordinance, by type of worker, are fulfilled.

(2) The employer who is a natural person shall also file a copy of his/her identity document.

#### ART. 6

(1) The employer, a legal entity, authorized natural person or individual enterprise shall prove that the general conditions provided by [Art. 4](#) paragraph (2) letter a) are fulfilled by presenting the following documents:

- a) Certificate of Incorporation from the Trade Register or Registration Certificate from the Register of Associations and Foundations, copy and original;
- b) Confirmation of Good Standing indicating that the Trade Register of the Register of Associations and Foundations, as appropriate, has not registered any mentions on opening of bankruptcy proceedings.

(2) The employer shall prove that the general conditions provided by [Art. 4](#) paragraph (2) letter b) are fulfilled by presenting the Tax Registration Certificate issued by the administration of public finance in whose jurisdiction the employer has its registered headquarters or, as appropriate, his domicile, attesting the employer has paid their contribution to the state budget for the last quarter, prior to filing the application.

(3) The employer shall prove that the general conditions provided by [Art. 4](#) paragraph (2) letter c) are fulfilled by presenting the Criminal Record.

(4) The General Inspectorate for Immigration shall verify the general conditions provided by [Art. 4](#) paragraph (2) letters d) - f) are fulfilled, through its territorial units.

## SECTION 2

### Employment of foreigners as permanent workers

#### ART. 7

(1) The employment permit for permanent workers shall be issued to the employer for the purposes of employing a foreigner based on a permanent or fixed-term full-time individual employment contract. The fixed-term individual employment contract shall be extended pursuant to the conditions provided by the [Labour Code](#), without obtaining a new employment permit, if the employment conditions for that job are maintained.

(2) The special conditions for the issuance of the employment permit for permanent workers are as follows:

a) The employer made due diligence to fill the vacancy by a Romanian citizen, a citizen of another Member State of the European Union or of the European Economic Area, a citizen of the Swiss Confederation or a foreign holder of the long-term stay right on the territory of Romania;

b) The employer intends to employ a foreigner based on a permanent or fixed-term full-time individual employment contract;

c) The foreigner the employer intends to hire for the vacant job fulfils the special conditions regarding professional qualifications, experience and authorisation, required by the legislation in force for that job and has not been convicted for crimes which are incompatible with the activity they intend to carry out on the territory of Romania.

(3) The employment permit for permanent workers shall be issued without fulfilling the condition provided by (2) letter a) if the vacant job is the position of company administrator regulated by the Company [Law](#) no. 31/1990, republished, as further amended and supplemented, and the respective employer does not have another foreign employee hired for such a position.

(4) The employment permit for permanent workers shall be issued without fulfilling the special conditions provided by paragraph (2) letters a) and c) if the vacant job is for professional athletes, and the respective employer is a legal entity whose main object of activity consists in sport activities.

#### ART. 8

(1) The employer shall prove that the special condition provided by [Art. 7](#) paragraph (2) letter a) is fulfilled by presenting the following documents:

a) Employer's organisational chart indicating filled and vacant positions;

b) A certificate regarding the workforce available for the vacant position, issued by the relevant employment agency for the area where the employer's headquarters or domicile are registered with 60 days at the most before lodging the application for the employment permit;

c) Proof of publication in a newspaper of wide circulation in Romania of at least one advertisement for filling the vacancy. In the event there is workforce available for the vacancy, the employer must present proof of publication of at least 3 consecutive advertisements for filling the vacancy;

d) A copy of the report drafted by the employer on the selection performed for filling the vacancy, following the publication of the advertisement/advertisements provided by letter c).

(2) The employer shall prove that the special condition provided by [Art. 7](#) paragraph (2) letter b) is fulfilled by presenting a copy of the firm employment offer.

(3) The employer shall prove that the special condition provided by [Art. 7](#) paragraph (2) letter c) is fulfilled by presenting the following documents:

a) Foreigner's curriculum vitae;

b) The authorisation document requested by law, where applicable;

c) Foreigner's criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence, translated and notarized pursuant to law.

(4) The foreigner's curriculum vitae shall have attached, where applicable, one of the following documents:

a) The certificate for the recognition of studies necessary to fill the vacant job, issued by the Ministry of National Education, pursuant to the relevant legal provisions in the field, or the diploma issued by an education institution accredited in Romania;

b) Copies of the documents attesting professional training acquired outside the education system or, as appropriate, attesting professional experience, translated and notarized pursuant to law;

c) Copies of the documents attesting that the professional qualification necessary to fill the vacancy has been acquired in Romania or in another Member State of the European Union, translated and notarized pursuant to law, where applicable.

### SECTION 3

#### Employment of foreigners as interns

##### ART. 9

(1) The employment permit for interns shall be issued exclusively to the employer - legal entity for the purposes of hiring a foreigner for a fixed-term internship in order to obtain a qualification or to improve their training and linguistic and cultural knowledge. The internship duration may not be extended.

(2) The special conditions for the issuance of the employment permit for interns are as follows:

a) The employer performed due diligence to employ for the internship a Romanian citizen, a citizen of another Member State of the European Union or of the European Economic Area, a citizen of the Swiss Confederation or a foreign holder of the long-term stay right on the territory of Romania;

b) The employer intends to employ a foreigner for a fixed-term internship in order to obtain a qualification or to improve their training and linguistic and cultural knowledge;

c) The foreigner the employer intends to hire fulfils the conditions regarding education or professional qualifications for the internship and has not been convicted for crimes which are incompatible with the activity they intend to carry out on the territory of Romania.

##### ART. 10

(1) The employer shall prove that the special condition provided by [Art. 9](#) paragraph (2) letter a) is fulfilled by presenting the following documents:

a) Proof of publication in a newspaper of wide circulation in Romania of at least one advertisement for employment for internship purposes;

b) A copy of the report drafted by the employer on the selection performed for employment for internship purposes.

(2) The employer shall prove that the special condition provided by [Art. 9](#) paragraph (2) letter b) is fulfilled by presenting the following documents:

a) A copy of the firm employment offer;

b) A copy of the internship contract concluded or to be concluded when the individual employment contract is signed.

(3) The employer shall prove that the special condition provided by [Art. 9](#) paragraph (2) letter c) ) is fulfilled by presenting the following documents:

a) Foreigner's curriculum vitae;

b) Copies of the documents attesting professional training acquired outside the education system, translated and notarized pursuant to law;

c) Copies of the documents attesting that the professional qualification necessary for the internship has been acquired in Romania or in another Member State of the European Union, translated and notarized pursuant to law, where applicable.

## SECTION 4

### Employment of foreigners as seasonal workers

#### ART. 11

(1) The employment permit for seasonal workers shall be issued to the employer for the purposes of hiring a foreigner for in a sector where activities are carried out depending on seasons, under an individual fixed-term employment contract which may not exceed 6 months in an interval of 12 months. The individual employment contract may not be extended.

(2) The special conditions for the issuance of the employment permit for seasonal workers are as follows:

a) The employer intends to employ a foreigner under a fixed-term full-time individual employment contract which may not exceed 6 months in an interval of 12 months;

b) The foreigner the employer intends to hire for the vacancy fulfils the conditions regarding professional qualifications, experience or authorisation, required by the legislation in force for that job.

#### ART. 12

(1) The employer shall prove that the special condition provided by [Art. 11](#) paragraph (2) letter a) is fulfilled by presenting a copy of the firm employment offer.

(2) The employer shall prove that the special condition provided by [Art. 11](#) paragraph (2) letter b) is fulfilled by presenting the following documents:

a) Foreigner's curriculum vitae;

b) The authorisation document requested by law, where applicable.

