

Building decent jobs for posted workers from non-EU countries

DECENT WORK FOR ALL:
A KEY FOR EFFECTIVE INDUSTRIAL RELATIONS
BRIEFING ON THE SITUATION IN ROMANIA

16

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Acronyms

ARCA: Romanian Forum for Refugees and Migrants

ILO: International Labour Organisation

RIO: Romanian Office for Immigration

RON: New Romanian Lei: On 1 July 2005, the leu was revalued at the rate of 10000 "old" lei (ROL) for one "new" leu (RON)

TLI: Territorial Labour Inspector/Inspectorate

Overview

The number of non-EU workers in Romania's construction industry is set to rise. Since Romania joined the EU and adopted legislation on the employment of foreign workers¹, there has been a rapid increase in the number of workers from non-EU countries, amounting to more than 40% of total foreign workers with individual employment contracts in 2008². Once the economic crisis is over, the construction industry is expected to expand to meet renewed demand, and its workforce will expand accordingly, including many workers from outside the EU.

There are two categories of non-EU workers – those who are hired by a Romanian employer on an individual employment contract and those who are posted to Romania by an employer in their home country with whom they have an employment contract. Unlike workers posted from EU countries, workers from third countries do not benefit from the provisions of the labour legislation in force. This creates confusion both with regard to the rights of these individuals and the obligations their employers must meet. It also provides companies based in Romania that hire posted workers with competitive advantages: the amounts paid by employers for posted workers are about 30% lower than those for workers on employment contracts, as they do not have to pay contributions to social insurance, health and unemployment funds in Romania.

Romanian regulations do not yet fully protect immigrant workers' labour or human rights. Recruiting companies now play a significant role in the process of selecting and recruiting non-EU workers. The legislative framework to regulate their activity is still not in place however, leaving room for violations both at the recruitment stage and during the administrative procedures for granting the right to work in Romania.

The Construction Industry

Romania's construction industry saw dynamic growth in 2007 and 2008. Its level of production ranked second in Europe by June 2008, but this was followed by a severe slump in the wake of the economic crisis. Furthermore, before the crisis the industry was facing a severe labour shortage due to the falling birth rate, emigration, an ageing workforce and the negative image young people have of the sector as being low paid and dangerous.

More and more foreign companies have emerged on the Romanian construction market, which had swollen to nearly 47,000 companies by 2007, although it is dominated by 20 large companies. In July 2009 the industry employed 365,900 workers, out of a total workforce of 4,519,500. Average net salaries are low (1,146 RON or 264 Euros in 2009, which equals about 83% of the average across all sectors³) and the number of occupational accidents reported is high (661 injuries, 72 deaths in 2008). Many irregularities in the observance of labour legislation have been recorded, including a lack of individual employment contracts, the failure to observe legal working hours, the failure to pay the minimum wage negotiated for the sector and the lack of collective bargaining.

Foreign Workers in Romania

Romania has been a country of destination for third country workers since it joined the European Union in 2007. According to the Romanian Immigration Office at the end of 2008 there were 56,290 foreigners in Romania, of whom 51,360 had a temporary residence permit. The majority of foreigners with a valid residence permit come from Turkey, China and Moldova. On 31 December 2008 9,876 foreigners with a valid residence permit had a permanent employment contract, and 4,531 were posted workers. In 2008, a total of 15,000 work permits were issued, and there were a further 8,000 issued in 2009.

¹ Emergency Ordinance no. 56/2007 on the employment and posting of foreign workers in Romania.

² In 2009 and 2010 the number of the non-EU workers was limited to 8,000 a year, due to the economic crisis.

³ Average hourly earnings in the construction sector correspond to those in wholesale and retail, but only amount to 66% and 80% of those paid in education and health.

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Scrap metal collectors: The unemployed in the town of Zlatna earn a living by selling the iron they take out from the walls of the decommissioned iron ore plant. Large pieces of metal are taken out carefully because they can be sold as construction materials, at a higher price than scrap metal. After a full day's labour, one person can get 25 to 35 RON (€6-8.5) selling iron to collection centres.



Theory

The legislation

Migration related policies, legislation and institutional structures have been strongly influenced by Romania's accession to the EU and the need to bring national legislation into line with the Union's acquis on migration.

