

## Chapter 24

# Romania: from legal support to frontal assault

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Post-socialist economic and political developments have produced a special type of neoliberal society in Romania, characterised by weak state institutions, high centralisation and collective bargaining coverage and relatively high trade union mobilisation power (Bohle and Greskovits 2012). Before the 2008 recession, relatively strong unions had the upper hand in influencing Romanian governments to support a protectionist labour legislation. Unlike most countries in Central and Eastern Europe (CEE), Romania kept its pre-1989 Labour Code for quite some time (until 2003), with some minor revisions that removed the unions' political obligations, such as socialist education. Post-1989 legislation entitled the social partners to bargain collectively and gave unions the right to strike (Hayter *et al.* 2013). Collective agreements could be concluded at national, industry (or other sub-divisions) and company levels. Comparable only to Slovenia, the *erga omnes* principle ensured an automatic extension of collective agreements to cover all employees in the bargaining unit at cross-industry, industrial and company levels. The presence of the favourability principle enshrined into law also meant, however, that lower-level collective agreements could only *improve* the provisions for employees set at higher levels (Trif 2016). Thus statutory regulations ensured that all employees were covered, at least by the provisions of cross-industry agreements (Table 24.1).

During the 2008 crisis, Prime Minister's Boc's centre-right government deregulated the labour market, weakening both individual and collective employee rights. Amendments to the Labour Code (Law 40/2011) made it easier for employers to dismiss employees, including shop stewards, as well as to increase workloads unilaterally and use flexible working time arrangements. The adoption of the 'so-called' Social Dialogue Act (Legea dialogului social 62/2011, LDS) diminished fundamental collective rights, such as the right to organise; for example, it is no longer possible to unionise workers in companies with fewer than 15 employees, to strike or to bargain collectively (Trif 2013). By prohibiting cross-industry agreements in tandem with abolishing automatic extension of industry agreements and making it far more difficult for unions to negotiate company level agreements, in particular by raising the representativeness threshold from 33 per cent to more than 50 per cent, the LDS caused a massive decline in bargaining coverage and union density (Table 24.1). This frontal assault on multi-employer bargaining arrangements led to a transformation of the regulatory framework from a statutory system that supported collective bargaining to a so-called 'voluntary' system that made it almost impossible to negotiate new cross-industry and industrial agreements after 2011 (Stoiciu 2016).

Table 24.1 Principal characteristics of collective bargaining in Romania

Key features	2000	2016
Actors who negotiated collective agreements	Trade unions Employers' associations Public and private employers	Trade unions and/or workers' representatives at company level Employers' associations Public and private employers
Importance of bargaining levels	Company bargaining slightly more important than industrial and cross-industry bargaining	Company bargaining the most important Cross-industry bargaining prohibited
Favourability principle/derogation possibilities	Favourability principle No derogations allowed from the minimum standards set by cross-industry and industrial agreements	Favourability principle solely at company level
Collective bargaining coverage (%)	100	35
Extension mechanism (or functional equivalent)	<i>Erga omnes</i> principle at - cross-industry - industrial and - company levels	<i>Erga omnes</i> principle solely at company level Extension possible at industrial level <i>de jure</i> , but <i>de facto</i> no extensions after 2011
Trade union density (%)	35	20
Employers' association rate (%)	80	Circa 60

Source: Trif (2016) and Appendix A1.