(3) The foreigner's curriculum vitae shall have attached, where applicable, one of the following documents:

a) The certificate for the recognition of studies necessary to fill the vacant job, issued by the Ministry of National Education, pursuant to the relevant legal provisions in the field, or the diploma issued by an education institution accredited in Romania;

b) Copies of the documents attesting professional training acquired outside the education system or, as appropriate, attesting professional experience, translated and notarized pursuant to law;

c) Copies of the documents attesting that the professional qualification necessary to fill the vacancy has been acquired in Romania or in another Member State of the European Union, translated and notarized pursuant to law, where applicable.

(4) In order to issue the employment permit for the employment of a foreigner as seasonal worker by the employer for whom the foreigner has previously carried out the same activity, it shall not be necessary to submit the documents attesting that the special conditions provided by [Art. 15](#) paragraph (2) are fulfilled, if the foreigner complied with the obligation to leave the territory of Romania upon termination of the previous individual employment contract.

## SECTION 5

### Employment of foreigners as cross-border workers

#### ART. 13

(1) The employment permit for cross-border shall be issued to the employer for the purposes of hiring a foreigner, citizen of a state bordering Romania who lives in the border area of that state, employed in a border locality on the territory of Romania, under a permanent or fixed-term full-time individual employment contract. The fixed-term individual employment contract may be extended pursuant to the conditions provided by the [Labour Code](#), without obtaining a new employment permit.

(2) The special conditions for the issuance of the employment permit for cross-border workers are as follows:

a) The employer intends to hire a foreigner, citizen of a state bordering Romania who lives in the border area of that state, employed in a border locality on the territory of Romania, under a permanent or fixed-term full-time individual employment contract;

b) The foreigner the employer intends to hire for the vacancy fulfils the conditions regarding professional qualifications, experience or authorisation, required by the Romanian legislation in force for that job and has not been convicted for crimes which are incompatible with the activity they intend to carry out on the territory of Romania.

#### ART. 14



(1) The employer shall prove that the special condition provided by [Art. 13](#) paragraph (2) letter a) is fulfilled by presenting the following documents:

- a) A copy of the firm employment offer;
- b) A copy of the valid identity document of the foreigner.

(2) The employer shall prove that the special condition provided by [Art. 13](#) paragraph (2) letter b) is fulfilled by presenting the following documents:

- a) Foreigner's curriculum vitae;
- b) The authorisation document requested by law, where applicable;
- c) Foreigner's criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence, translated and notarized pursuant to law.

(3) The foreigner's curriculum vitae shall have attached, where applicable, one of the following documents:

a) The certificate for the recognition of studies necessary to fill the vacant job, issued by the Ministry of National Education, pursuant to the relevant legal provisions in the field, or the diploma issued by an education institution accredited in Romania;

b) Copies of the documents attesting professional training acquired outside the education system or, as appropriate, attesting professional experience, translated and notarized pursuant to law;

c) Copies of the documents attesting that the professional qualification necessary to fill the vacancy has been acquired in Romania or in another Member State of the European Union, translated and notarized pursuant to law, where applicable.

## SECTION 6

### Employment of foreigners as highly qualified workers

#### ART. 15

(1) The employment permit for highly qualified workers shall be issued exclusively to the employer - legal entity for the purposes of hiring a foreigner for a highly qualified job under a permanent or fixed-term individual employment contract of at least 1-year duration. The fixed-term individual employment contract may be extended pursuant to the conditions provided by the [Labour Code](#), without obtaining a new employment permit.

(2) The special conditions for the issuance of the employment permit for highly qualified workers are as follows:

a) The employer intends to hire a foreigner for a highly qualified job, under a permanent or fixed-term individual employment contract of at least 1-year duration, and pay a salary at least 4 times the average gross salary;

b) The foreigner the employer intends to hire for the vacancy fulfils the conditions regarding professional qualifications, experience or authorisation, required by the legislation in force for that highly qualified job and has not been

convicted for crimes which are incompatible with the activity they intend to carry out on the territory of Romania.

ART. 16

(1) The employer shall prove that the special condition provided by [Art. 15](#) paragraph (2) letter a) is fulfilled by presenting a copy of the firm employment offer.

(2) The employer shall prove that the special condition provided by [Art. 15](#) paragraph (2) letter b) is fulfilled by presenting the following documents:

- a) Foreigner's curriculum vitae;
- b) The authorisation document requested by law, where applicable;
- c) Foreigner's criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence, translated and notarized pursuant to law.

(3) The foreigner's curriculum vitae shall have attached one of the following documents:

a) The certificate for the recognition of studies necessary to fill the vacant job, issued by the Ministry of National Education, pursuant to the relevant legal provisions in the field, or the diploma/certificate of qualification issued by an education institution/unit accredited in Romania, attesting the post-high school or higher education qualification, both in case of regulated and non-regulated professions;

b) Documents attesting that the professional qualification necessary to fill the vacancy has been acquired in Romania or in another Member State of the European Union, due to professional experience requiring a level of knowledge comparable with post-high school or higher education qualifications, only for regulated professions.

## ART. 44

## Long-stay visa for employment

(1) Long-stay visa for employment shall be granted to foreigners for the purposes of employment on the territory of Romania by an employer.

(2) The visa application shall be accompanied by the following documents:

a) A copy of the employment permit issued pursuant to the special legislation on the employment or secondment of foreigners on the territory of Romania or, as appropriate, documents attesting that the applicant falls under the categories provided by paragraph (3);

b) Proof of subsistence means at the level of the gross minimum guaranteed salary for the entire period mentioned in the visa;

c) Criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence;

d) Health insurance throughout the visa validity period.

(3) Long-stay visa for employment shall be granted without presenting a copy of the employment permit to foreigners who fall under the following categories:

a) Foreigners whose free access to the Romanian labour market is established by treaties signed by Romania with other countries;

b) Foreigners who will carry out teaching or scientific activities or other categories of specific activities of a temporary nature in specialised accredited or provisionally authorised institutions in Romania, under bilateral agreements, and personnel with special qualifications, pursuant to the order of the minister of national education, as well as the foreigners who perform artistic activities in cultural institutions in Romania, under the order of the minister of culture;

c) Foreigners who will carry out on the territory of Romania temporary activities required by ministries or other bodies of the central public or local administration or by autonomous administrative authorities;

d) Foreigners who are appointed as head of a branch, representation or subsidiary in Romania of a company based abroad, and who are not associates, shareholders or administrators of a Romanian legal entity on the date of the application, if in the respective branch, representation or subsidiary there is no other foreigner who benefits from a right to stay for this purpose.

(4) The foreigner may apply for a long-stay visa for employment within 60 days after having obtained the employment visa by the employer. The visa shall be approved by the National Visa Centre within 10 days from submitting the visa application, without the need to obtain the permit provided by Art. 30 paragraph (7).

(5) For the foreigners provided by paragraph (3) it is necessary to obtain the approval of the General Inspectorate for Immigration, stipulated by Art. 30 paragraph (7).

(6) The long-stay visa for employment also attests the foreigner's right to work on the territory of Romania.

#### ART. 44<sup>1</sup>

##### Long-stay visa for secondment

(1) Long-stay visa for secondment shall be granted to foreigners for the purposes of carrying out professional activities on the territory of Romania for a service beneficiary.

(2) The visa application shall be accompanied by the following documents:

a) A copy of the secondment permit issued pursuant to the special legislation on the employment or secondment of foreigners on the territory of Romania;

b) Proof of subsistence means at the level of the gross minimum guaranteed salary for the entire period mentioned in the visa;

c) Criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence;

d) Health insurance throughout the visa validity period.

(3) Long-stay visa for secondment shall be granted without presenting a copy of the secondment permit to foreigners who fall under the following categories:

a) Foreigners employed by legal entities having their registered headquarters in a Member State of the European Union or of the European Economic Area or in the Swiss Confederation, transferred in Romania, subject to their holding a stay permit issued by that state;

b) Foreigners who will carry out teaching or scientific activities or other categories of specific activities of a temporary nature in specialised accredited or provisionally authorised institutions in Romania, under bilateral agreements, and personnel with special qualifications, pursuant to the order of the minister of national education, as well as the foreigners who perform artistic activities in cultural institutions in Romania, under the order of the minister of culture;

c) Foreigners who will carry out on the territory of Romania temporary activities required by ministries or other bodies of the central public or local administration or by autonomous administrative authorities.

