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Romania

In July 2011, the Romanian government passed Act 62/2011 which not only governs *new collective bargaining rules* for all levels from national to company, but also regulates representativeness criteria for trade unions and employers' organisations, the Economic and Social Council (CES) and labour conflicts, among other things. It extracts and somewhat modifies the relevant rules on collective bargaining contained in the Labour Code (Law No. 53/2003), the Collective Agreement Law (Law No. 130/1996) and Laws No. 54/2003 (on the establishment, structure and management of trade unions) and Law No. 356/2001 (on employers).

However, the government adopted this new law on Social Dialogue circumventing the normal parliamentary procedure. This was contested unsuccessfully by opposition parties in the Constitutional Court. There was also dissatisfaction among the social partners in particular because for several provisions there were no supporting impact studies and comments and observations made by the Economic and Social Council and the International Labour Organization (ILO 2011) were not taken into consideration. Major changes involve the following:

– *Abolition of the national collective agreement* (as reference point for collective bargaining at all levels). This collective agreement used to stipulate minimum rights and obligation applicable to all employees in Romania, irrespective of whether lower levels were covered by collective agreements and among other things laid down the terms of reference regarding minimum wage, length of working time and working conditions.

– Collective agreements, which previously were negotiated for each branch of the national economy (with 32 of those listed in the national agreement), have been replaced by *sectoral collective agreements*. Furthermore, previous branch collective agreements were applicable to all workers and all businesses in the branch, regardless of whether there were other agreements at company or group level. The new 'sectoral' agreements, however, will apply only to companies that are members of employers' organisations that have signed the sectoral agreement and can only be enforced at sectoral level if more than 50 per cent of all employees in the sector work for companies that are members of the signatory employers' organisations.

– Collective bargaining previously took place annually and the national agreement was in principle made for four years; now there is no longer a compulsory agenda for negotiations. Only the minimum (12 months) and maximum (24 months) duration of a collective agreement is fixed.

– *Representativeness criteria*. The new law sets out such criteria for social partners at all levels (company, groups of companies, sectoral and national). Whereas previously, 15 persons working in the same branch or profession, albeit in different companies, were required to set up a trade union, 15 workers in the same company are now required. However, 90 per cent of Romanian companies have only nine workers or fewer.

National representativeness criteria are still required because only nationally representative social partners may appoint representatives to the National Tripartite Council for Social Dialogue (CNTDS), the CES and social dialogue committees for central and county public administration bodies.

– Furthermore, a trade union is representative and allowed to negotiate a single-employer collective agreement only if at least half plus one of the company's workers are affiliated to it (compared to one-third under the previous legislation). This also has as a consequence that only one trade union can be representative in one company compared to up to three under the old legislation. When there are no representative unions in a company because there are not enough members, negotiations can be carried out by the federation to which the existing union belongs. If there is no union at all, negotiations will be carried out by employee representatives only.

– As for the *Social and Economic Council*, this will become a public institution of national interest charged with creating the conditions for a civic dialogue between employers' associations, trade unions and structured entities of civil society and government, thus leaving its place in the CES to the latter entities. A tripartite national social dialogue committee, composed of union and employers' representatives, as well as representatives of the financial and banking industry, will be set up and coordinated by the Prime Minister, but will act only in an advisory capacity.

– Finally, a mediation and arbitration body will be set up to handle industrial conflicts.

Apparently, mainly due to the problems encountered by the social partners in acquiring recognition at sectoral level, collective bargaining has come to a standstill in Romania. In September 2011, Romania's five trade union confederations – Cartel Alfa, BNS, CLSR-FRatia, the Democratic Trade Union Confederation of Romania and the Meridian National Trade Union Confederation – and some employers' organisations (Conpirom, the National Union of Romanian Employers and UGIR-1903) joined forces and signed a memorandum of understanding (MoU) calling on the centre-right government to revive social dialogue as soon as possible in order, notably, to discuss concrete measures to prevent a possible new economic crisis. Both employers and unions apparently think that the text conflicts with ILO conventions and the principles promoted by the various EU treaties and have therefore – supported by the ITUC and ETUC – requested the assistance of ILO experts.