This chapter argues that Romania represents an extreme case of disorganised decentralisation of collective bargaining following the 2008 recession. It shows that developments in bargaining were path-dependent prior to 2008, while the path-departure was triggered by shifting statutory rights from supporting to hindering bargaining arrangements in the wake of the post-2008 crisis. It provides examples from two highly unionised industries, namely public education and metal, but also from the barely unionised retail, to illustrate within-country variations. The selected industries have been affected differently by the recession. The increase in international demand for relatively cheap automobiles since 2008 has boosted the labour force and turnover in this industry. In 2016, the value added to GDP by services, including education and retail, was 63.3 per cent, that of industry 32.4 per cent, 13 per cent of which is due to the automobile industry, and that of agriculture 4.3 per cent (World Bank 2018). Government 'austerity' measures included wage cuts and some job losses in education (Guga *et al.* 2018). The decrease in domestic demand in retail led to a 9 per cent decline in the labour force until 2014, after which it increased again because of growing domestic consumption. Apart from decentralisation, the collapse of cross-industry and industrial bargaining almost quadrupled the number of workers on the minimum wage from 2011 to 2016 (Guga *et al.* 2018: 47), as employers were no longer obliged to implement wage rates set at higher levels. Low wages, combined with the opportunity to work in other Member States after joining the European Union (EU) in 2007, have led to massive emigration since 2008 (Stan and Erne 2014). This has kept the unemployment rate fairly low, while leading to labour shortages in most industries, including retail (Guga *et al.* 2018).

## Industrial relations context and principal actors

The path-dependent transition from socialism to a market economy in the 1990s resulted in a large degree of continuity in labour market regulation. Romania had one of the most centralised planned economies and its transition to a market economy started only after the sudden collapse of the communist regime in 1989 (Trif 2008). Consequently, there was neither a credible alternative political elite to steer the country towards democracy nor experienced domestic entrepreneurs and managers to restructure state-owned enterprises. These initial circumstances contributed to a slow transition to a market economy by fairly weak governments that sought the unions' support in exchange for a legal framework relatively favourable to workers (Ban 2016). In order to harmonise Labour Code provisions with the EU social *acquis* during the EU accession process in the mid-2000s, the restrictions on concluding fixed-term employment contracts were relaxed in countries that had protectionist labour legislation, such as Romania and Slovenia (Trif 2008). When foreign investors tried to remove the legal obligation on employers to bargain with unions or employee representatives during the 2005 Labour Code revision, however, Romanian unions managed to preserve collective bargaining institutions with the support of the European Trade Union Confederation (ETUC) and the International Labour Organization (ILO).

The unions' success was short-lived, as foreign investors, who bought a large number of large state-owned companies in the 2000s after the privatisation process was simplified and it became certain that Romania would join the EU, triggered the dismantling of the collective bargaining system during the recent crisis (Trif 2013). Apart from lobbying a sympathetic centre-right government, the foreign investors' quest for a 'flexible' labour market was endorsed by the 'Troika' comprising the European Commission (EC), the International Monetary Fund (IMF) and the European Central Bank (Schulten and Müller 2013), from which Romania borrowed approximately €20 billion in 2010 to deal with the budget deficit. Although labour market regulation was not considered a cause of the crisis in Romania (Ban 2016), the demand for labour market flexibilisation was one of the conditions for getting financial assistance from the Troika. Thus the key actors that affected the legal framework for collective bargaining have been the trade unions and external actors rather than domestic employers.

Most employers' associations were established by managers of state-owned enterprises to protect their interests vis-à-vis the unions and the state in the early 1990s. After privatisation, in the main, domestic owners remained affiliated to employers' associations, which generally continued to be staffed by former senior managers of state-owned enterprises. Nevertheless, as individual employers had sufficient power to negotiate terms and conditions of employment at the company level, they gave a limited mandate to their associations to bargain collectively at higher levels. Furthermore, the fragmentation of employers' associations increased after 2000; the number of nationally representative employers' associations<sup>1</sup> grew from five in 2001 to 11 in 2006 (Trif and Mocanu 2006: 25). Their number increased further to 13 in 2010, but only

1. Their members must employ at least seven per cent of the total labour force to be representative at the national level, while members of federations must employ at least 10 per cent of the industry labour force to be representative at industry level.