(4) The visa application provided by paragraph (3) shall be accompanied by the following documents:

a) A copy of the individual employment contract, registered with the competent authorities in that country, translated and notarized;

b) Valid stay permit issued by the state where the employer has its headquarters, original and copy;

c) A copy of the secondment document, translated and notarized;

d) Proof of subsistence means at the level of the gross minimum guaranteed salary for the entire period mentioned in the visa;

e) Criminal record or any other document with the same legal value, issued by the authorities in the country of domicile or residence;

f) Health insurance throughout the visa validity period.

(5) The foreigner may apply for a long-stay visa for secondment within 60 days after having obtained the secondment permit by the service beneficiary. The visa shall be approved by the National Visa Centre within 10 days from submitting the visa application, without the need to obtain the permit provided by Art. 30 paragraph (7).

(6) For the foreigners provided by paragraph (3) it is necessary to obtain the approval of the General Inspectorate for Immigration, stipulated by Art. 30 paragraph (7).

(7) The long-stay visa for secondment also attests the foreigner's right to work on the territory of Romania.

#### ART. 51

Application for the extension of the right to temporary stay

(1) The applications for the extension of the right to temporary stay shall be lodged by the applicants in person, at least 30 days prior the expiry of the right to stay, with the territorial units of the Romanian Office for Immigration from the place of residence.

(2) The application shall be accompanied by the border-crossing document, original and copy, by a medical certificate issues by a public or private medical institution, attesting they do not suffer from any condition which might endanger public health, by proof of legal ownership of the housing space they declare as their residence on the territory of Romania, proof of social health insurance, of subsistence means and of payment of fees related to the extension of the right to stay and of the cost of the document issued for this purpose, as well as by all other documents stipulated in this chapter, depending on the purpose for which they require approval of stay in Romania.

(3) The proof of subsistence means may be a payslip, a pension pay slip, a tax statement, a bank statement or other equivalent documents.

(4) The application shall be solved within 30 days from the filing date. In the event that additional verifications are necessary to confirm that the conditions for extending the right to stay are fulfilled, the deadline for solving the application may be extended by 15 days at the most.

(5) When the extension of the right to stay is requested based on marriage and additional verifications are necessary, pursuant to Art. 63, the deadline for solving the application may be extended by 90 days at the most, in which case the right to stay shall be extended until the application has been solved.

(6) If necessary the applicant may be requested to participate in an interview. Failure to be present at the interview may be grounds for denying the extension of the right to stay, except for cases when the applicant may prove that his/her failure to be present is due to reasons beyond his/her control.

(7) If the application for the extension of the right to stay is for family reunification, both spouses shall participate in the interview provided by paragraph (6).

(8) The application for the extension of the right to stay lodged by the holder of an EU Blue Card obtained in another Member State shall be solved within 15 days after the registration of the application.

#### ART. 52

##### Denial to extend the right to temporary stay in Romania

(1) If the general and special conditions applicable for the purposes of the stay, provided by this section, are not fulfilled cumulatively on the application data, or if the foreigner is under one of the situations for the cancellation of the right to temporary stay provided by Art. 77 paragraph (3), the extension of the right to temporary stay shall be denied.

(2) The decision to deny the extension of the right to stay, as well as the grounds for the refusal shall be communicated to the applicant through the return decision.

1. Extension of the right to temporary stay for economic, professional and commercial activities

#### ART. 56

##### Extension of the right to temporary stay for employment

(1) Foreigners who entered Romania for employment purposes shall be extended the right to temporary stay for employment purposes if they present the full-time individual employment contract, registered in the general record of employees, indicating that the salary is at least the gross average salary. In case of highly qualified workers, the salary should be at least 4 times the average gross salary.

(2) The provisions of paragraph (1) regarding the salary indicated by the employment contract shall not apply to foreigners employed in the public system whose salary is established pursuant to the legislation on the wages of personnel paid from public funds.

(3) In case the information or documents provided to support the application to extend the right to temporary stay for employment purposes are not adequate, the General Inspectorate for Immigration shall inform the applicant on the additional information required and shall indicate a reasonable deadline for the submission of such information, which shall not exceed 30 days. The deadline provided by Art. 51 paragraph (4) shall be suspended until the necessary additional information or documents have been received by the General Inspectorate for Immigration. In case the additional information or documents are not provided within the deadline, the application may be denied.

(4) Subsequent extensions of the right to temporary stay for employment purposes may be granted if the foreigner presents the following documents:

a) Full-time individual labour contract, registered with the territorial labour inspectorate;

b) Proof of maintaining the salary at least at the level indicated by paragraph (1) throughout the stay period granted previously.

(5) As an exception from paragraphs (1) and (4), foreigners who are appointed as head of a branch, representation or subsidiary in Romania of a company based abroad, under a contract of mandate or any other document of the same legal value, shall be extended the right to temporary stay for employment purposes, if they bring proof of the means of subsistence obtained from the activities carried out in this capacity, at least at the level of the average gross salary.

(6) The right to temporary stay for employment purposes shall be extended pursuant to paragraph (1) or (4) for a period equal to the employment contract duration, but no longer than one year.

(7) Highly qualified foreign workers shall be extended the right to temporary stay for employment purposes pursuant to paragraph (1) or (5) for a period equal to the employment contract duration plus 3 months, but no longer than 2 years.

(8) Subsequent extensions of the right to temporary stay for employment purposes shall be granted without fulfilling the conditions provided by paragraph (4) for the entire period when the foreigner benefits from unemployment allowance pursuant to Law no. 76/2002 on the unemployment insurance system and employment stimulation, as further amended and supplemented.

(9) If the employment relationship of the foreigner is terminated before expiry of the period for which the sole permit of the EU Blue Card was issued, they shall still be valid until expiry of their validity period, without exceeding the period when the foreigner benefits from unemployment allowance pursuant to the provisions of Law no. 76/2002, as further amended and supplemented, or no longer than 60 days from the registration of employment termination, if the foreigner does not benefit from unemployment allowance.

(10) Foreigners who are holders of the right to temporary stay for study may apply for the extension of the right to stay for employment purposes, upon completion of studies, pursuant to paragraph (1) and provided that they present a copy of the employment permit issued pursuant to the special legislation on the employment and secondment of foreigners on the territory of Romania, without the obligation to obtain a long-stay visa for employment.

(11) Foreigners who have benefitted previously of the right to stay on the territory of Romania for at least 3 years, as family members of a Romanian citizen and who are in one of the situations provided by Art. 64 paragraph (2), may apply for the extension of the right to stay for employment purposes pursuant to the conditions provided by paragraph (1), without the obligation to obtain a long-stay visa for employment.

(12) The approval or the denial of the application for the EU Blue Card shall be communicated by the General Inspectorate for Immigration, in writing, to the first Member State, within 30 days, when Romania is the second Member State.

#### ART. 56<sup>1</sup>

Extension of the right to temporary stay for secondment

(1) Foreigners who entered Romania for secondment purposes shall be extended the right to temporary stay from the application date, if:

- a) The service beneficiary has obtained a secondment permit, pursuant to law;
- b) They present the secondment decision, translated and notarized;
- c) Present proof of subsistence means at least equal to the average gross salary.

(2) Foreigners provided by Art. 44<sup>1</sup> paragraph (3) letters b) and c) shall be extended the right to temporary stay if they present the following documents:

- a) Minister order or, as appropriate, the express request of the bodies of the central public or local administration or by autonomous administrative authorities;
- b) A notification from the service beneficiary indicating the activity carried out by the foreigner and its duration;
- c) Proof of subsistence means at the level of the gross minimum guaranteed salary.