At the end of October 2011, Patrorom – an umbrella for four employers' associations: Conpirom, UGIT-1903, UGIR-1903 (Romanian employers) and the National Union of Romanian Employers – signed a social agreement with five union confederations (Cartel Alfa, BNS, CLSR-FRATIA, the Confederation of Democratic Unions of Romania and the Meridian National Union Confederation). This agreement lays down the foundations for bilateral cooperation, whereby they recognise each other in their respective capacity as social partner. The agreement also lays down rules for the tripartite social dialogue. Thus, the text provides that collective agreements will be negotiated outside the framework of tripartite dialogue provided for in the Social Dialogue Act and will apply to all businesses whose representatives signed this agreement. The signatory employers and unions have also decided to leave the Social and Economic Council until the government replaces its representatives with civil society representatives, as provided for in the new Social Dialogue Act.

At the beginning of 2012, the government and the social partners had still not found a compromise solution on the number and description of sectors. This dispute about numbers – the government initially wanted only 25 sectors

with a minimum of 70,000 workers in each sector, whereas the social partners aimed at a list of 41 sectors – is seriously delaying and even blocking wage negotiations in the different sectors. After several rounds of negotiations both sides wanted to compromise on the figures (government 28; social partners around 35). It is unclear what kind of solution has been reached in the meantime (time of writing mid-January 2013).

With the first proposals launched in December 2010, *reform of the Labour Code* was finally adopted via Law 40/2011 of 1 May 2011. The new Law on Social Dialogue was also adopted by the government, although without involving the Parliament and was unsuccessfully contested before the Constitutional Court. The main bottlenecks in the negotiations were the prolongation of probationary periods, the more flexible use of fixed-term contracts and (the abolition of national) collective agreements.

According to the new Code, the *probationary period* is now longer: for workers it has been extended from 30 to 90 days, and for executive positions from 90 to 120 days. The provision that, for unskilled workers, the probationary period was exceptional and could not exceed five working days has been abolished. At the same time, the first six months, at most, of graduates entering employment and which was previously considered as a probationary period, is under the new law considered as a period of training. Employers will also be allowed to try three candidates for the same position and can multiply probationary periods for the same job for up to 12 months. It should also be noted that under Romanian law a probationary period may be terminated without notice, at any time and without a reason.

Furthermore, the *maximum length of fixed-term contracts* has been increased from 24 to 36 months and the only restriction regarding extension is that no more than three successive fixed-term contracts can be concluded, with the first for a maximum of 36 months and the following ones for a maximum of 12 months each (previously, only three successive contracts could be concluded, not exceeding 24 months). Also of note is that, in its Letter of Intent of 2 December 2011 to the IMF backing up its request for financial support, the Romanian government announced –with some pride- that as a result of the new Labour Code which came into force on 30 April 2011, more than one million new contracts had been signed, 33 percent of which were fixed-term contracts! (Romanian Government 2011)

As for *temporary agency work*, the maximum period has been set at 24 months, but with a possibility to extend it to 36 months, and there are hardly any limits on the reasons for using agency workers, except in cases where the employer wants to replace existing workers or to substitute workers on strike. The new Labour Code also foresees that agency workers have the right to remuneration equal at least to the legal minimum wage and thus not necessarily to the same wage as a permanent worker in the user enterprise performing the same or a similar job.

In case of *reduced activity*, the employer has the possibility, after consultation with the trade unions or workers' representatives, to unilaterally reduce the working week from five to four days and to reduce wages proportionately. Also in relation to working time, the maximum weekly *working time* remains 48 hours but the new Code foresees an increase in the reference period from three to four months and in the near future even to six or even 12 months. In addition, the period of time off as compensation for overtime work has been increased from 30 to 60 days and it becomes possible to grant free days in advance in order to compensate for future overtime. It is also still possible for one person to conclude two employment contracts with the same employer, which could lead to situations in which the rules on limiting overtime are bypassed.

Changes were also made to *dismissal protection*, in particular, the abrogation of a number of protective norms for union leaders, including the ban on dismissing them within two years of the end of their mandate or during their mandate for reasons not specific to the employee in question. In case of collective redundancies, employers will be able to give priority to performance criteria, not social criteria as was previously the case. The rules on collective redundancies also no longer apply to public sector employees. The regulation under which an employer undertaking collective redundancies cannot re-hire for the jobs of the dismissed workers for a period of nine months has also been eliminated. When employees are notified that business is to be resumed, they can agree in writing to resume working within no more than five days compared to 10 days under the previous Labour Code. Moreover, the period of notice has been increased from a maximum of fifteen days to a maximum of twenty days for all workers and from a maximum of thirty days to a maximum of 45 days for executive positions.

As for the regulations on written contracts between employers and employees, it is now stipulated that only minimum wages can be negotiated through collective agreements, while individual wages can be established only through individual negotiations. Trade unions also lose rights in relation to negotiating work regulations as these regulations are no longer dependent on union approval but only "on consultation" with them.

