

Article: „Working in Romania. Access to the local labour markets and fiscal perspective.”

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Romania's joining the European Union raised significant interest in other EU member states and the countries outside the European Economic Area. Beginning with 1 January 2007, a still increasing number of multinational companies entered the Romanian market aiming for accelerated development and bringing with them specialists in various fields, foreign citizens coming to work on Romanian territory.

More than a few times, Romanian developing companies hiring foreign citizens and the foreign citizen himself trying to integrate on the Romanian labour market encountered difficulties identifying the steps they have to take and the conditions they have to fulfill to ensure a smooth, efficient and above all, *legal* integration in Romania.

Together with the European integration, the notion of „foreigner” gained alternative meaning and gave way to new approaches. According to changes brought to Government Emergency Ordinance no. 194/2002 regarding the status of foreigners in Romania, by Government Emergency Ordinance no.55/2007 regarding the establishment of The Romanian Immigration Office by the reorganisation of the Foreigners Authority and the National Refugee Office as well as other relevant Normative Acts, the term „foreigner” no longer refers to any person that does not hold a Romanian citizenship.

What it does refer to today is the person that is not a Romanian citizen or a citizen of any other European Union member state or of The European Economic Area, as stated in Government Emergency Ordinance no.56/2007

European Community citizens can and will therefore be hired according to European Union regulations. They are no longer considered „foreign” and will benefit from the national regulations applicable to Romanian citizens. The most relevant regulation in this regard is EU Regulation No. 492/2011 regarding the free circulation of workers inside the Union.

Workers that are citizens of other member states are treated the same as Romanian citizens as far as the terms and conditions of employment, payment and dismissal are concerned and in case they lose their jobs they benefit from professional reintegration and re employment.

As for foreigners that are not citizens of another European Union member state or of a state in the European Economic Area, in order for them to have the right to work in Romania they must

hold a working authorisation- an official document issued under current law, which gives its holder the right to be employed on Romanian territory or to be *detached* in Romania to one single employer.

The foreign citizen must know that in order for him to be employed in Romania, he must, according to the provisions of Article 3 of OUG 56/2007: *a)* have the professional training, authorization and experience in the line of work according to the demands of the Romanian employer, *b)* have proof of good health condition and have no criminal record that is incompatible with the activity he is to perform on Romanian territory, *c)* falls within the annual number of authorisations approved by Government Decision.

The foreign citizen looking for work in Romania must know that he will not be eligible if his employment would be on a position that could have been filled by a Romanian citizen, a citizen of an EU member state, a citizen of a signatory state of The Agreement regarding The European Economic Area, or by permanent residents on Romanian territory.

However, the above does not constitute an obstacle for: *a)* the foreign citizen that holds the position of administrator of a commercial company with foreign capital and is the only person holding that position, *b)* the foreign citizen who is a professional sports player and holds proof of performing the same sports activity in another country, *c)* the foreign citizen applying for the jobspecific permit or is a crossborder worker and *d)* foreign citizens holding a stay permit for education purposes.

Although the following is not a condition that would directly concern the foreign citizen applying for a job in Romania, they should know that the Romanian employer must prove their „credit worthiness” to the immigration authority, showing that all financial obligations to the state budget are in order and that their field of activity is that which they decide to employ the foreign citizen for.

The employer is the one that begins the procedures for obtaining a work permit for the foreign citizen they wish to employ, as stated in *Article 4* of the same Ordinance 56/2007, but only after in possession of all documentation atesting that the above laid conditions are met.

Although the working permit is issued for one year, exceptionally, according to provisions laid down in *Article 6c and 6f of Emergency Ordinance 56/2007*, amended, the working permit will be issued only for a period of 6 months for seasonal workers, more precisely for holders of job specific work permits.

On the basis of the work permit obtained by the employer , the foreign citizen having now legally entered Romania, will file the request for permission to stay at the Romanian Immigration Office, either alone or assisted by an attorney. This permission will be issued for a period of maximum a year, with possibility to get extensions of similar lengths of time.

The request for permission to stay will be accompanied by a valid border pass document, proof of living space in Romania, a medical document certifying good health condition, fiscal certificate from the employer and applicable taxes.

Foreign citizens should also know certain fiscal aspects, whether Romanian legislation provisions concern them or their Romanian employers. *Article 7.17 of The Romanian Fiscal Code* refers to the foreign citizen as a „non resident”.

From a fiscal point of view, the foreign citizen, citizen of a UE member state or of a state outside the European Economic Area, is subject to Romanian taxation according to the type of activity, contractual relation he is involved in on the Romanian territory and the type of revenue he receives on Romanian territory.

According to *Article 116.d. of The Romanian Fiscal Code*, tax on non resident revenue is established at 16% taking into account exceptions referred to in the same *Article*; foreign citizens owe a 10% tax applicable to dividends obtained by being the associate of a Romanian legal person, with the condition that the foreign citizen is the resident of a EU member state. If not, the applicable quota is 16%.

Income obtained by foreign citizens from gambling is subject to a taxation quota of 25%

Foreign citizens employed with an individual employment contract as permanent workers within a Romanian company as their employer are subject to taxation of their revenue, the respective tax being transferred to the Romanian state budget by the Romanian employer.

Whether it is because of the too many conditions imposed by the Romanian legislation regarding integration of the foreign workers on the local labour market or the very viciousness of the market itself it is certain that factors led to a decrease of the number of foreign workers permitted to legally work in Romania in 2011 as compared to the previous year. Romania issued, by Government Judgement, only 5500 working permits for foreign citizens in 2011 compared to 8000 permits issued in 2010.

Nearly 4000 of the total 5500 permits issued for 2011 are destined for foreign citizens that wish to work in Romania on permanent jobs. Posted workers have the right to 600 permits this year, seasonal workers to 200. The sports industry was covered by 300 permits for their foreign players and 200 permits were issued for cross border workers. The Government issued 100 work permits for nominal workers and another hundred for internship jobs.

Any supplementation of the number of permits shall be made by approval of the Government and only on the basis of relevant supporting documents, at the proposal of the Ministry of Labour, Family and Social Protection.

In spite of the lowering number of permits, foreign citizens are more and more interested in a simpler access on the Romanian labour market based on knowledge of legal conditions and necessary steps regarding the procedure to obtain working authorisations and permits.

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