(3) The right to stay shall be extended for a period of up to one year within a 5-year interval after filing the application for the extension of the stay right.

(4) Foreigners employed by legal entities having their headquarters on the territory of one the Member States of the European Union or of the European Economic Area or on the territory of the Swiss Confederation, transferred to Romania, shall be extended the right to temporary stay, without being limited to the interval provided by paragraph (3), if they present the following documents:

- a) A copy of the individual employment contract, registered with the competent authorities of that Member State, translated and notarized;
- b) Valid stay permit issued by the state where the employer has its headquarters, original and copy;
- c) A copy of the secondment document, translated and notarized;
- d) Proof of subsistence means at the level of the average gross guaranteed salary.

(3) The right to stay shall be extended for a period of up to one year within.

(5) Foreigners who obtained a secondment permit based on the approval of the Ministry of Labour, Family, Social Protection and Elderly shall be extended the stay right if they present the documents provided by paragraph (1), without being limited to the interval provided by paragraph (3).



The project "***Training in the field of anti-discrimination, gender-based equality and the rights of disabled people***", implemented by the National Council for Combating Discrimination between May 01, 2014 - November 30, 2015, was justified in the context of compliance with ex-ante requirements in the field of non-discrimination, gender-based equality and protection of disabled people for the European and Investment Structural Funds 2014-2020, according to (EU) Regulation No. 1303/2013 Regulation No. 1303/2013 of the European Parliament and of the Council of 17 December 2013, regarding the assurance of a **training component in the field of non-discrimination, gender-based equality and protection of disabled people**.

This project contributes to:

- fulfilling the ex-ante requirements in the field of non-discrimination, gender-based equality and **protection of disabled people**
- providing the achievement of the training component in the field of non-discrimination, gender-based equality and protection of **disabled people**,
- supporting the staff of authorities involved in management and control of European structural and investment funds, within managing authorities, intermediate bodies, certifying and payment authority and the audit authority, at all relevant levels.
- also it supports the process of administrative capacity building throughout the implementation and application of EU and national legislation in this field.

#### **Project objective**

- achievement of required knowledge in the field of European and national legislation and policies on non-discrimination, gender-based equality and protection of disabled people,
- accessibility to the practical implementation of the United Nations Convention on the Rights of Persons with Disabilities

#### **Direct beneficiaries/target groups**

The project targets a number of 602 persons tasked with evaluation, implementation and monitoring of ESIF within:

- Managing Authorities and Intermediate Bodies,
- Certifying and Payment Authority,

- Audit Authority,
- Ministry of European Funds.

### **Training courses**

- shall take place over a 12 months period, starting from June 2014, in a format of 3 modules, each related to one set of requirements.
- these will be attended by 602 persons, who will have to take part in all the three modules, in order to get a certificate.
- The overall duration of the course is of 15 days, spread over the implementation period of the project, structured against 3 modules, of 5 days each.
- Each module shall include domestic legislation, European/Community legislation, how these are reflected within the national legislation, as well as practical cases.
- Each module shall be finalised through a test, and the attendance of participants is mandatory to all the three modules, in order to receive a certificate of attendance.
- The training programme will have a practical nature, as the participants will be benefiting from the experience gathered by the expert trainers, as well as from the practical experience of the Council case law.
- The locations for organizing the training sessions will be placed in 3 regions of the country.

### **Expected outcomes from the implementation of the project**

- Provision of training for the staff of authorities involved in management and control of European Structural and Investment Funds, at all levels relevant for managing the dimensions related to anti-discrimination, equal opportunities and rights for the disabled people.
- By the end of the training programme, the training beneficiaries should be capable to identify the modality in which principles of anti-discrimination, gender-based equality and rights of disabled people are to be identified during the various stages related to the preparation, drafting and implementation of operational programmes.

### **DOMESTIC CASE LAW**

**DECISION NO. 119 from 17.02.2014**

**Case file no. 683/2013 Complaint no. 6142/02.10.2013**

**Subject: insults and offences brought to the claimant by the respondent family**

The claimant complains that her hearing is affected up to 90% and she cannot perceive sounds from a certain distance onwards. Because of an inheritance, currently she finds herself in a conflict with a neighbouring family that she lives together with in the same courtyard. Due to her disability, the claimant complains about the fact that she was "repeatedly abused, spat upon and offended (jokes are made in relationship to her disability), by the other family and their children".

The Management Board of the National Board for Combating Discrimination considers that the complaint as it was submitted reveals a situation in which the claimant is offended and insulted by the respondent, based on the disability that she is affected by and on an open conflict in relationship to an inheritance.

On the spot, the investigation team discussed with the claimant. She told the NCCD representatives that, because of her disability, she cannot hear and she empowered her husband to discuss about the complaint, as he can express more clearly the circumstances described in the document.

As regards the definition of discrimination, as regulated in Government Ordinance no. 137/2000, republished, the Management Board underlined that, when people are treated differently, the respective treatment is due to their inclusion in one of the criteria stipulated by the text of the law, under art. 2 of the G.O. no. 137/2000, republished.

The Management Board analysed if the different treatment was due to a criterion as stipulated under art. 2 para. 1, respectively race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, inclusion in a disadvantaged category, that should have represented the determining element in applying such a treatment.

However, the condition for such a criterion to represent the determining reason must be interpreted in the sense of existence of a specific, materialized circumstance which makes up for the reason of the discriminatory action or deed and which, should it not be present, would not determine such a discrimination to take place. Thus, the nature of discrimination, under its organic nature, is derived from the very fact that the difference in treatment is determined by the existence of a certain criterion, that implies a cause-effect relationship between the different imputable treatment and the criterion forbidden by law, invoked in the situation of that person who considers herself/himself to be discriminated against.

After restating that the nature of discrimination, under its organic nature, is derived from the very fact that the difference in treatment is determined by the existence of a certain criterion, that implies a cause-effect relationship between the different imputable treatment and the criterion forbidden by law, invoked in the situation of that person who considers herself/himself to be discriminated against, the Management Board finds that such a relationship can be established in this case. The Management Board, based on the documents submitted to the case file, by the claimant (audio-video recordings, medical

documents that prove the degree of disability underlined as a discrimination criterion, as well as documents that provide a cause-effect relationship between the actions of the respondent that determine a less favourable treatment applicable to the claimant), concludes that such findings were submitted that point out to the performance of a number of discrimination actions/deeds (obscene signs, repeated abuses, pointing out the disability that the claimant suffers from through a series of shouts).

Consequently, the Management Board's assumption is that a forbidden criterion, as stipulated by art. 2 para. 1) and 5); "any behaviour based on a criterion related to the race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, inclusion in a disadvantaged category, age, disability, refugee or asylum-seeker status or any other criterion that might lead to the establishment of an intimidating, hostile, degrading or offensive environment" of Government Ordinance no. 137/2000 republished, represented an *obiter dictum* in relationship to the behaviour of the respondent and his two children against the claimant.

Based on all the above, based on art. 20 para. (2) of Government Ordinance no. 137/2000 on prevention against and sanctioning all forms of discrimination, republished, the Management Board unanimously decided to sanction the respondent with an administrative fine amounting to 1,000 RON.

#### **DECISION NO. 200 from 02.04.2014**

**Case file no.: 706/2013 Complaint no. 6407/02.10.2013**

**Subject: taxation applied to his pension, while, as a disabled person, the subject was exempted from paying any tax**

The claimant, a disabled person, exempted from taxation of the pension, according to the law, claims that his revenues were subjected to taxation and the respondent has miscalculated the pension, as this should not have been taxed.

The Management Board of the NCCD considers that the subject of the claim is represented by retaining a certain amount of money, even that was not due, as the claimant is a disabled person and, in accordance with legal provisions in force, the revenues of such persons are not subjected to taxation.