six of them were still representative at the national level in 2015 (Stoiciu 2016). These are as follows: the General Union of Romanian Industrialists 1903 (Uniunea Generală a Industriaşilor din România 1903, UGIR 1903), the National Council of Private Small and Medium-sized Enterprises (Consiliul Naţional al Întreprinderilor Private Mici şi Mijlocii din România, CNIPMMR), the National Confederation of Romanian Employers (Confederaţia Naţională a Patronatului Român, CNPR), the Employers' Confederation of Romanian Industry (Confederaţia Patronală din Industria României, CONPIROM), the Romanian National Employers (Patronatul Naţional Român, PNR) and the Concordia Employers' Confederation (Confederaţia Patronală Concordia, Concordia). Members of the first three organisations cover over 300,000 employees and those of the last three 230,000 to 260,000 employees. Despite a relatively high density (60 to 80 per cent), Romanian employers' associations were considered amongst the weakest in the CEE countries (Trif and Mocanu 2006: 25), primarily due to the weak mandate from their members. The inherited legacies, particularly the lack of employers' associations during the communist era and the slow privatisation process, have made the development of the Romanian employers' associations far more difficult than that of the unions.

In contrast, there have been fewer structural changes among the union confederations. Five union confederations have operated in Romania since the 1990s: the National Trade Union Confederation Cartel Alfa (Confederaţia Naţională Sindicală Cartel Alfa, CNS Cartel Alfa), the National Confederation of Free Trade Unions from Romania - Frăţia (Confederaţia Naţională a Sindicatelor Libere din România – Frăţia, CNSRL- Fratia), the National Trade Union Bloc (Blocul Naţional Sindical, BNS), the Confederation of Democratic Trade Unions in Romania (Confederaţia Sindicatelor Democratice din România, CSDR) and the Meridian National Trade Union Confederation (Confederaţia Sindicală Naţională Meridian, CSN Meridian) (Trif 2013). Their size is roughly similar, varying between 250,000 to 320,000 (Stoiciu 2016: 18), which is above the five per cent of the total labour force threshold required to be representative at national level. Union federations need to have at least seven per cent density to be the representative at the industry level. Although the adoption of the LDS radically altered only the representativeness threshold for company level unions, from a third to over 50 per cent in 2011, it reduced the role and influence of both unions and employers' associations in collective bargaining, as will be discussed in the following sections.

## **Extent of bargaining**

The extent of collective bargaining refers to the proportion of workers in a bargaining unit covered by collective agreements. It is contingent primarily on the statutory provisions on extension mechanisms and the voluntary capacity of unions and employers to conclude collective agreements. After 45 years during which the party-state determined virtually all aspects of Romanian employment relations, a pluralist legislative framework was adopted in the 1990s that guaranteed freedom of association, the right to bargain collectively and the right to strike (Trif 2008). Nevertheless, heavy statutory regulation of collective bargaining has persisted in post-1989 Romania to a higher degree than in other CEE countries.

Until 2011, the process of collective bargaining was primarily regulated by the Law on Collective Labour Agreements (*Legea privind contractul colectiv de muncă 130/1996*), which stipulated that social partners can negotiate at national or cross-industry, industrial or other sub-divisions, and company levels. Similar to pre-1989, the law allowed only a single collective agreement to be concluded by representative unions and employers' associations or individual employers at company level, which had to cover all employees, regardless of their union membership in each bargaining unit. This *erga omnes* statutory extension of collective agreements resulted in virtually 100 per cent coverage (Table 24.1). After 2011, the legal framework provided external legitimacy and support for the social partners. As regards employers, it encouraged them to affiliate to representative associations, in order to have a say in the negotiations of the cross-industry and industrial collective agreements. Representative employers' associations, as well as union confederations could also influence procedural aspects of collective bargaining, as all draft laws on labour issues had to be approved by the Economic and Social Council (*Consiliul Economic și Social*), the national tripartite body. Nevertheless, the density of employers' associations declined from 80 per cent in 2001 to 60 per cent in 2007. Considering that foreign investors are more likely than domestic employers to opt out of employers' associations, this decline could be related to the substantial increase in foreign direct investment in the early 2000s (Trif 2008).