The principal laws governing the circulation of persons and legal migration in Romania are:

- **Government Emergency Ordinance no. 194/2002 on the status of foreigners in Romania.** The law defines a foreigner as a person who is neither a citizen of Romania nor of any other EU or European Economic Area (EEA) country. A non-EU national who intends to work in Romania legally must obtain a long residence visa, granted on request for 90 days after entering Romania. They then have the right to extend their stay and the Romanian Immigration Office (RIO) grants them a residence permit. Unlike those who conclude an employment contract directly with the employer in Romania, posted workers can be admitted to Romania on the basis of a long residence visa for purposes other than employment.
- **Law no. 334 / 2006 concerning the posting of workers in the framework of the provision of trans-national services** sets out the conditions and rules applicable to posted workers from the EU in the framework of the provision of transnational services. These workers benefit from the labour conditions set out in Romanian law and/or national or sectoral collective agreements as regards working hours, annual paid leave, minimum salaries; the conditions in which the workers are posted, especially by temporary labour agencies; health and safety at work; the protection of pregnant women and of children and provisions regarding discrimination.
At the European Union level, an important piece of legislation is the **EU Posting of Workers Directive**⁴.
- **Emergency Ordinance no. 56/2007 concerning the employment in and posting of foreigners to Romania** also defines a foreigner as a person who is neither a citizen of Romania, the EU or the EEA. A work permit can be issued by the Romanian Integration Office (RIO) at the employers' request for workers who meet the legal requirements. A work permit for permanent workers grants the right to work on the basis of a permanent or temporary contract with one legal or natural person in Romania or a legal entity based abroad with a branch office in Romania. A work permit for posted workers grants the holder the right to work for up to one year every five years on the basis of a posting by a foreign employer with a Romanian employer or for the branch/office in Romania of a legal person based abroad. Workers from third countries do not benefit from the provisions on working conditions set out in Romanian law and/or national or sectoral collective agreements.
- **Government Ordinance no. 44/2004 on the social integration of foreigners who were granted a form of protection or the right to residence in Romania.** Programmes for the social integration of foreigners have been developed, and anyone with a residence permit has the right to Romanian language classes and cultural adjustment sessions free of charge. A National Strategy on Migration and an inter-institutional framework for its implementation were approved in 2004.

The RIO has direct responsibility for granting non-EU nationals residence and work permits. It issues, cancels or revokes work permits for both permanent and posted workers. The RIO has a well defined role and is responsible for verifying that legal requirements are met upon admission and afterwards.

A trade union leaders' view (1)

"Migration policies are weak and there is a tendency to evade the law"

"We don't have a migration policy adjusted to current trends. There is no strategy. Even after problems came to light in the cases involving Chinese workers in 2007, nobody has done anything to adjust the legislation. Migration needs to be seriously regulated.

Individual contracts should by law observe the provisions of the collective contract. There is a tendency to evade the law, however, and there are no specific laws protecting the foreign workers. Furthermore, the scope of illegal labour is quite worrying. Many employers openly favour the black economy. If they are caught out they are sanctioned, but the worker has to leave the country.

Employers can manipulate employment contracts so they don't have to pay the full amounts. The most common way of doing this is to establish the minimum salary and cover additional costs with fake per diems. Another option is to condition pay on doing excessive overtime. At the end of the period, the employer draws up a document showing the worker did not observe the hours stipulated in the contract, and they therefore lower the salary. Or they conclude part time contracts, even though the worker works full time.

Labour inspection is supposed to solve these problems, but it is not good. It should be reformed from the ground up, in every aspect, the institution, the employees, the skills."

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:EN:HTML>



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Garbage recycling: Floarea Furdui, a former sanitation employee, is still working in the field, although she is retired. She collects PETs from the Prahova river bed near her village, sorts them and sells them.

The worker's view "It's the employer who makes the rules and he does whatever he wants"

A Chinese construction worker hired in China to work in Romania talks about his experience

"I was recruited in China through an agency looking for construction workers. They guaranteed 780 euros per month for 260 working hours. But I don't get paid in euros, only in Lei. The amount varies according to the exchange rate and it is not enough. I always have debts. In six months I have only sent 1,600 euros home for my wife and child and I can only afford to phone once a month. Now they have stopped paying us.