Having analysed the facts presented in this claim, the Management Board makes a reference to the European Court of Human Rights, which, in relationship to article 14 on prohibition of discrimination, assessed that a different treatment becomes a discrimination, according to the understanding of article 14 of the Convention, when distinctions are made

between analogous and comparable situations, without relying on a reasonable and objective justification. The European court has ruled on a regular basis that, in order for such infringement to take place, "it should be established that persons placed in analogous or comparable situations for that matter benefit from a preferential treatment and that the respective distinction finds no objective or reasonable justification".

In the same sense, the European Court of Justice has stated the principle of equality as one of the general principles of Community law. In the scope of Community law, the principle of equality excludes comparable situations that are dealt with differently and different situations dealt with similarly, except in the case where the treatment is justified objectively.

Adding to these issues also the definition of discrimination, as regulated through article 2 para. 1 of Government Ordinance 137/2000 as supplemented and amended, republished, the Management Board finds that, in order for a deed to pass as a discriminatory action, it must fulfil simultaneously a number of conditions:

- a) the existence of a different treatment applied to analogous situations or failure to treat differently situations that are different, non-comparable.
- b) the existence of a discrimination criterion according to art. 2 para. 1 of G.O. no. 137/2000 on prevention against and sanctioning all forms of discrimination, re-published, with further amendments.
- c) the treatment should have had as a purpose or effect the restriction, disregard the acknowledgement, use or exercise, based on equal terms, of a right that is provided by law ().
- d) such a differentiated treatment should not be objectively justified by a legitimate aim, and the means for achieving such an aim are not proper and required.

Having examined the complaint submitted by the claimants and the legal provisions applicable, the Management Board finds that the deeds as presented represent discrimination actions according to the G.O. no. 137/2000 on prevention against and sanctioning all forms of discrimination, as supplemented and amended. The claimant, based on the power conferred through law, is the beneficiary of a right, that of having his revenue exempted from taxation, however, due to the neglect or failure of the institution which was legally bound to protect him, a significant amount of money had been retained from a person who suffers from a severe disability.

Thus, the College considers that the provisions of art. 2 para. 1 combined with provisions of art. 10 letter h) of G.O. no. 137/2000, republished, were applicable at the moment when the claim was submitted.

The Management Board takes act of the fact that discrimination was eliminated by returning the amount of money that had been retained, however, it cannot neglect the fact the claimant's right was infringed compared with other disabled persons who were

benefiting from pensions that were not subjected to taxation, at the moment when the NCCD was notified. Even if the claimant had been issued with a disability certificate in 16.03.2012, respectively 07.03.2013, the General Department for Social Care and Child Protection sent reports including the claimant's data to the City Pension House on November 7, 2013, subsequent to the moment when the notification had been submitted to the NCCD and to the issuance of a subpoena no. 6566/14.10.2013.

In this respect, there was also a separate opinion expressed by H.I. and S.C.S. regarding the sanctioning of the discriminatory action:

Based on all the above, based on art. 20 para. (2) of Government Ordinance no. 137/2000 on prevention against and sanctioning all forms of discrimination, republished, the Management Board unanimously decided:

Finding the existence of a discriminatory treatment according to art. 2 para. 1, art. 10 letter h) of G.O. 137/2000 on prevention against and sanctioning all forms of discrimination, republished (with the unanimous votes of all members that were present during that meeting);

Sanctioning the respondent with a warning, according to art. 5 para. 2 and art. 7 para. 3 of G.O. no. 2/2001 regarding the legal regime of misdemeanours, as supplemented and amended (with 5 in favour and two votes against the decision expressed by the members present during the meeting);

The Council recommends to the respondent to perform due diligence and submit in due time data/reports for persons with severe disabilities, so that they can benefit from the rights that are stipulated and guaranteed by law.

#### **DECISION NO. 320 from 22.05.2013**

**Case file no.: 43/2013 Complaint no: 528/29.01.2013**

**Subject: approval of occupational standards for the occupation of masseur, which states that visually impaired masseurs cannot acquire the skills needed for therapeutic massage, reflexogenic massage and/or lymphatic drainage massage.**

The petitioner, Romanian Association for the Blind and Visually Impaired, registered at C.N.C.D., shows that the applicant has achieved Occupational Standards for the occupation masseur, specifying that visually impaired masseur cannot acquire the skills needed for therapeutic massage, reflexogenic massage and / or lymphatic drainage massage.

The defendant National Qualifications Authority states the following:

- the occupational standard for masseur was developed by LEEA - Med. S.R.L. and approved in 2000 by the Council for Occupational Standards and Assessment;

- occupational standards can be developed and/or reviewed by professional associations, employers' organizations and trade unions, companies, training providers, etc., in compliance with methodological provisions in force;

- the methodological framework can be accessed on the website of the accused institution.

Through letter no. 15467/25.03.2013, registered at C.N.C.D. under no. 2270/ 041.04.2013, the Ministry of National Education shows that the vocational training standard for technician masseur (massage therapist), drawn up by the Ministry, does not contain the above mentioned discriminatory elements. At the same time, it shows that the defendant has taken over the tasks of the Council for Occupational Standards and Assessment and of the National Council for Vocational Training that have developed and coordinated the process of developing the standards subject to the case.

The Ruling Council states that there is an occupational standard for the occupation of masseur, which states that visually impaired people cannot acquire the skills needed for therapeutic massage, reflex massage and / or lymphatic drainage massage. The Ruling Council also notes that the defendant is responsible for the content of these occupational standards, as it is the institution which actually approves them (according to the document entitled "Stages of development of occupational analysis, occupational standard and appropriate professional qualifications", posted on the defendant's web page).

In terms of legal liability, the Ruling Council finds that the applicant was founded as a result of a reorganization process of other institutions in charge of the development, endorsement and approval of occupational standards. The defendant has not taken any measure to amend the occupational standard subject of the present petition, not even after the petition was officially communicated to all parties. Consequently, the defendant is legally responsible for the content of occupational standards in its present form.

According to ECHR jurisprudence in the field, the difference in treatment is considered discrimination when distinctions between analogical and comparable situations are made without a reasonable and objective justification. The European court has consistently considered that for such a breach to occur "*it must be established that persons in analogous or comparable situations benefit of preferential treatment and that this distinction has no objective or reasonable justification*". ECHR appreciated, by its jurisprudence, that the Contracting States have some discretion to determine whether and to what extent differences between similar or comparable situations can justify the different legal treatment applied.

However, a differentiation could be noticed; the occupational standard for the occupation of masseur states that visually impaired people cannot acquire the skills needed for therapeutic massage, reflexogenic massage and/or lymphatic drainage.

The differentiation criterion is the visual deficiency.

The law applied is the right to work, guaranteed by the **Constitution of Romania**.

In conclusion, the provisions of art. 2 para. 1 of **G.O. no. 137/2000** apply. The occupational standard for the occupation of masseur which states that a visually impaired masseur cannot acquire the skills needed for therapeutical massage, reflexogenic massage reflex and / or lymphatic drainage creates a discrimination based on a disability which has the effect of restricting the exercise of the right to work in equal conditions.

According to art. 5 of **G.O. no. 137/2000**, the term contravention refers to *"the conditioned participation in an economic activity of an individual or the conditional choice and exercise of a free profession of an individual, based on race, nationality, ethnicity, religion, social status, belief, gender or sexual orientation, age or membership of a disadvantaged group. "*

The occupational standard for masseur, according to which the visually impaired masseur cannot acquire the skills needed for therapeutic massage, reflexogenic massage and/or lymphatic drainage represents a conditioning of the right to exercise the profession of masseur on grounds of disability. In this regard, the provisions of art. 5 of **G.O no. 137/2000** also apply.