Similar to employers' associations, the unions also relied on the external legitimacy provided by a favourable legal framework to ensure high collective bargaining coverage prior to 2011. Apart from the *erga omnes* and favourability statutory provisions, the Law on Trade Unions (*Legea sindicatelor 54/2003*) allowed federations to become representative at the industrial level simply by being affiliated to a representative confederation at the national level. Thus even without meeting the representativeness criteria concerning membership in that particular industry, unions could acquire the capacity to negotiate. For instance, the Federation of Commerce Unions (*Federația Sindicatelor din Comerț, FSC*) concluded an industrial agreement in 2010, covering all employees in retail, although it had less than one per cent union density (Trif and Stoiciu 2017). The FSC gained its representativeness from being affiliated to a representative confederation, namely CNS Cartel Alfa. Similarly, company-level unions affiliated to representative industrial federations were eligible to negotiate a collective agreement for all employees, regardless of their union membership. Union density remained relatively stable between 2000 and 2008 at about 35 per cent and was higher than in most CEE countries. In a context in which company-level unions could be deemed representative by being affiliated to a representative federation, while federations could acquire representativeness by being affiliated to a representative confederation, it was essential for the union movement to ensure that confederations met the representativeness criteria before 2010.

By contrast, union density at industrial and company levels began to play a crucial role in ensuring their eligibility to negotiate after the slashing of collective employment rights by means of the LDS in 2011 (Trif 2013). First, the LDS forbids collective bargaining across industries. Before 2011, the five union confederations and their employer counterparts negotiated a national collective agreement annually, stipulating minimum rights and obligations for the entire labour force. The lack of such cross-

industry agreements led to a substantial decline in collective bargaining coverage from 98 per cent in 2010 to 35 per cent in 2011. Surprisingly, although the provision of the LDS that outlaws cross-industry collective bargaining violates ILO Convention No. 98, it was strongly supported by the EC and the IMF (2012:1). Second, the LDS made it very difficult to negotiate industrial agreements. Previously, social partners that fulfilled the representativeness criteria or were affiliated to a representative confederation could conclude agreements covering all employees and employers in a specific industry. In 2011, the social partners agreed that 32 industries were eligible for collective bargaining, of which 20 had collective agreements. The LDS redefined 29 broader industries, based on the NACE classification, eligible for collective bargaining. Social partners had to re-register with local courts and prove that they were representative for the redefined industries. While most union federations regained their representative status, only seven employers' federations had re-applied by the end of 2012 (Hayter *et al.* 2013: 56–59). Some employers interpreted the LDS as an opportunity to exit their associations, as the new industry agreements apply only to employers that are members of associations that signed the collective agreement, unless they cover more than 50 per cent of the labour force in the industry (Trif 2016). The legal changes led to a major decline in bargaining coverage, with the number of industrial agreements falling from 20 in 2008 to seven in 2014 (Ministry of Labour, Family and Social Protection 2014). Formally, public sector employees, such those working in education, continued to be covered by industrial collective agreements after 2011. In 2009, however, the government had already disregarded the provisions of existing collective agreements by unilaterally changing both procedures for setting wages and substantive provisions (Stoiciu 2016). No new industrial collective agreements were concluded in the private sector between 2011 and 2015.

Summing up, the post-1989 legal framework ensured high collective bargaining coverage until the 2008 recession in Romania. In contrast, the government's frontal attack on collective employment rights after 2008, including the prohibition of cross-industry collective bargaining and the removal of the *erga omnes* extension mechanism at the industrial level, led to a steep decline in the extent of bargaining (Appendix A1.A). The statutory extension mechanism is still in place at the company level, where generally the actual terms and conditions of employment are set (Trif 2016). This means that all employees are covered by company-level collective agreements, regardless of whether they are union members. Nevertheless, the LDS has reduced the capacity of unions to enter into negotiations at the company level, at which new provisions on union recognition and representativeness apply. These provisions will be discussed in the next section.