When I first came to Romania I lived in a container with 20 other people, with no water and no light. Now I share a room of 70 square metres with 35 people in accommodation provided by the employer. We have to buy our food, but there is no gas in the stove so there is a person on site who cooks it. Now we don't even get money for food. It is very difficult for us in Romania. I don't know the language, and if I get sick I don't know anything about medical care.

If they pay us our salaries I want to go. But I don't know which institution can help us. It's the employer who makes the rules and does whatever he wants."

Weaknesses in the law

Although the law guarantees the holders of a permanent residence permit in Romania the right to benefit from the same rights as Romanian citizens, including freedom of association⁵, there are many legislative shortcomings.

- **The lack of clear provisions regarding the legal terms and conditions of employment applicable to non-EU workers.** Posted workers are often the target of abuse by employers who claim that as the employment contract was signed in a third country, they are not bound by the provisions of the Labour Code and other laws and regulations.
- **Denial of the right to register with an Employment Agency, effectively depriving non-EU posted workers the right to unemployment benefit.** A non-EU worker whose employment contract is terminated for reasons beyond their control is in theory entitled to unemployment benefit. However, once their employment relationship is terminated, their permit is cancelled and their right of residence in Romania is revoked. The worker has to leave the country and may not claim the unemployment benefit to which they have contributed.
- **Lax regulations on the employment of posted workers lead to lack of protection.** Workers seeking a Romanian employment contract must apply for a work permit in advance, and the process can take up to 45 days. Posted workers, however, can enter Romania on a visa for other purposes and can obtain their work permit after they enter the country, and the process is much faster. It is also made easier because Romanian employers are no longer requested to submit financial records or provide evidence of the impossibility of recruiting from the local market. The employment contract from the country of origin has to be submitted, but does not have to be changed in line with national regulations (such as the minimum salary), and posting exempts Romanian employers from contributing to the social insurance fund. Hence the worker is less protected and it is cheaper for the employer.
- **The legislative void regarding the monitoring of the observance of the non-EU workers' rights.** It is the territorial labour inspectorate (TLI), not the RIO, that is responsible for verifying the working conditions of foreign workers. In the case of posted workers however, the employment contract concluded in the third country and the posting contract are not specifically required by law to be registered with the territorial labour inspectorate. This is therefore not done, and non-EU posted workers do not therefore benefit from any checking of the observance of their rights.
- **The non-regulation of private recruitment agencies.** The absence of a proper legislative framework to regulate the activity of recruitment companies that mediate the employment of foreign workers leaves room for many violations of non-EU workers' rights. Changes are often made to the initial verbal contract, especially with regard to wages and working hours.
- **Lack of a coherent system of sanctions against abusive employers.** Government Emergency Ordinance no. 56/2007 regarding the employment and posting of foreigners to Romania does not provide for any sanction against abusive actions against migrant workers, such as the withholding of the original work permit by the employer.

⁵ Art. 75 of the Emergency Ordinance no. 194/2002

Practice

An evaluation

The workers' experience

Controls carried out by the Labour Inspectorate regarding the employment and posting of foreign workers found many irregularities. Frequently foreign workers cannot speak Romanian, even though a work permit is issued only on the basis of at least a basic knowledge of Romanian. Foreign workers are sometimes hired through recruitment companies, but there are no legal provisions allowing territorial labour inspectors to verify these companies. Sub-contractors do not draw up the necessary official documents for posted workers and some employers do not pay salaries on the dates due. Salaries are usually paid in Romanian lei, not in hard currency as promised by the foreign intermediary who recruited the workers.

Foreign workers have complained of wages not paid on time, excessive working hours, sub-standard accommodation, no transportation to the workplace and a lack of social protection. A study on the working conditions of foreign workers in Romania called "Let's Talk"⁶ carried out by the Romanian Forum for Refugees and Migrants (ARCA), the Group for Dialogue Initiative and the Pro-Women Foundation has revealed further difficulties, namely:

- Abuses by recruiters.
- Inobservance of the initial verbal agreement with the recruiter (the pay is gross not net, more than six working days per week).
- Inobservance or modification of contractual clauses (such as luncheon vouchers in lieu of salary).
- Abusive practices such as unpaid salaries and keeping the original work permit at the company offices.
- A lack of information in a language the worker can understand.
- Difficulties in settling in due to language problems and the lack of information.
- Improper working conditions.

