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EUROPEAN SOCIAL CHARTER

Answers to additional questions related to

23rd National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF ROMANIA
Articles 2, 3, 4, 5, 6, and 20

CYCLE 2024

ROMANIA

Article 2.1

Please provide information on whether inactive on-call periods when no actual work is carried out are considered working time or rest time?

Also, please provide information on whether such inactive on-call periods are compensated and, if so, what are the rules on compensation (especially for inactive on-call outside the employer's premises)?

Pursuant to the provisions of Article 17(3)(d), Article 111(1), and Article 159(2) of Law No. 53/2003 - the Labour Code, republished, as subsequently amended and supplemented, working time is defined as any period during which the employee performs work activity according employer's disposal, and carries out their duties and responsibilities in accordance with the provisions of the individual employment contract, the applicable collective labour agreement, and/or the legislation in force. The specification of job responsibilities shall be made in a document entitled the job description, which forms an annex to the individual employment contract. For work performed under an individual employment contract, each employee is entitled to remuneration expressed in money. Therefore, **normal periods of inactivity, depending on the nature of the activity and if the duties are listed in the job description (and thus in the contract), are considered working time and shall be remunerated in accordance with the law and the individual employment contract.**

Article 3.1

Please provide information on the content and implementation of national policies (including any existing action plans/strategies) on psychosocial or new and emerging risks in relation to:

- *jobs requiring intense attention or high performance;*
- *jobs related to stress or traumatic situation at work.*

In addition, please provide information on any developments concerning the transposition of the Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving the working conditions in platform work into Romanian legislation.

In accordance with the provisions of the Law on Occupational Safety and Health no. 319/2006, as amended and supplemented, the employer is obliged to assess the risks of occupational accidents and illnesses existing at the workplace, including psychosocial ones, and to draw up a prevention and protection plan containing measures of a technical, organizational, hygienic-sanitary or other nature, to ensure the safety and health of workers. The prevention and protection plan will be revised when new risks arise, changes in working conditions and following the occurrence of an event.

Thus, for jobs that require intense attention or high performance as well as for those that produce stress or traumatic situations at the workplace, the employer establishes measures to combat them in the prevention and protection plan.

The Labor Inspectorate has made available, to those interested, guides and brochures on psychosocial or new and emerging risks on its own website and has organized meetings, symposia, actions and control campaigns on this topic.

Regarding Directive (EU) 2024/2831 of the European Parliament and of the Council on improving working conditions in working platforms, a working group was established at the level of the Ministry of Labour, Family, Youth and Social Solidarity with members from the relevant departments and from the Labour Inspectorate, to transpose the Directive into national legislation within the deadline (December 2026).

Article 3.2

Please provide information as to whether occupational health and safety regulations cover

- *the self employed*
- *domestic workers*

Occupational health and safety regulations cover self-employed persons. They are obliged to respect and apply the legal provisions in this field when participating in the work process.

Law on occupational safety and health no. 319/2006, as amended and supplemented, does not apply to persons performing domestic work, according to the provisions of art. 5 letter a):

"worker - a person employed by an employer, according to the law, including students, pupils during the internship period, as well as apprentices and other participants in the work process, with the exception of persons performing domestic work".

Considering that within the framework of the National Recovery and Resilience Plan (NRRP) of Romania, adopted by the European Commission on September 27, 2021, under component 13 - Social reforms, reform 4 was established: "Introduction of work vouchers and formalization of work in the field of domestic workers", having as a milestone, for the first quarter of 2022, "Entry into force of the legislation and implementing rules regarding the voucher system for domestic workers", taking into account the fact that this milestone was fulfilled by the adoption of Law no. 111/2022 on the regulation of the activity of the domestic service provider, which provides in its content as the deadline for entry into force the date of January 1, 2024, with the exception of art. 13 paragraph (1) and art. 17, respectively by the adoption of Government Decision no. 822/2022 for the approval of the Methodological Norms for the application of the provisions of Law no. 111/2022 on the regulation of the activity of the domestic service provider, as stipulated in the preamble of GEO no. 38/2024 for the amendment and completion of Law no. 111/2022 on the regulation of the activity of the domestic service provider, we consider that the regulations on health and safety at work cover the category mentioned above.

The normative acts regulating the institution of the household activities provider constitute a legal alternative for carrying out occasional domestic work, without involving the commitments and obligations associated with a traditional employment relationship. Thus, the household activities provider has a legal status distinct from that of employees or independent workers.