## **Security of bargaining**

Security of bargaining is related to union security. This depends both on the statutory provisions on fundamental union rights, as well as on the voluntary support offered by employers to unions in the recruitment and retention of members. Similar to other CEE countries, the voluntary element of bargaining security in Romania has historically been weak. As employers' attitudes towards collective bargaining have always been

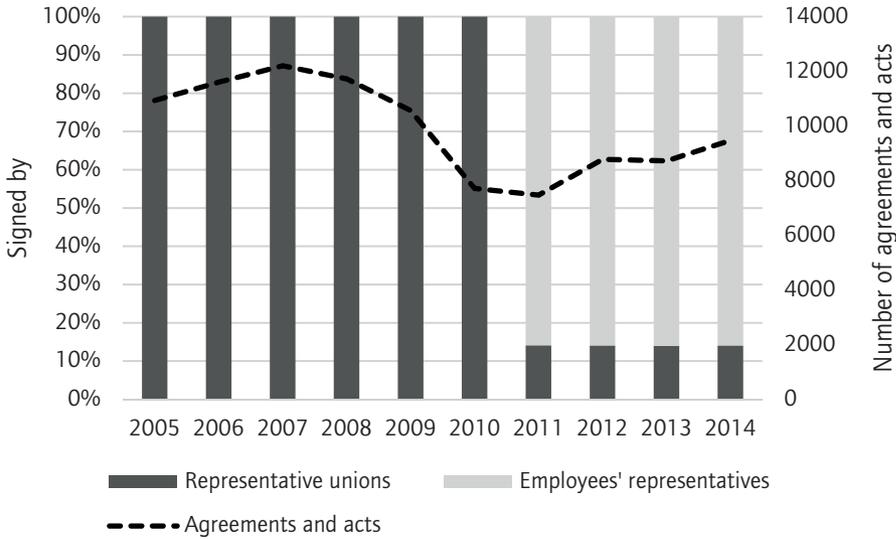
contingent on their own ideology and experience with unions, no drastic changes have occurred since the 2000s. The statutory framework shifted radically, from being rather supportive before 2011 to being obstructive thereafter (Trif 2013). The LDS has undermined basic union rights in relation to the freedom of association, recognition for collective bargaining purposes and the right to strike (Trif 2016).

First, the new regulations make it virtually impossible for unions to conclude any collective agreements that would cover workers in small companies. In a context in which cross-industry agreements are no longer negotiable, and industrial agreements are binding mainly for large employers, which are more likely to join an association, small companies have been automatically excluded from the remit of collective bargaining. This is because the LDS requires a minimum of 15 workers from the same company to form a union, while before 2011 15 employees working in the same profession could form a union. Company-level unions also need over 50 per cent density to be entitled to bargain. Hence, it is no longer possible to unionise workers in companies with fewer than 15 employees, which accounted for over 90 per cent of companies in 2012 (Trif 2016). Although those workers were rarely unionised before 2011, they were nevertheless covered by the provisions of cross-industry and industrial agreements.

Second, the LDS makes it far more difficult for unions to negotiate agreements at company level due to modifications of the representativeness criteria (Trif 2016). Many unions lost their right to bargain, as the new law stipulates that they must represent over half of the labour force, compared with one-third under the previous law. If there are no representative unions, elected employee representatives negotiate collective agreements, subject to the favourability principle. In companies in which union density is below 50 per cent, employees may be represented in collective bargaining by the representative union federation to which the company level union is affiliated (Stoiciu 2016). Before 2015, federations could negotiate at company level alongside elected employee representatives, who were the only ones entitled to sign agreements. Between 2011 and 2015, 86 per cent of company collective agreements were signed by elected employee representatives, with or without representatives of union federations (Figure 24.1), while previously company-level unions had signed all agreements. Unions that lost their representative status continued to have a role by supporting employee representatives. Union officials reported that the negotiation process is more complex, however, because employers have more control over employee representatives.