Social dialogue

Tripartite social partnership exists, consisting of Romania's five trade union confederations and 13 employers' confederations, together with government officials. The Economic and Social Council⁷ is their main consultative structure at national level. Social dialogue takes place through dialogue committees at the sectoral and territorial level. The minimum salary is established through tripartite collective bargaining. Collective employment contracts are negotiated and concluded through bipartite social dialogue between trade unions and employers, while individual employment contracts take as their legal basis the single national collective employment contract.

Tripartite or bipartite social dialogue on migration is very limited however. Trade union confederations say they were not consulted when the national migration strategy was drafted. Furthermore, there is a lack of foreigners' associations in Romania and a relatively low number of NGOs dealing with migration.

A trade union leaders' view (2)

"Romania is the only country in central Europe that has had a trade union leader killed for trying to represent employees"

"Foreign workers in Romania benefit from less protection than Romanian employees in practice. Foreign employers resort more often to abusive practices because they count on the fact that foreigners cannot speak Romanian and are not familiar with the legal provisions in force. The Labour Inspectorate is a weak body and unfortunately it is the only one that could ensure the enforcement of the law, unless a case is taken to court, which could take months or years.

Two years ago we tried to set up a trade union with 40 undocumented workers and the next day they lost their jobs. The workers pointed out that even if we tried to sue the employer, they would not want to work for him again. Romania is the only country in central Europe that has had a trade union leader killed for trying to represent employees. And an employee with a top multinational company died of exhaustion at work. The Labour Inspectorate does very little to ensure the observance of employees' rights.

To protect non-EU workers, labour inspection must function correctly. There is a list of ILO Conventions that Romania should ratify urgently. Labour inspection must be made to work the way it does in most EU countries. At the moment employers use every opportunity to break the law and commit abuses as a competitive advantage. Everybody knows that. By making Labour Inspection work and by ensuring consistent legal counselling for local trade unions, we could solve many of the existing problems."

⁶ Authors: Ana Maria Cârstea, Camelia Constantin, Rodica Novac, Florentina Constantin and Angela Stoilnicu⁶

⁷ Established by Law no. 109/1997

The Labour Inspector “Employers are interested in paying as little as possible”

A Territorial Labour Inspector (TLI) highlights the vulnerability of posted workers from third countries, pointing out that posting means few obligations for the Romanian employer. He is critical of some migrant workers too however, for being unable to speak Romanian, as theoretically required, and for having what he sees as unreasonable expectations about pay.

“There was a protest by 100 Chinese workers about salaries. The recruitment company told them they would get 1500 euros per month, but they were paid 1500 lei per month (about 345 euros). The TLI checked and we found out they got the amount stipulated in their contract, 1500 lei. They have no documentary proof that they were promised 1500 Euros per month. They signed employment contracts in Romanian. The law says that those who come to Romania should have a basic knowledge of Romanian but they don't. They sign a contract, then find the accommodation is poor, they are not happy with the working hours. Romanian employers are interested like any other in paying as little as possible. But how could they, as unskilled workers, expect to get 1500 euros a month?”

There are problems with recruitment companies, promising one thing and doing another. But the contract between the Romanian employer and the Chinese company does not include labour related information. I don't know how much the Chinese worker gets paid, if he benefits from health insurance in his country, etc. No documents need to be sent to the territorial labour inspectorate by the Romanian employer. All documents are submitted to the Romanian Immigration Office. We can inform the authorities if problems are reported to us, but it is for the prosecutor's office to investigate, not us. There are so many companies that promise one thing and do another.”

Good practice

Lobbying in partnership

Trade unions and NGOs have worked together to lobby to change legislation. Three trade union confederations, the National Trade Union Confederation Cartel ALFA, the National Free Trade Union Confederation in Romania FRATIA and the National Trade Union Block BNS, together with three NGOs, ARCA the Romanian Forum for Refugees and Migrants, the Group for Dialogue Initiative and the Association for Organisation Development – SAH ROM, submitted a report to the Romanian government to urge active involvement in the verification of the implementation of legislation to protect non-EU workers, bearing in mind the problems described in the “practice” section above, and improvements in the normative framework to protect these persons' rights, to tackle the weaknesses in the law outlined in the legislation section.