On 5 January 2012, Governmental Decision No. 1256/2011 on the operational requirements and the authorization procedure for temporary work agencies was published in the Romanian Official Gazette. The main objective of the amendments made via this decision to the Labour Code is to remove restrictions on the hiring of temporary workers. Up to the amendment, a temporary employment contract could only be concluded: a) To replace an employee whose employment contract was suspended, except an employee who is on strike and b) to perform seasonal work or to perform specialised or occasional work. Furthermore the Governmental Decision explicitly lays down the equal treatment principle, stipulating that: "the basic requirements for work and employment regarding the duration of working time, overtime, daily and weekly rest periods, night work, holidays and salaries applicable to temporary workers during the assignment should at least reach the level of those applicable to regular employees as if they had been directly recruited by the respective user undertaking to perform the same job. All basic requirements and employment requirements stipulated by laws, internal regulations, the collective labour contract applicable in the field, as well as any other specific regulations applicable to the user shall be applicable directly to the temporary workers during the temporary work assignment. The new Governmental Decision also stipulates that the user of the temporary employee shall: a) inform temporary employees about available vacancies, ensuring the same opportunity to find permanent employment as other workers in the given undertaking by posting a notice in a place visible to all employees; b) ensure access of temporary employees to professional training organised for the user undertaking's workers; c) provide employee representatives with information about the use of temporary employees as part of its information obligation; d) provide temporary employees with the same rights as those of workers directly employed by the undertaking in compliance with the law, internal regulations or the collective labour contract applicable to the user undertaking, as well as any other specific regulations applicable to the user undertaking; and e) provide accurate and genuine information about the use of temporary employees when the unions or employee representatives, acting under the law, request a report about the employees hired. Temporary workers shall enjoy access to the facilities of the temporary work agency in terms of professional training and the legal provisions in childcare laws, and the number of temporary employees shall be included when calculating the minimum threshold for the number of employee representatives in the user company.

After almost a month of daily protests and demonstrations, Prime Minister Emil Boc was replaced by Mihai Razvan Ungureanu on 6 February 2012. The ongoing protests were mainly against the austerity measures in force for the past two years, accepted as part of the agreement between Romania and the IMF in 2009. The new government programme's main objective is to save existing jobs and boost job creation. The measures include the payment of subsidies to employers who create jobs, but also incentives to get parents to return to work, notably by giving subsidies to businesses recruiting women with children under the age of 6 or developing 'alternative' forms of labour, such as teleworking or part-time work. The government also wants to develop national social dialogue to boost employment.

On 21 March 2012, a new Labour Inspection Law (No. 51 of 19 March 2012) was published in the Romanian Official Gazette. Under it, the Labour Inspectorate becomes more focused on controlling how a workforce is being used - to identify cases of undeclared work. It also stipulates the competences of the Labour Inspector in identifying individuals working illegally at work places or other areas subject to control. The Labour Inspectorate's tasks have been extended to cover occupational health and safety. The control and sanction function of the regional Labour Inspectorates have also been extended. In addition to the right to administer civil and administrative sanctions and to notify the criminal investigation bodies when finding evidence of the law having been violated, the Labour Inspector is now also entitled to request the temporary or permanent termination of a given unit's license. Furthermore, the new law gives the Labour Inspector the right to inspect economic agents without prior notice and also provides a complete set of measures for the Inspector's protection when denied access or subjected to physical abuse. New fines applicable in the case of preventing the Labour Inspector from performing his control functions have been introduced, including cases in which the person encountered at the workplace refuses to identify himself or to provide information about the case under investigation. The law provides that the Labour Inspector enjoys special protection against threats, violence or any other acts that jeopardise him, his family and/or his assets, and he may be entitled to damages in the case of being subjected to prejudice as a result of the work. Moreover, a Consultative Tripartite Committee has been created at Labour Inspectorate level to promote social dialogue. It is made up of representatives appointed by the Inspectorate and the social partners.

