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Transposition and implementation of Directive 2016/801 in Romania

Views from a human capital exporting country

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Overview presentation

- General context & data on migration
- Transposition into national law
- What is new?
- Admission & residence
- Right to work
- Intra-EU mobility
- Au pairs
- Concluding remarks

Romania: General data on migration

- Labour and student exporting country with a negative birth rate and shrinking population
- Between 2007-2015: 3,4 million Romanians have emigrated (17% population)
- Brain drain in highly skilled professions (research, health care, engineers and IT)
- Failure of public and private employers to retain highly skilled and educated persons in the national labour market
- Chronically underfunded education and research systems ➤ foreign students as sources of finance for the higher education system ➤ explains why internalization efforts focus on students and less on researchers and other categories
- Total number of foreigners in 2018: approx. 120.000 foreigners (family reunification, study, work)
 - 69.141 from non-EU countries - Moldova, Turkey, Israel, China
 - 51.217 from EU/EEA/Swiss citizens - Italia, Germany, Greece, France

TCNs in Romania (2018)

• 120358 legally residing TCNs

(IGI Annual Report for 2018)

- 69.141 non-EU countries
 - Family members 35,4%
 - Study 22,8%
 - Permanent residents 17,8%

Country of origin	Total	Percentage
Moldova	9981	14,4%
Turkey	9234	13,4%
China	7894	11,4%
Syria	5254	7,6%
Israel	3233	4,7%
Other	33545	48,5%
Total	69141	100%

Work authorisations (2018)

- 10527 work authorisations
 - Permanent workers: 69.8%
 - Posted: 26.8%

Tip aviz	2018	%	2017	Diferenta	Evolutie
PERMANENT	7346	69.8%	3827	3519	92.0%
DETASAT	2824	26.8%	779	2045	262.5%
INALT CALIFICAT	158	1.5%	188	-30	-16.0%
SEZONIER	90	0.9%	18	72	400.0%
TRANSFRONTALIER	69	0.7%	14	55	392.9%
ICT	36	0.3%	44	-8	-18.2%
STAGIAR	4	0.0%	1	3	300.0%
Grand total	10527	100.0%	4871	5656	116.1%

Foreign students in Romania

- Number of foreign students in 2018: 5,4% of all students registered in state universities in 2018
 - 7.759 students from EU/EEA/Switzerland
 - 21.085 students from non-EU countries (127 countries): almost half of them from the Republic of Moldova; from the other half, 40% from Middle Eastern countries: Israel, Syria, Iraq, Jordan, Lebanon, Palestine and Iran
- Main study areas: general medicine, dental medicine and pharmacy
- Only 4% of medical residents were TCNs
- Most students follow programmes in French (65%) v. English (29%)
- In 2017, most TCN students were registered at undergraduate level (BA 80,9%; Master 15,5%; PhD 3,6%)
- Student mobility in 2017: mainly within EU countries + no of mobile RO students (6998) is higher than incoming EU students (2847) BUT non-EU student mobility: more incoming foreign students (1252) than outgoing RO students (661)

Transposition of Directive 2016/801 in Romanian law

- Romania was late to transpose the Directive
- Law no 247/2018 (10 November 2018) + 31 legislative acts that are relevant for the transposition of the Directive into national law
 - Legal regime applicable to aliens in RO (GEO no. 194/2002)
 - Aliens' right to work in RO (GEO no.25/2014)
 - Education laws
 - Fees for visas
- Relevant institutions with competences in the transposition and implementation of the Directive: Ministry of Internal Affairs, Ministry of Labour and Social Justice, Ministry of National Education & Ministry of Research and Innovation

Law no 247/2018: what is new?

- New concepts and definitions: pupil, students, trainee, educational project, host entity, host family, au pair, reception agreement (researchers)
- Temporary right of residence for foreigners participating in volunteer programmes, foreigners participating in education programmes, vocational training, pupil exchange programmes or educational projects, au pairs
- Provisions on students & researchers' mobility, incl. notification procedure
- Foreigners who participate in vocational training activities: responsibility for the host entity to respect the duration of stay – host entity bears the costs incurred during case of removal of overstaying foreigners
- Exemptions from the obligation to obtain an employment notice + conditions under which au pairs have to be issued with an employment notice
- Level of resources calculated in relation to gross minimum wage as a way to ensure that TCNs cannot be paid less than RO nationals
- Reduction of required salary for migrant workers from average to minimum gross wage, except for highly skilled workers + reduction of fees paid for obtaining work authorisation

Admission & residence

- Long-stay visa for studies → Short-term residence right for studies
 - Pupils taking part in pupil exchange programme or educational project, (BA and LLM) students, PhD students, unpaid trainees (professional training agreement)
 - Ministry of Education & IGI
- Long-stay visa for research → Short-term residence right for research (acceptance agreement researcher and research-development entity)
 - Ministry of Research and Innovation and IGI
- Long-stay visa for other purposes → Short-term residence right for other purposes (max 1 yr)
 - Volunteers, persons participating in an unpaid professional formation programme (vocational training)
- Long-stay visa for work: au-pair workers?!

