

# GMS Flash Alert



## Romania - Ordinance Clarifies and Eases Rules on Foreign Workers

A new Ordinance issued by the Romanian government has introduced a new type of work authorisation for intra-corporate/company transfer (ICT) workers. It also allows foreigners who hold temporary resident permits and have permanent work contracts to sign a part-time contract with another Romanian employer without obtaining a work authorisation. The Ordinance's provisions took effect from 3 September 2016, with some exceptions.

The changes bring Romania's legislation into line with EU Directive 2014/36/EU<sup>1</sup> on the conditions for entry and stay of third-country nationals who take up jobs as seasonal workers, as well as with Directive 2014/66/EU<sup>2</sup> on the conditions for entry and stay of third-country nationals in the context of a transfer within the same company.

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### WHY THIS MATTERS

In general, the new rules introduce greater clarity and flexibility concerning the hiring and deployment of foreign workers in Romania, as well as their roles, obligations, and mobility.

The new provisions give multinational companies the right to second third-country nationals for a longer period (up to three years). The immigration process has been simplified as foreigners can obtain a residence permit valid for up to three years, instead of one year under the standard assignment procedure. The Ordinance also gives the right to companies to second foreigners to occupy management positions. (The old legislation only allowed them to hold positions requiring a special qualification.)

This should facilitate the mobility of such workers, and make it easier for employers to deploy ICT workers more readily to meet their business and talent acquisition objectives and cut through the usual red tape relating to such workers.

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### Background

Ordinance no.25 (24 August 2016) to amend certain immigration laws was published in the Official Journal of Romania (*Monitorul Oficial al Romaniei*) on 31 August 2016.<sup>3</sup> It transposes Directive 2014/66/EU into Romanian legislation. The new Ordinance amends Ordinance no.25/2014 on the employment and secondment of foreigners to Romania and Government Emergency Ordinance no.194/2002 on the regulations for foreigners in Romania.

## Summary of the Main Rules Introduced by the Ordinance

The new rules enable foreign ICT workers to be seconded for:

- up to three years, for management staff and specialists.
- up to one year, for trainees.

ICT workers from other European Union (EU) countries may now obtain a work authorisation for secondments of up to 90 days within a six-month period (**short-term mobility**) or for more than 90 days (**long-term mobility**).

The new rules also allow foreigners who hold a temporary residence permit as a permanent worker (i.e., with a local employment contract), to conclude a part-time contract with another Romanian employer without needing a work authorisation.

## The Detail: What Is New in the Ordinance

- New terms have been introduced and defined, such as: **"ICT worker"** (person transferred within the same company) who is defined as "a foreigner who lives in a third-country at the time of application for the secondment authorisation and who is transferred within the same company."
- Clarifications have been made regarding the definition and conditions which have to be fulfilled by a group of companies and beneficiaries of services.
- **"Transfer within the same company"** is defined as "the temporary secondment of a foreigner to carry out professional or training activities, who has a management position, as a specialist or trainee; who lives in a third-country at the time of application for the secondment authorisation; who works for a company registered in that country; and who remains hired with a valid employment contract, with one or more companies that are part of the same company or group of companies generating assignments, of which at least one beneficiary company is registered in Romania."
- A **"specialist"** is defined as a foreigner who has at least three years of professional experience, relevant for the area of activity, and who has technical or management knowledge, which is useful for the beneficiary of the services. He/she must also have at least six consecutive months of experience in the same company or group of companies. Trainees must have at least three consecutive months of experience within the same company or group of companies.
- A new secondment authorisation has been introduced for ICT workers from other EU member states, who are seconded to Romania for a period of up to 90 days within a six-month period (called "*short-term mobility*") or for a period longer than 90 days (called "*long-term mobility*") if the documents prove that the Romanian company is part of the foreign company or the same group of companies.
- The concept of **"ICT permit"** has been introduced (which is defined as a permit for a transferred person within the same company that attests to the right of this foreigner to stay and work in Romania as an ICT worker). A **"mobile ICT"** has also been introduced, which attests to the foreigner's right to stay and work in Romania as an ICT worker based on long-term mobility.
- New clarifications have been introduced on the duration of an assignment, which can be up to three years for foreigners who occupy a *management* or *qualified position*, and up to one year for foreigners who come as *trainee* workers.

- A new requirement has been introduced whereby the Romanian Immigration Office (*Inspectoratul General pentru Imigrari*) must be informed if a foreigner who holds a residence permit in another EU country is seconded to Romania. The notification should be made by the Romanian entity on behalf of the company from the other EU country.
- Foreigners who hold ICT permits issued by other EU member states may carry out activities in Romania as ICT workers from the date when the Romanian company registers the application for the secondment authorisation, and consequently they do not have to wait until it is issued.
- Holders of an ICT permit may now request family reunification even if their temporary residence permit is valid for less than one year.
- Foreigners with a temporary right to stay, with the right to work, and who are hired in Romania with a full-time employment contract, can now be hired by another Romanian company, without a work authorisation, under a part-time employment contract and for a maximum of four working hours per day.
- An exemption has been introduced from the requirement to obtain a work visa for foreigners who hold a temporary residence permit for seasonal or secondment purposes who request the extension of their temporary right to stay to become permanent workers.
- The Ordinance also states that if the foreigner's employment contract ceases before the expiry of the single permit (i.e., the temporary residence permit) or EU Blue Card, the staying document will be valid until it expires. However it will not be valid longer than the period for which the holder is eligible to receive an unemployment allowance, nor for more than 90 days from the date when the employment contract was terminated.
- Penalties have been increased for companies that hire a foreigner without a work or secondment authorisation or who is illegally in the country.

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## KPMG NOTE

The new provisions took effect from 3 September 2016, with the exception of the section on penalties (civil and criminal offences) which will enter into force 30 days after publication in the Official Journal of Romania. However, as the quota of work authorisations set by the Romanian government for 2016 does not mention this new type of work authorisation for ICT workers, we believe that most of the changes are likely to take effect only from the beginning of 2017.

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## FOOTNOTES:

1 For EU Directive 2014/36/EU, click [here](#).

2 For EU Directive 2014/66/EU, click [here](#).

3 For the published laws and other statutory instruments of Romania (in Romanian), see the website for [Monitorul Oficial](#).

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**The information contained in this newsletter was submitted by the KPMG International member firm in Romania.**

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