In May, the new government initiated and published in the Romanian Official Gazette a bill to modify the contested Act on Social Dialogue No. 62/2011. The most important amendments proposed included:

- greater protection for trade union leaders (their dismissal is to be prohibited during their mandate and 2 years after their mandate ends);
- simplified procedure for trade unions to acquire legal personality;
- recognition of the right of association of freelancers and day labourers in trade unions;
- an employer obligation to provide unions with working premises;
- restoration of obligatory annual collective negotiations for wages and working conditions;
- an employer obligation to provide employees with additional information during collective negotiations;
- restoration of the possibility of reversing the *erga omnes* opposability of the provisions of the collective labour agreement, at the level of unit, group of units, and sector;

- the right of the representative unions at national and sector levels to negotiate collective labour agreements at lower levels where they have affiliated unions;
- reduced the numbers of employee representatives (no longer appointed in units without union membership);
- abolishment of the conciliation procedure prior to strikes;
- extension of the possibility to initiate collective disputes – and subsequently strikes (included for the first time in Romanian legislation) -, when the provisions of a collective agreement are violated. Collective disputes can be initiated if at least 20% of employees have collectively not been granted the individual rights stipulated in applicable collective or individual agreements.

It is unclear what the current status of these proposed amendments is; what is however clear is that another draft law - the Draft Emergency Ordinance to Amend law 62/2011 and in particular a version of late August 2012 - came into the hands of the European Commission and IMF. The Romanian government indeed wanted to amend the contested law to bring it more in line with ILO Convention N° 98 as repeatedly demanded by the ILO. However, in a document entitled "Joint Comments of European Commission and IMF Staff on the Draft Emergency Ordinance to Amend Law 62/2011 on Social Dialogue (12 October 2012)", the Commission and the IMF "strongly urge the authorities to limit any amendments to Law 62/2011 to revisions necessary to bring the law into compliance with core ILO conventions" (European Commission and IMF 2012). What this means in concrete terms becomes clear from the following: *"Comments on collective bargaining critical to ensure compliance with the programme [i.e. the lending programme between the Commission, IMF and the government and whereby negotiations on a new lending programme were envisaged to start beginning of 2013]:*

- ***National collective agreements:*** *The re-introduction of national collective labor agreements with automatic erga-omnes extension risks resulting in a misalignment of wages and productivity developments across firms, sectors and occupations. We strongly urge the authorities to ensure that national collective agreements do not contain elements related to wages and/or reverse the progress achieved with the Labor Code adopted in May 2011 (e.g. on working time regulation).*
- ***Sectoral collective agreements:*** *The draft legislation repeals the existing numerical criteria for the registration of collective labor contracts and replaces them with numerical criteria for their extension (Art. 133). We strongly urge the authorities to ensure that the threshold of 50% of the total number of employees in the sector refers either to employers' associations only or to both trade unions and employers' associations.*
- ***Collective wage bargaining in the public sector:*** *If changes are made to Chapter 4 regulating collective bargaining in the public sector, appropriate safeguards need to ensure that public sector wage developments are aligned with productivity and budgetary prudence.*
- ***Annual obligatory bargaining:*** *The obligation to conduct collective bargaining annually, as well as the pre-defined subject of bargaining, leads to unnecessary transaction costs, especially for small firms (Art. 129). We strongly urge the authorities to abolish the obligation to bargain annually and replace it with an obligation to start collective bargaining before the expiration of collective labor agreements."*

The Commission and IMF were furthermore *"concerned about loosening procedures in the existing legislation that are intended to avoid the proliferation of strikes" and "recommend to limit the number of elected and appointed representatives to be protected to an appropriate number and timeframe."*

This "behind-the-scenes pressure to halt the restoration of core labour rights" was strongly condemned by the ITUC. (ITUC (2012))

In July 2012, Act N° 115/2012 brought modifications to the mediation system. Their main aim is to promote mediation and ease overburdened courts. An obligation has been introduced to inform parties about the usefulness of these alternative means to resolve conflicts, and the parties and/or the interested party must prove that they took part in the briefing on the advantages of mediation and/or the termination of individual labour contracts. In addition, Act 76/2012 (published in the Official Gazette of 30 May 2012) brought changes to the Civil Procedure Code, with a change in the jurisdiction for labour matters. Under the previous Code, labour conflicts were to initially be brought before the jurisdictional courts [Tribunale]. The new Code removes this stipulation and now magistrate courts [Judecatorii] (inferior courts of initial and general jurisdiction) are responsible for judging all cases not falling under the jurisdiction of other courts. No other law deals with the competence of courts on labour issues. On the contrary, the specific labour laws (the Labour Code and Law on Social Dialogue) refer to the Civil Procedure Code. It is feared that this change will create certain difficulties, as the magistrate courts [Judecatorii] do not have specialised judges and have had no previous jurisdiction over labour conflicts. The competence of jurisdictional courts [Tribunale] continues to remain restricted to actions related to the termination of strikes. The new provisions were intended to come into force on 1 September 2012 but, as their impact was indeed underestimated and the reform was not sufficiently prepared, they are now envisaged to enter into force on 1 February 2013.

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