Third, the laws adopted in 2011 hinder employees' rights to organise strikes in three, interrelated ways (Trif 2013). First, the LDS obliges parties in conflict to seek conciliation before a strike could be called, while before 2011 the use of alternative dispute resolution mechanism was optional. Second, the LDS forbids unions to organise industrial action if their demands require a legal solution to solve the conflict. In addition, the LDS introduced a peace-clause removing the possibility to call a strike on the duration of a collective agreement, even if its provisions are not implemented. Third, workers involved in industrial action lose all their employment rights, except their health-care insurance, while previously they lost only their wages. Furthermore, company-level union officials used to be protected against dismissal for two years after they completed their mandate under the old laws, while under the new laws they are no longer protected when their

Figure 24.1 Company collective agreements (and additional acts), 2005–2014



Source: Guga and Constantin (2015: 131).

mandate ends. The 2011 legal changes, as well as the intimidation of union leaders and the lack of success of the 2009 and 2010 protests against the ‘austerity’ measures, led to a major decline in industrial action in Romania since 2011 (Trif 2013).

Romania had the highest strike activity in the region before 2008. During the 1990s, the number of days not worked per thousand workers per annum was approximately twice the Eastern Europe average, although it represented less than two-thirds of the Western Europe average (Appendix A1.I). Between 2000 and 2008, Romanian unions continued to be among the most militant in the region, but the number of protests decreased considerably. The available data indicate that the number of days not worked per thousand employees per annum more than halved in 2000–2008 compared with 1995–1999 (Vandaele 2011: 11). During the 2000s, more than one-third of the days not worked due to strikes were in education (37 per cent), followed closely by manufacturing. Almost two-thirds of labour disputes between 2003 and 2008 were triggered by wage claims, while a quarter were triggered by claims linked to restructuring, collective bargaining and social rights (Hayter *et al.* 2013: 77).

The European Commission and the IMF (2012) opposed the proposed legal changes by the centre-left government in 2012 concerning strengthening the security of collective bargaining (Trif 2016). Specifically, they resisted changes that, although making industrial action easier, sought a further reduction in unions’ influence, for example, through the restriction of legal protection for shop stewards. By contrast, they welcomed the proposed changes in relation to both the representativeness criteria of local unions, lowering the threshold from over 50 per cent to 35 per cent, and the

number of members required to form a union, reduced from 15 to five. In 2013, ILO representatives held discussions with the centre-left government and Troika officials about the need to amend the current labour laws to comply with the ILO conventions (Hayter *et al.* 2013). No significant changes were made to the LDS until 2017, however.

## Levels of bargaining

The level of collective bargaining refers to whether bargaining takes place at the company or workplace, industrial, subindustrial or cross-industry levels. Before 2011, Romania had a multi-layered collective bargaining system based on the favourability principle, meaning that lower-level agreements could not impose worse employees' terms and conditions than those set at higher levels. Until 2011, the starting point was the national collective agreement negotiated by the representative unions and employers' confederations. The second layer consisted of industrial agreements, negotiated by the representative unions and employers' federations that covered 60 per cent of all employees in industries eligible for collective bargaining (Trif 2013). It was also possible to have other forms of multi-employer bargaining involving regions or groups of companies, but these agreements were binding only for the signatory parties. In contrast, national, industrial and company-level collective agreements concluded by representative parties covered all employers and employees in their respective bargaining unit before 2011. The third layer was the company level, at which the actual terms and conditions of employment were established, as national and industrial agreements set only minimum standards, which local actors were allowed to improve (Trif 2008). There were 11,729 company collective agreements in 2008, covering most large unionised companies (Guga and Constantin 2015: 131–32). Notwithstanding pressures on the government from foreign investors to reduce collective employment rights during the EU accession process, unions managed to preserve multi-layered bargaining arrangements, which ensured both vertical coordination, through the favourability principle, and horizontal coordination, through the *erga omnes* one. Nevertheless, the foreign investors' quest for a flexible labour market came to fruition in 2011.