Social dialogue

The construction sector has some well-developed social dialogue mechanisms. The ARACO Employers' Confederation and the FAMILIA 'Anghel Saligy' General Federation of Trade Unions, the representative organisations in the sector, are signatories to the 2008-2009 collective agreement in construction. The two organisations also concluded a sectoral social agreement for 2007-2009, which sets up a System of Sectoral Self-regulation in Construction (SASEC). This system consists of:

- A Builders' Social Fund (providing compensation for periods of inactivity due to bad weather).
- A Builders' Vocational House and Sectoral Committee on Vocational Training (whose tasks include linking the Romanian vocational training system to similar systems in Europe and developing a system of occupational standards for life-long learning).
- A Builders' Fund for Safety and Health at Work to build a system of training and auditing aimed at developing a package of services that should lead to the awarding of a certificate of good health and safety practices to construction sites that meet the legal standards.
- A Builders' Holiday Fund to help reduce the cost for workers, particularly in the low earning winter season.
- A Builders' Pension Fund that collects and invests part of individual contributions to the social insurance fund.

Bargaining Committees: The SASEC has also set up a bargaining committee for combating undeclared work and a bargaining committee on the relationship between transnational trusts and domestic entrepreneurs. Finally, it has a bargaining committee for migrant workers, which cooperates with the relevant public institutions, develops partnerships and concludes bilateral agreements between trade unions/employers' organisations and similar organisations in the countries of origin, helps foreign workers join trade unions and ensures the observance of foreign workers' rights and obligations while employed in Romania.

This social agreement and the System of Sectoral Self-Regulation in the construction sector are unique in Romania. The structures developed under the agreement are operational, have their own staff, and implement projects funded by EU's PHARE and Leonardo Da Vinci programmes, the European Social Fund, and the International Labour Organisation (ILO), and cooperate with similar foreign institutions. They are particularly important in terms of their potential with regard to the representation and protection of migrant workers.

It is therefore important that trade unions work together to improve the legislative framework and tackle the deficient implementation of existing rules and procedures.

Summary

Romanian social security legislation is in line with EU provisions and the fundamental principles regarding the coordination of social security systems are observed by national legislation. Third country nationals who are legal residents of a member state benefit from these provisions. Harmonisation is not complete however. Third country nationals posted by non-Romanian employers do not enjoy the same levels of protection, and abuses occur. Workers feel uninformed, unprotected and at the mercy of the employer.

Labour inspection is weak, and the existing system means that inspectors are not able to fully monitor the conditions under which third country nationals are hired. No documents need to be sent to the territorial labour inspectorate by the Romanian employer. All documents are submitted to the Romanian Immigration Office. In some cases employers take advantage of weaknesses in the law, or simply break the law in order to gain competitive advantage.

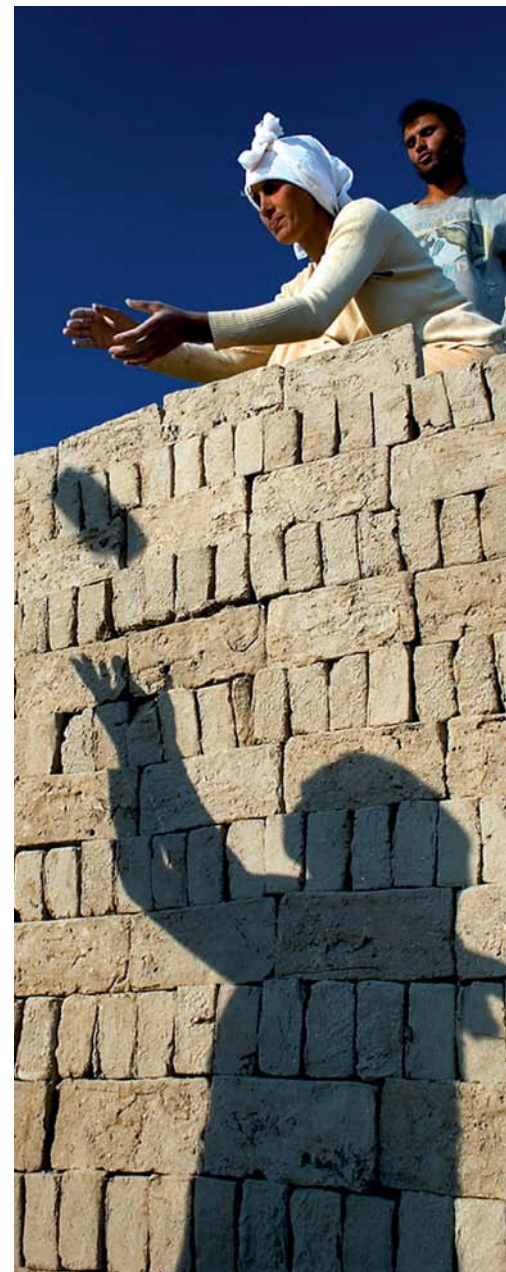
If a foreign posted worker's contract is terminated sooner than foreseen, they are sent back home, unless they find another job within 30 days, because their permit loses its validity, and they do not have access to unemployment benefit.