So, the occupational standard subject to the present petition constitutes discrimination under article 2 para. 1 of **G.O. no. 137/2000** – as it representing a differentiation based on disability, which restricts the right to work - and also under art. 5 of **G.O. no. 137/2000** – as it represents a restriction in exercising a profession based on disability.

The Ruling Council decided to apply civil fines amounting to 4,000 lei, considering the following aspects:

- Discrimination against a group of people;
- according to existing studies, the category of people with disabilities can be considered a disadvantaged category, particularly in what regards their employment opportunities;
- discrimination affects employment;
- the defendant was not previously asked to amend the occupational standard for masseur.

Regarding the above, pursuant to art. 20 para. (2) of **G.O. 137/2000 on preventing and sanctioning all forms of discrimination**, republished, the members of the **RULING COUNCIL** present at the meeting have unanimously decided as follows:

- the occupational standard for the occupation of masseur which states that a visually impaired masseur cannot acquire the skills needed for therapeutic massage, reflexogenic massage and/or lymphatic drainage massage represents a discrimination according to art. 2 para. 1 in conjunction with Art. 5 of **G.O. no. 137/2000**;



- the payment of a civil fine amounting to 4,000 lei by the defendant National Qualifications Authority.

**DECISION No. 447 of 17.07.2013**

**File no: 372/2013 Petition no: 2701/12.04.2013**

**Subject: form of the defendant which includes the term "handicapped"**

The petitioner considers discriminatory the fact that a form issued by the pension house contains the phrase "for the directorate of handicapped", the term being discriminatory and offensive to people with disabilities and the employees of the General Directorate of Social Assistance and Child Protection (DGASPC). Basically, the above mentioned term was used instead of the more appropriate phrase "to be used for DGASPC Braila".

Once the party have finished presenting the case, the Ruling Council acknowledges that the petitioner complains that the standard form of Braila County Pension House used by the beneficiaries in order to obtain from this institution free travel vouchers according to Law. 448/2006 on the protection and promotion of rights of persons with disabilities, is formulated in a way liable to harm the dignity of beneficiaries of Law no. 448/2006 on the protection and promotion of rights of people with disabilities as well as the employees of Braila General Directorate of Social Assistance and Child Protection.

The form is not a regular one, being typed on the computer. The form must be filled in by people requesting a certificate needed "**for the directorate of handicapped**", as the application itself mentions.

The evidence presented in the file shows that the situation was remedied by removal of the respective phrase from the form.

The Ruling Council shows that the National Council for Combating Discrimination (CNCD) can analyse a petition in accordance with *Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination*, republished (hereinafter Ordinance no. 137/2000). At the same time, the Council analyzes the defendant's actions in terms of ensuring the balance imposed by the observance of non-discrimination principle and the dignity of a person, as provided by art. 2 para. (1) and art. 15 of Ordinance 137/2000 on preventing and sanctioning all forms of discrimination, republished.

In the context of the right to non-discrimination, correlated to an unfair, hostile, humiliating or degrading treatment, it should be noted the element which differentiates the criterion according to which a misconduct could be described as hostile, unfair treatment to a degrading treatment, as defined by the European civil courts, the former Commission on Human Rights and the European Court of Human

Rights. This criterion is variable, depending on the circumstances of the case and the effects of its application.

In deciding whether or not a certain treatment is degrading within the meaning of art. 3 of the Convention, the European Court of Human Rights examines whether the purpose of the application is to humiliate and debase the victim and whether, by its effects, the victim's personality has been damaged in a manner incompatible with art. 3.

In fact, the phrase "for the directorate of the handicapped" is formulated in a way liable to harm the dignity of beneficiaries of Law no. 448/2006 on the protection and promotion of rights of people with disabilities.

In the present case, the Council considers that art. 10 and art. 14 of the European Convention on Human Rights and Fundamental Freedoms apply, together with the provisions of art. 1 para. (3), art. 16, art. 29 and art. 30 of the Constitution of Romania, as amended in 2003; art. 2 para. (1) and art. 15 of G.O. 137/2000 on preventing and sanctioning all forms of discrimination.

However, the Council recommends the management of Braila County Pension House, the issuer of those certificates, to show a greater care and prohibit formulations likely to harm the dignity of a person or of leading to discrimination of any kind.

The decision to impose a sanction must be based on the effects of the discrimination act, namely the profound humiliation of the petitioner. A disabled person who anyhow faces a hostile society, discrimination that occurs daily, is called "handicapped" by a public authority, designed to defend their own interests. The decision to impose a sanction must also consider the defendant's conduct, which fixed the problem before the decision of the Ruling Council.

Given the foregoing, it is considered that the defendant should be sanctioned in accordance with art. 26 para. 1 of **Ordinance no. 137/2000**, as subsequently amended. Mistakenly, the major opinion doesn't even consider this possibility, as it does not answer the question: why not apply the legal provisions on civil crime?

Regarding the above, pursuant to art. 20. para. 2, of G.O. no. 137/2000 on preventing and sanctioning all forms of discrimination, as subsequently amended and supplemented, the **Ruling Council has decided, with six pros and one con from the members present at the meeting, as follows:**

- the action of the defendant County Pension House represents discrimination under the provisions of Article 2 paragraph 1 in conjunction with Art. 15 of Ordinance 137/2000 on preventing and sanctioning all forms of discrimination, as subsequently amended;

- the defendant will be sanctioned with a warning, according to article 5 para 2 and art. 7 paragraph. 3 of G.O 2/2001 regarding the legal regime of misdemeanours, as subsequently amended and supplemented;
- the defendant is recommended to be more careful in the future and avoid such actions or inactions that may lead to acts of discrimination.

**DECISION No. 513 of 04.09.2013**

**File no. 164/2013 Petition no. 1147/22.02.2013**

**Subject: the impossibility for people with disabilities to park their own cars on the parking places belonging to residents of blocks of flats in Titu.**

The petitioner, a person with a serious locomotor disability, claims that the local authorities have not set up special parking spaces for people with disabilities, around the blocks of flats. "The mayor, the local authorities, have not set up parking spaces for *non-residents* in front of block no. 5, where my aunt lives." The petitioner states that, whenever he comes to bring food to his aunt (suffering from a brain aneurysm), her neighbors wouldn't let him park his car in the parking lot set up for them. For this reason, the petitioner must look for a parking place, two or three blocks away from his relative's house, where parking places for "visitors" are set up. In this regard, he asked the local authorities to set up few parking spaces for people with disabilities around each block of flats. In the absence of parking spaces for people with disabilities in front of every block of flats, the petitioner considers himself discriminated against in relation to other people.

The Ruling Council of C.N.C.D. notes that, as formulated, the petition reveals a situation where the petitioner is forced to drive around blocks to find a parking space every time he goes to visit his aunt, in the absence of parking places specially designed for people with disabilities in front of every block of flats. The petitioner states that he has made countless statements in this regard, having received no response.

Relative to the definition of discrimination as regulated by G.O. no. 137/2000, as subsequently republished, the Ruling Council notices that discrimination occurs only when people are treated differently, due to their membership of one of the criteria laid down in the text of the law, art. 2 of G.O no.137 / 2000, republished. This being said, the Ruling Council must examine whether the different treatment was induced because of a criterion laid down by Article 2 paragraph 1, that is race, nationality, ethnicity, language, religion, social status, belief, gender, sexual orientation, age, disability, chronic non-contagious illness, HIV infection, belonging to a disadvantaged category, which constituted the decisive factor in the application of this treatment.

Reiterating that the nature of discrimination, in terms of its incorporation, stems from the fact that the difference is determined by the existence of a criterion, which implies a causal link between the different treatment and the criterion relied on by the person who feels discriminated against, the Ruling Council notes that such a link could be set in this case. The case includes indications of nature to presume that a prohibited criterion stipulated by art. 2 para 1 and art. 10 para h), and art. 26 paragraph 1) of G.O. no. 137/2000 as amended by section 5 of art.1 of GEO no. 19/2013, approved by Law no. 189/2013, was an *obiter dictum* in relation with the impossibility of the disabled person to park their own car in a parking lot, as no special places for disabled persons are set up (and marked distinctively in this regard). Section II -Access to public administrative and legal, health care services, other services, goods and facilities of GO 137/2000, as subsequently amended, art. 10 para. (H) provides that "refusal to grant a person or group of persons the rights or facilities" constitute an offense if the act does not fall under criminal law.