Despite opposition from the unions and the largest employers' associations, a radical decentralisation of collective bargaining was pursued by the government unilaterally during the recession (Ciutacu 2012). In 2009, the five national union confederations set up a crisis committee to protest against the 'austerity' measures. They filed a complaint with the ILO in 2010, claiming that the government was breaching union rights and freedoms. The unions also suggested over 400 measures to deal with the crisis. Their proposals, however, were largely ignored. As a result, the unions withdrew from most tripartite bodies. Somewhat surprisingly, the four largest employers' organisations, out of 13 confederations, covering almost two-thirds of the active labour force, joined the five union confederations in their protest against the LDS by withdrawing from the national tripartite institutions in 2011. They were against the LDS primarily because its provisions brought an end to their main role as employers' representatives in national collective bargaining (Trif 2016). The cross-industry agreements also maintained social peace and set minimum labour standards to ensure fair competition between their

members. Finally, the unions organised a series of protests in 2010, demanding that the government guarantee implementation of collective agreements and eliminate legal restrictions on free collective bargaining. The protest actions of unions and employers' associations failed to prevent the government dismantling the multi-level collective bargaining system, however.

Although collective bargaining has been decentralised, multi-employer agreements have not ceased to exist (Trif 2016). There were 24 multi-employer collective agreements valid in 2014; out of those, seven were labelled industrial agreements, despite covering only companies belonging to associations that entered into collective agreements. Only four new industrial agreements were concluded between 2011 and 2015, one of which was in education (Stoiciu 2016:7). No new industry-wide agreements were signed between 2011 and 2015 in the private sector. Multi-employer bargaining for groups of companies survived, however, in highly unionised private industries, such as metalworking. In 2012, a small number of employers in the automotive industry negotiated a two-year agreement including less than 10 per cent of the companies covered by the 2010 industrial agreement (Trif 2016). The importance of company-level collective agreements has therefore increased. The key difference, however, is that since 2011 company-level social partners have been able to rely on higher level provisions in only a few exceptional cases.

Summing up, collective bargaining structures in Romania have undergone a dramatic process of disorganised decentralisation across all industries, reducing the levels of bargaining. In the context of outlawing cross-industry bargaining and reducing the support for extension mechanisms at the industrial level in 2011, multi-employer bargaining survived, albeit greatly weakened, only in industries/sub-industries with relatively strong unions, such as metal (Trif and Stoiciu 2017). In industries and companies no longer covered by collective agreements, terms and conditions of employment vary greatly, contingent on the local labour market and employers' attitudes towards employees (Trif 2016). Moreover, in non-unionised companies it is often difficult to enforce even the minimum legal standards.

## **Depth of bargaining**

Depth of bargaining refers to the extent of involvement of local union officials in the formulation of claims and the implementation of collective agreements at company level. It concerns three main dimensions: the level of collective bargaining, the internal organisation of unions and union density. Considerable depth is expected in a multi-level bargaining system, in which relatively strong local unions have an important role in the negotiating process and agreement implementation (Paolucci 2017). In contrast, a lack of depth is a feature of a decentralised bargaining system, with weak vertical links within the union hierarchy and low density. Variations in depth are contingent on both the statutory and voluntary provisions framing the collective bargaining system.

Before 2011, there was significant depth of bargaining in Romania, linked to statutory provisions inherited from the communist era. First, multi-level collective bargaining

was supported by the legal obligation to negotiate annual cross-industry agreements that covered all employees (Trif 2013). The provisions of these agreements could only be improved on by representative social partners at the industrial and company levels due to the favourability principle. Second, this principle also led to relatively strong vertical links within the union hierarchy, as higher level collective agreements provided a reference for lower level bargaining. In addition, the *erga omnes* principle facilitated horizontal cooperation between union organisations, which were required to negotiate a single collective agreement at each bargaining unit. The favourability principle, coupled with the *erga omnes* mechanisms, strengthened links between bargaining levels and the coherence of unions' organisational structure and, at the same time, provided unions with external legitimacy (Trif and Stoiciu 2017). For social partners in Romania it was not as critical as in the United Kingdom or Denmark to develop a strong internal legitimacy, referring to rank-and-file support and trust, because it was the law, and not membership, which guaranteed relatively deep bargaining before 2011.