A proper legal framework governing the functioning of private recruitment companies is clearly needed to better address conflicts arising over the implementation of contracts agreed between the employment agency, the employer and the worker, which mainly concern the inobservance or subsequent modification by the employer or recruiter of the initial verbal agreement or the written employment contract, in particular with regard to wages and working hours. There is a lack of transparency regarding the activities of these companies and the numerous abusive practices against workers are a matter for serious concern.

Proposals by the Romanian government to draft a law on labour force migration are to be welcomed, especially the provisions to regulate the posting of third country workers, to render employers using foreign workers more accountable, and to regulate the activity of recruitment agencies. It is to be hoped that discussions to be held in the social dialogue committee and with NGOs will help achieve a comprehensive draft.

Social dialogue exists, but more needs to be done to consult the social partners and NGOs when reforming labour migration policy. Trade unions and NGOs are very active in lobbying for such changes.

“Social dialogue exists, but more needs to be done to consult the social partners and NGOs when reforming labour migration policy.”



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Gypsy brickmoulders: Brickmoulders are gypsies who are very proud of the craft they've inherited from their forefathers, passed down from one generation to another. Women work as hard as men do. Their employers allow them to work on their sites in exchange for a certain amount of money per brick or for a share of the final production. They do not have employment contracts or health insurance.

About the project

“Decent Work for All: A Key for Effective Industrial Relations” is a one-year project which aims to produce recommendations on how to improve working conditions around Europe in sectors with higher incidences of precarious working conditions (ie construction, health and long-term care) and more vulnerable groups (ie youth, undocumented migrants) through coordinated efforts by governments, employers and trade unions in the framework of social dialogue. It also looks into the role of social partners in fighting precarious labour and promoting decent work and quality jobs.

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All “Decent Work for All: A Key for Effective Industrial Relations” briefings are available on www.solidar.org

SOLIDAR is a European network of 53 NGOs active in over 90 countries working to advance social justice in Europe and worldwide. SOLIDAR lobbies the EU and international institutions in three primary areas: social affairs (more social Europe), international cooperation (development cooperation) and education (lifelong learning for all).

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Recommendations

- There should be a broader discussion on the **activity of private recruitment companies outside Romania’s borders**. Labour force intermediation is an activity that exceeds the national and European framework and that is why the introduction, at European level, of a licensing system for the providers of recruitment and placement services should be taken into account, following the British model, which has already been implemented in several fields, such as agriculture. According to this model, recruiting migrants for agricultural work is only allowed through operators that have approval from the Border and Immigration Agency and have followed the necessary licensing procedures, thus ensuring the transparency of these companies’ activity.
- The **rules on labour inspection** must be changed so that labour inspectors are able to monitor the conditions under which third country nationals are recruited and employed. Romania’s labour inspection system needs to be strengthened.
- **Minimum standards** should be introduced, together with a system of sanctions against abusive employers and recruiters. Citizens posted from third countries should benefit from the same rights and conditions, guaranteed by law, as EU workers, posted in the framework of the provision of transnational services, who are guaranteed the working conditions established under Romanian law and/or the national or sectoral collective employment contract.
- The Romanian state should impose **licensing conditions** on foreign recruitment companies to ensure transparency and create a framework for the protection of foreign workers’ rights.
- Romania should **ratify ILO Convention 181** on Private Recruitment Agencies, in order to regulate the recruitment agencies’ practices in the respect of workers’ rights, and Convention 97 on Migration for Employment Purposes in order to guarantee the same working conditions as nationals for workers from third countries.
- **Recruitment companies** should ensure that workers know what their rights are and what to do in the event of the abuse of those rights. Workers should be given an employment contract in a language they understand.