Regarding the above, pursuant to art. 20 para. (2) **G.O 137/2000 on preventing and sanctioning all forms of discrimination**, republished, the members of the **RULING COUNCIL** present at the meeting have unanimously decided as follows:

- the elements of a discrimination act, according to art. 2, paragraph 1, art. 10 paragraph h) of Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination are met and
- the defendant shall be penalized with a fine amounting to 1,000 lei, according to art. 10 paragraph h) in conjunction with art. 26 paragraph 1) of G.O no.137 / 2000 on preventing and sanctioning all forms of discrimination, as subsequently amended and supplemented, republished.

**DECISION no. 644 of 30.10.2013**

**File no: 506/2013 Petition no: 4268/20.06.2013**

**Subject: pressure on the mother of a disabled child to withdraw the child from school.**

**Category: right to education, right to dignity. Criterion: disability.**

The petitioner, European Centre for the Rights of Children with Disabilities (CEDCD), mandated by G.A.M, the mother of M.A.M I. (child with disability), through petition registered by CNCD under no. 4268 /20.06.2013, shows that the 7 year old minor was diagnosed with Asperger syndrome (autism spectrum disorder). He was enrolled at the school, after being evaluated by a psychiatrist who recommended his integration into a mainstream school. At the time the child was enrolled, the mother informed the school on the diagnosis.

The petitioner states that the disability of the minor consists in the inability to interact to others, which is why it is recommended to integrate those with this diagnosis in a

mainstream school environment. The minor does not know how to react when other kids make fun of him or he sees that others are more skilled than him, which can make him suffer and also lead to panic attacks manifested by crying and attempting to escape from closed areas. Lack of communication with other children can lead to major depression and suicide attempts.

Without understanding the situation of the minor, the parents pressured the school board to move the child from the school. On the 22<sup>nd</sup> of May 2013, the defendant called the mother of the child to the school and asked her to withdraw him from school. On the 19<sup>th</sup> of June 2013, the child mother was called for a parents' meeting at the defendant premises, during which the child was insulted (he was called handicapped in a pejorative sense), and signatures were collected for the removal of the minor from the school.

The petitioner requests the acknowledgement and punishment of the act of discrimination, and the enforcement of prevention measures.

The defendant School. 59 in Bucharest, through its representative, filed some position papers which state the following:

- the child was enrolled in school, but was later transferred to Secondary School no. 197, sector 6
- another student with disabilities was also enrolled in the classroom
- the minor had an aggressive behaviour
- once the teachers have observed the child's behaviour, the mother was advised to go to a specialist for a professional evaluation, which revealed the disability of the minor;
- the school staff tried to adapt the school curricula to the child's needs, but the child became aggressive and the parents have made several complaints to the school board;
- during the meeting of the Board of Directors of the school held on the 18<sup>th</sup> of June 2013 a recommendation was formulated for the mother to transferred the child to another class with fewer students and no other children with special educational needs;
- the mother refused this solution, showing that the relationship between the teacher and the minor is good;
- the school has not issued a document on the moving or transfer of the minor without the consent of the mother

A complaint of the petitioner to the Bucharest School Inspectorate found that the claim of the parent is not confirmed.

The Ruling Council notes that, according to **Medical certificate no. 25/05.03.2013**, the child was diagnosed with the Asperger syndrome. According to the **Medical**

**certificate**, the minor is psychologically and behaviourally able to attend a mainstream school.

On the 20<sup>th</sup> of May 2013, 19 out of 25 parents filed a notice to the defendant stating that the child has an aggressive behaviour which bothers the other children and the teacher. Some other statements from parents on the child's behaviour were also submitted to the file. According to his teacher, the child needs stability rather than transfer to another class or school.

The dialogue recorded between the minor and the defendant on the 22<sup>nd</sup> of May 2013, submitted to the file, the defendant admits that students exaggerate when they tell their parents what happens at school, which makes parents overreact, but expresses its concern on the possibility that parents may withdraw their children from the school, which can lead to the dissolution of the class. The defendant underlines that "parents make the law", and that the school cannot make a stand against them. If parents want the transfer of the child, the school can't do anything about this.

Therefore, it is in the school interest to suggest the transfer of the child, stating in the end that if the mother finally succeeds in convincing the other parents to withdraw their request to transfer the child, it is going to be ok, but if not, "we will discuss in other terms". At the parents meeting held on the 19<sup>th</sup> of June 2013, parents have clearly expressed their wishes: "Now we have two students with problems in the class, next year we don't want any child with special needs in the class."

Even if the definition of direct discrimination, according to **G.O no. 137/2000** or the EU directives in the field, does not contain the element of objective justification, the presented situation can be analysed in accordance with the ECHR.

According to ECHR jurisprudence in the field, the difference in treatment is considered discrimination when distinctions between analogical and comparable situations are made without a reasonable and objective justification. The European court has consistently considered that for such a breach to occur "*it must be established that persons in analogous or comparable situations benefit of preferential treatment and that this distinction has no objective or reasonable justification*". ECHR appreciated, by its jurisprudence, that the Contracting States have some discretion to determine whether and to what extent differences between similar or comparable situations can justify the different legal treatment applied.

In conclusion, there is a difference if people in similar situations are treated differently, or if people in different situations are treated identically.

The Ruling Council notes that the defendant has promoted the transfer of the child to another class. Thus, as compared to other children, the child was treated differently.

Discrimination is determined by the existence of a criterion.

The Ruling Council notes that the reason for which the defendant promoted the child's transfer to another class is his disability.

According to art. 2 para. 1 of **Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination**, as subsequently amended (hereinafter **G.O. no. 137/2000**), “discrimination refers to any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, gender, sexual orientation, age, disability, non-contagious disease, HIV infection, membership in a disadvantaged group and any other criterion which has the purpose or effect of restricting, eliminate the recognition, use or exercise, in equal conditions, of the human rights and fundamental freedoms or rights recognized by law, in the political, economic, social, cultural or any other field of public life.”

Thus it can be considered an act of discrimination

- a differentiation
- based on a criterion
- which restricts a fundamental right.

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The Ruling Council notes that the defendant has promoted the transfer of the child to another class. Thus, as compared to other children, the child was treated differently.

Discrimination is determined by the existence of a criterion.

The Ruling Council notes that the reason for which the defendant promoted the child's transfer to another class is his disability.

An act can be considered discriminatory if it reaches a right guaranteed by any of the international treaties ratified by Romania, or by the national legislation.

The Ruling Council notes that the promotion of child transfer to another class affects his/her right to education, right to health (from a medical point of view, a stable environment proved to be beneficial for the minor) and the right to dignity. These rights are set up by the

**Constitution of Romania** (art. 32, art. 34, and also art. 1 para. 3). Similarly, these rights are also ensured by **Law no. 272/2004 on the protection and promotion of child rights** and **the Convention on the Rights of Persons with Disabilities**, ratified by **Law no. 221/2010**.

Under certain circumstances, the differentiation can be objectively justified. Objective justification includes the existence of a legitimate purpose, achieved by appropriate and necessary means.

The defendant relies on the following grounds:

- the minor has an aggressive behaviour;
- there was pressure from parents;
- the parallel class had a smaller number of students, and there were no children with disabilities.

In conclusion, the fact that the defendant promoted the child transfer to another class represents an act of discrimination according to art. 2 para. 1 of **G.O no. 137/2000**, as it is based on a differentiation based on disability which has the effect of restricting the exercise in conditions of equality, the right to education and right to health.