In this regard, art. 1 of Law no. 111/2022 on the regulation of the activity of the household activities provider, as subsequently amended and supplemented, establishes the regulatory scope as follows: "By way of derogation from the provisions of Law no. 53/2003 - Labor Code, republished, as subsequently amended and supplemented, by this law it is regulated the manner in which natural persons may carry out household activities in exchange for remuneration granted in the form of household activities vouchers".

Also, even the justification of the regulation found in the Explanatory Memorandum of Law No. 111/2022 clearly shows that the normative act regulates the performance of occasional household activities by a natural person having the status of a household activities provider for the benefit of another natural person having the status of beneficiary, in exchange for remuneration granted exclusively in the form of household activity vouchers, purchased by the beneficiary and subsequently exchanged for money by the household activities provider, after withholding the related contributions, in this way the respective person acquiring the status of insured in the social and health insurance system.

Moreover, the explanatory note of Government Emergency Ordinance no. 38/2024 amending and supplementing Law no. 111/2022 is clarifying regarding the intention to regulate the activity of the household activities provider specifically, without creating the legislative premises for the household activities provider to be considered a "worker" within the meaning of the Labor Code, considering the occasional nature of the activity, the specific form of remuneration and the distinct legal framework that regulates the relationship between the parties.

These normative acts regulate the formalization of occasional work in households, without placing household activities providers in the category of workers according to the Labor Code based on the following legal arguments that support the distinction between the household activities provider and a worker:

- Absence of an employment contract;
- Exclusive remuneration through household activity vouchers;
- Occasional and unskilled activity;
- Limitations on the duration of the activity;
- Distinct fiscal and social security status.

Article 3.3

Please provide information on measures taken to ensure the supervision of implementation of health and safety regulations by the labour inspection or other competent authorities concerning the following categories of workers:

- *domestic workers;*
- *digital platform workers;*

- *posted workers;*
- *workers employed through subcontracting;*
- *the self-employed.*

Labour Inspection drafts and implements annual action programs to support the MLFTSS's policies in the areas of competence of the institution, pursuant to Article 12(1)(A)(b) of the Rules of Organization and Operation of the Labour Inspection, approved by Government Decision No. 488/2017, as amended and supplemented.

In the field of occupational safety and health, the annual framework action programs include awareness-raising and inspection campaigns concerning specific risks identified as national and European priorities, as well as controls regarding compliance with legislation in sectors with high incidence rates of work accidents and occupational diseases. The target groups are defined for each campaign/action and usually include both employers and the categories of employees covered by the legal provisions on occupational safety and health.

Under the 2024 Framework Action Program of the Romanian Labour Inspection, the following campaigns/actions in the field of occupational safety and health were scheduled:

- Organize and conduct the European Week for Safety and Health at Work;
- Occupational safety and health in the digital age, under the aegis of the European Agency for Safety and Health at Work;
- The 2024 SLIC campaign on work accidents;
- The national campaign "Cultural Values of Occupational Safety and Health," aimed at develop a prevention culture among students in high schools and vocational schools;
- National campaign for informing, raising awareness, and monitoring employers regarding workplace risks where day labourers and/or temporary workers are employed.

Article 4.3

Please provide information on whether gender neutral job classification and remuneration systems are in place in public and private sectors.

As stated in the 23rd national report, the principle of equal pay for work of equal value represents a dimension of gender policy, introduced into Romanian legislation by Law no. 202/2002 regarding equal opportunities and treatment between women and men.

Law no. 202/2002, is the framework law in order to eliminate all forms of discrimination based on the criterion of sex, in all spheres of public life in Romania, respectively the measures regarding the labour market, participation in decision-making, education, culture and information, elimination of gender roles and stereotypes.

According to the provisions of Law no. 202/2002, labour relations include, among other things, non-discriminatory access to:

- the free choice or exercise of a profession or activity;
- employment in all positions or vacant jobs and at all levels of the professional hierarchy;
- equal income for work of equal value.

Also, the Labour Code specifies that for equal work or work of equal value it shall be forbidden any discrimination for criteria such as sex with regard to all remuneration elements and conditions.

According to Law no. 153/2017 on the remuneration of staff paid from public funds, the basic salary of civil servants, without any discrimination on grounds of gender, is differentiated by position, grade/step and seniority scale.

The hierarchy of positions with a view to determining basic salaries, both between areas of activity and within the same area, shall be based on the following general criteria:

a) knowledge and experience;

b) complexity, creativity and diversity of activities;

c) judgment and impact of decisions;

d) accountability, coordination and supervision;

e) social dialog and communication;

f) working conditions;

g) incompatibilities and special regimes.