TCN students = pupils, pupils as part of pupil exchange programmes, students, (post)-doctoral students and trainees

Application with higher education institution

- Public or private institution accredited by law or provisionally authorized
- Conditions for entry and acceptance vary (language of instruction Romanian or foreign)
- Special rules for TCNs of Romanian ethnic origin and TCNs with a scholarship from the Romanian government
- If student is accepted, letter of study issued by the Min. of Education as proof that student is accepted in a study programme with frequency

Application for a long-stay visa for study purposes

- Application via online portal but submission of application in person at RO diplomatic missions or consular offices abroad for pre-graduate, graduate and post-graduate studies
- Request for a visa long-stay for study - at least 2 months before departure
- Issued for 90 days with one or multiple entries + issued within 60 days
- Visa allows entry into Romanian territory
- Conditions: proof of being accepted to study + proof of payment of tuition fee 1 y + proof of sufficient means at minimum gross wage (duration of visa) + proof of knowledge of language of tuition + criminal record + medical insurance (visa duration) + parent's approval for minors
- Special conditions for pupils part of pupil exchange programme (13-19 yrs) + unpaid trainees (professional training agreement + higher educ diploma issued in the past 2 yrs/ proof of enrolment + host entity's commitment to repay irregular stay/return costs + proof of sufficient means + proof of accommodation)

Application for a residence permit for short stay

- Application for short stay residence permit in person or online 30 days prior to the expiration of the long stay visa for study
- Conditions: passport/ border crossing doc + study acceptance letter + certificate of enrolment + proof of sufficient means for min of 6 months + proof of accommodation + medical certificate + fees
- Special conditions for pupils as part of pupil exchange programmes
- Duration: issued for the duration of course of study + pupils as part of pupil exchange programme max 1 y
- Work: a max of 4 hours/day without having to apply for an employment notice BUT communication obligation to local IGI concerning employment for both employer and student
- Extension: max 1 years to finalize studies or max 6 months with a view to complete formalities linked with graduation and authentication of study diplomas
- Change of study: possible as long as within the initial duration of studies; otherwise a new long-stay visa for studies has to be obtained

Access to the national labour market

- General rule: the employer needs to obtain an employment notice + yearly quota + labour market test
- Students
 - during studies 4 hours/day without employment notice
 - extension of the right to reside for max 9 months after graduation to find a job/initiate job formalities or start a business upon proof of graduation
 - Trainees (long-stay visa for studies) vs. Art. 9 GEO no 25/2014 details the procedure for employing a trainee including the obligation to obtain the employment notice
- Researchers
 - extension of the right to reside for max 9 months after research activity has ended to find a job/initiate job formalities or start a business
 - Entitled to perform didactic activities
 - Relation with researchers who enter based on a long-stay visa for work purposes and who are exempt from the employment notice?! Art. 44/3/b GEO no 194/2002 read together with Art. 2/k GEO no 25/2014 and
 - Relation with Art. 3 GEO no 25/2014 regulating exemptions from the obligation to obtain an employment notice
- Exemption from applying for a long-stay visa for work purposes but once work is found the regular procedures apply

Students & Researchers' Mobility

- Notification procedure:
 - Students: the higher education institution notifies the local inspectorate general for immigration (IGI) 30 days before start of studies + max 30 days to object
 - Researchers: once the research institution notifies the local IGI + max 30 days to object
- Students (Art. 58¹): max of 360 days + no long-stay visa requirement
- Researchers (Art. 67¹):
 - short term mobility - no long-stay visa requirement
 - long term mobility - application for short-stay residence permit without visa requirement
- Family members who join the TCN if they possess permit or long stay visa for family reunification purposes issued by the 1st MS

Au-pairs = workers

- Definition = foreign national temporarily employed by a host family to improve the worker's linguistic knowledge and proficiencies in exchange for light housework and child care activities
- Work authorisation is necessary:
 - Foreign national is 18-30 yrs
 - Has completed lower secondary education
 - The employer undertakes the obligation to cover the au pair's expenses related to subsistence, accommodation and social health insurance
 - There is no family relation between employer and au pair
 - The employer has a different nationality from the au pair
- Extension of the temporary right to stay is conditioned by the conclusion of a part-time employment agreement for up to 1 yr with a max work time of 25 hours/week + wage is set at least minimum gross wage
- Extension is limited to max 1 yr

Concluding remarks

- Quality of legislation
- Administrative formalities + recognition of diplomas
- Possibility to switch to the labour market
- Information
- Data collection
- Attractiveness of national labour market, education and research systems