According to art. 11 para. 1 of **G.O no. 137/2000**, "*denying the access of a person or a group of persons to the public or private education system, to any degree or level, because of their belonging to a certain race, nationality, ethnicity, religion, social category or to a disadvantaged category, because of their beliefs, gender or sexual orientation of the persons concerned is contravention*".

The Ruling Council notes that although there was no explicit refusal of the defendant on the child access to the education system, promoting the transfer of a child, by exerting different pressures on his/her parent, practically represents such form of exclusion, in which case the provisions of art. 11 para. 1 of **G.O no. 137/2000** apply.

According to art. 2 para. 5 of **G.O. no. 137/2000**, "*harassment, as sanctioned by the law, is any behaviour based on race, nationality, ethnicity, language, religion, social status, beliefs, gender, sexual orientation, belonging to a disadvantaged category, age, disability, status of refugee or asylee or any other criteria that could create an intimidating, hostile, degrading or offensive environment.* "

The Ruling Council notes that for the minor in question a hostile and degrading environment was created, including through the inaction of the defendant towards the parents clearly demanding the exclusion of "handicapped" children from the class, but also by the action of the defendant to take this idea further and promote the transfer of the child. Consequently, by doing so, the defendant committed an act of harassment of the minor concerned.

Art. 15 of **G.O no. 137/2000** "*any public behaviour which has the nature of a nationalist-chauvinist propaganda, incitement to racial or national hatred or any behaviour that aims or aimed at touching the dignity or creating an intimidating, hostile, degrading, humiliating or*



*offensive environment for a person or a community, due to their belonging to a certain race, nationality, ethnicity, religion, social category, disadvantaged group or belief, gender or sexual orientation thereof " constitute an offense if the act does not fall under criminal law.*

The Ruling Council decides to apply a contravention fine of 1,000 lei to the defendant, by its representatives, considering the following:

- the act of discrimination targeted a person, not a group of people or a community;
- the act of discrimination targeted a person belonging to a highly vulnerable category;
- the act of discrimination has affected three fundamental rights (the right to education, the right to health, the right to dignity), seriously jeopardizing the child's future;
- the act of discrimination was done by a legal public institution, being motivated by the perception that the Romanian laws do not apply as long as there is pressure from some parents;
- the EU directives require Member States to apply dissuasive sanctions;
- the case shows a common practice of education institutions that cannot be promoted.

Regarding the above, pursuant to art. 20 para. (2) **G.O 137/2000 on preventing and sanctioning all forms of discrimination**, republished, the **RULING COUNCIL** decided as follows:

- the situation presented by the petitioner represents an act of discrimination according to art. 2 para. 1, art. 2 para. 5, Art. 11 para. 1 and art. 15 of **G.O. no. 137/2000**;
- the payment of a civil fine amounting to 1,000 lei by School no. 59 in Bucharest, through its representative S.C.
- requests the defendant to inform parents on CNCD decision in the case and recommends the defendant not to accept any pressure from parents regarding the exclusion of children with disabilities from classes, if there is a medical recommendation which allows them to attend a mainstream school;
- A copy of this decision will be communicated to the parties, Bucharest School Inspectorate, Ministry of Education and Public Finance Administration of Sector 6 Bucharest for the payment of the fine.

## Project presentation

### *"Improvement of anti-discrimination measures at national level through the increased participation of experts and of civil society"*

National Council for Combating Discrimination, as project promoter, in a partnership with the Council of Europe, aims to identify means for prevention and combating discrimination in Romania as the overall objective of this project.

The purpose of the project is to contribute to designing the national strategy for prevention and combating discrimination for 2014-2020 through an increased participation of all significant stakeholders and based on relevant European standards. Another purpose is represented by an increased level of awareness regarding the new challenges brought within the dynamics of the discrimination phenomenon inside the Romanian society, at national, as well as at local level.

The allocated budget is 399,990 EUR, and the project aims to deliver a number of activities throughout its entire implementation period (24 months, from March 2014 to March 2016):

- Research in view of identifying European best practice and designing relevant information materials
- Delivery of a study on perception, attitudes and expectations of the population regarding the discrimination phenomenon and methods for combating it
- Consultations with institutions involved in the implementation of the strategy (ministries, other central and local authorities) and NGOs that are active in this field, as well as with representatives of vulnerable groups and from the ranks of professionals
- Organization of round tables at regional level with representatives of local authorities, of NGOs active at local/regional level, of professional associations with the purpose of identifying current issues and best solutions for dealing with these
- Set-up a working group and drafting a proposal for the Strategy

- Specialized courses for representatives of professional categories directly involved in judiciary and educational activities that have an impact on discrimination issues (school inspectors, teachers, magistrates and police officers)
- Organization of a study visit to the European Court of Human Rights and to the Council of Europe for a group of experts and magistrates
- Delivery of a promotional campaign (that should include social networks) on the issues related to discrimination in Romania
- Creation of a web platform/portal in order to promote specific activities for prevention and combating discrimination and the new national strategy in this field.

The project brings together the experience of the two partners, the National Council for Combating Discrimination (Romania) and the Council of Europe and it shall be implemented within the second component of the programme: support for cooperation among public authorities, civil society and the private sector, with the aim of decreasing inequalities at national level, with a focus on promoting a non-discriminatory, inclusive culture at local level.

The project complies with the mission of the National Council for Combating Discrimination and it represents the most efficient way to build up based on experienced already collected in this field in Romanian and to fully benefit from the standards and know-how of the Council of Europe.

## ***"Mobilisation of universities in combating discrimination"***

The project ***"Mobilisation of universities in combating discrimination"*** contributes to fighting discrimination and hate-speech in higher education, to the establishment of an academic environment free of discrimination by building the capacity of universities, of the Ministry of Education and of students to properly respond to this phenomenon. Currently, no data are available that could reveal the level of discrimination within universities, as long as research shows that intolerant attitudes are widespread among young people.

### **Partners:**

- Romanian Academic Society (S.A.R.),
- National Council for Combating Discrimination (C.N.C.D.) and
- the Association Centre for Education and Social Development (C.E.D.S.)

The partners aim to collect data, to assess the level of discrimination and to promote public policies option for the line ministries, rules and procedures for universities and to create a network of volunteers-students who should monitor discrimination cases and the procedures of universities. The partners will be involving in such activities students and teachers from 10 pilot universities, student associations and trade unions, political decision-makers, mass-media, bloggers who are active in the field of education and anti-discrimination, and they will create formal partnerships together with and among these institutions.

### **General objective:**

Fighting discrimination and hate-speech in higher education in order to establish an academic environment free of discrimination by building the capacity of universities, of the Ministry of Education and of students to properly respond to this phenomenon.

### **SPECIFIC OBJECTIVES:**

1. Deliver for the first time a study on the level of discrimination and hate speech within universities and the degree of awareness on these issues.
2. Drafting recommendations and specific actions for dealing with the issues identified as a result of the assessment of the discrimination level and hate speech within

universities, that should be submitted to the Ministry of Education and Research and to the leadership of Romanian universities.

3. Increasing capacity of Romanian public and private universities to manage issues related to discrimination and hate speech through the development or implementation of some internal proceedings for notification, solving and reporting such cases.

4. Increasing the capacity of students and employees - teaching staff and ancillary staff - to report cases of discrimination cases and hate speech within public and private Romanian universities on a voluntary basis, to the anti-discrimination NGOs, to the public institutions and to responsible institutions

5. Increasing the capacity of the Ministry of Education and Research to formally assess and report on the discrimination level within public and private Romanian universities and to design policies for fighting discrimination and hate speech.

6. Creation of an institutional link between universities and student trade unions and employees trade unions, on one hand, and the National Council for Combating Discrimination, on the other hand.

**Implementation period:** June 15, 2014 - December 14, 2015