In private sector, each employer sets its own salary scale and especially its own human resource policy, establishing their own evaluation indicators and promotion procedures.

In addition, as part of the National Strategy on Promoting Equal Opportunities and Treatment between Women and Men and Preventing and Combating Domestic Violence for the period 2022-2027, there is a distinct chapter, clearly defined with measures and objectives aimed at addressing gender equality in the labour market in an integrated manner—particularly regarding employment rates, income levels, and fields of employment.

Under the specific objective "Strengthening the principle of equal pay between women and men through increased transparency, both in the public and private sectors", a set of measures is foreseen, including legislative provisions aligned with Commission Recommendation 2014/124/EU on strengthening the principle of equal pay between men and women. The main goal is to promote pay transparency and to combat the gender pay gap.

Moreover, the Strategy provides for:

- Awareness campaigns targeting both employees and employers, focusing on workplace discrimination related to gender-based pay disparities;
- Training for labour inspectors to identify pay inequalities between women and men;
- Regular and rigorous collection and publication of disaggregated statistical data by region, gender, and sector of activity, enabling analysis and corrective measures regarding pay disparities.

Furthermore, Romania is currently undergoing the process of aligning its national legislation with Directive (EU) 2023/970 on strengthening the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. This process entails amending two major laws, with the targeted completion date set for April 2026."

Article 6.2

Please provide information on the allegations received in a letter by the General Secretary of the European Trade Union Confederation, according to which, the recent adoption of an Emergency Ordinance No. 156/2024 gravely undermines the autonomy of social partners and fundamental trade union rights, in particular the right to collective bargaining. In particular, the Emergency Ordinance permanently restricts collective bargaining in public authorities owned enterprises by unilaterally abolishing the possibility of granting collectively negotiated benefits (salary increases, bonuses and incentives) which effectively annuls or suspends acquired rights of more than 1.5 million Romanian workers.

According to art. 99 and art. 118 paragraph (1) of Law no. 367/2022 on social dialogue, when negotiating clauses and concluding collective labor contracts, the parties are equal and free, and any intervention by public authorities, in any form and manner, in the negotiation, conclusion, execution, modification and termination of collective labor contracts is prohibited, while collective labor contracts cannot be unilaterally terminated. At the same time, according to art. 105 para. (3) of Law no. 367/2022 on social dialogue, the responsibility for concluding collective labor contracts in violation of the provisions of para. (1)-(3) lies with the employer, who is obliged to recover the amounts unduly granted.

Also, according to art. 105 para. (2) the collective labor agreements (CLA) are negotiated after approving the revenue and expenditure budgets of the credit authorizing officers, within the limits and under the conditions established therein. Most of the revenue and expenditure budgets are approved in January after the approvement of the state budget.

The legal challenge is induced by the adoption of a new law that restricts rights negotiated through the collective agreement in force with the force of law of the parties: law vs. contractual law (of the parties).

Although art. 41 par. 5 of the Constitution establishes the binding nature of collective agreements, they are not included in the hierarchy of legal norms established by the Constitution.

According to the Law on social dialogue, the CLA must comply with the minimum legal conditions under penalty of nullity of the clauses found only by the court at the request of the parties or ex officio, the liability falling on the employer in the event of negotiation in breach of applicable legislation (art. 105). The Law also establishes the conditions for concluding the validity of legally concluded collective labor contracts (12-24 months, with the possibility of a 12-month extension - art. 108).

In the context of the austerity measures of 2008-2010, the European Court of Human Rights (ECHR) ruled on the primary role of the state to legislate in the social field and in the general interest to ensure budgetary and financial stability by reducing monetary rights.

In the budgetary sector, defined according to art. 1 of Law no. 367/2022 on social dialogue, collective bargaining carried out by entities according to the legal regime established by the laws specifically applicable to them, provides for specific negotiation conditions for compliance with budgetary rigors. The parties to the negotiation must respect the legal rights and obligations (specific applicable legislation: the budget payroll Law, the Law on good state governance applicable to state-owned companies and autonomous governments, etc.)

Although the national jurisprudence is incomplete, the 2010 ECHR decisions that recognized the state's margin of appreciation in matters of social policy and in the general interest (public finances) or Decision no. 17/2016 of the High Court of Cassation and Justice can be taken into account (given that art. 138 of Law no. 62/2011 maintains its continuity through art. 105 of Law no. 367/2022).