In a context of low internal legitimacy of social partners, the so-called 'voluntary' collective bargaining system imposed by the state in 2011 (Trif 2016) affected all three dimensions of depth. First, the neoliberal statutory (de)regulation through the LDS caused the dismantling of multi-layer arrangements; this, in turn, reduced the depth of bargaining by outlawing collective agreements at the cross-industry level and removing the *erga omnes* principle at the industrial level. Consequently, company-level bargaining, even when it existed, is no longer supported by higher level provisions. Second, the lack of cross-industry bargaining and the removal of extension mechanisms have weakened the internal organisation of unions by taking away the incentives for vertical and horizontal cooperation. Third, there has been a significant decline in union density from about 33 per cent to approximately 20 per cent (Table 24.1). Finally, the threshold requirement for local unions to bargain has increased from 33 per cent to 50 per cent (Trif 2013), making it more difficult for parties to engage in negotiations. Thus, there was a path departure from relatively significant depth prior to 2011 to a lack of depth between 2011 and 2015.

While empirical evidence shows rather a lack of depth in all industries, a degree of cross-industry variation emerges (Trif 2016). In the case of the highly-unionised metal industry, which could be considered the best-case scenario, multi-employer bargaining has survived. It takes place only at sub-industrial and company levels, however, and covers around 10 per cent of the companies that were under the industrial agreements before 2011. Furthermore, the lack of national and industrial agreements made company collective bargaining more difficult for unions. Company-level union representatives in two metal companies reported that they had to start negotiations from scratch, while before 2011 they began negotiations from the provisions agreed at industrial level. Industry-wide agreements had better provisions regarding minimum wages, pay increases linked to inflation, payment of overtime and so on. Union representatives revealed that they took for granted the provisions of the national and industrial agreements, and realised their importance only when those agreements ceased to exist. Although cross-industry and industrial agreements used to set only minimum employment standards, the company-level unions acknowledged that they were a great help, particularly in securing higher wages. Moreover, on the employers' side, the

Ford Motor Company was one of the first in Romania to use legal experts to negotiate collective agreements on their behalf. They reduced lunch breaks, increased workloads and provided minimum compensation for injuries beside introducing irregular working hours in the 2011–2012 collective agreement. Thus using legal experts to negotiate collective agreements on behalf of employers is a recent trend that has further enhanced employers' influence over employment conditions, even in the highly unionised metal industry.

In the case of weakly unionised (under 1 per cent) retail, the LDS led to the disappearance of cross-industry and industrial agreements, resulting in a massive reduction of bargaining coverage (Trif 2016). Between 2011 and 2015, collective bargaining took place solely at company level in a few large multinational corporations in which unions managed to achieve over 50 per cent density. In 2016, just four companies were covered by collective agreements, namely Carrefour, Selgros, Metro and Real (Trif and Stoiciu 2017: 172). The FSC union changed its organising strategy from targeting all multinationals to focusing only on the most unionised companies. The objective was to reach the new threshold required for unions to conclude collective agreements. Strong leadership and international linkages have facilitated the organising of workers, despite the dire legal framework. This was also the case in information technology when employers used aggressive cost-cutting strategies, including outsourcing. These examples show how the removal of statutory provisions has reduced the institutional resources on which unions can draw. Under the new legal framework, unions can rely only on their internal legitimacy to secure any meaningful collective bargaining. Thus union density has become the most important dimension of depth since 2011.

In a context of reduced institutional support, unions at company level depend entirely on employers' good will, as well as on their ability to organise employees. Despite their increasing efforts at gaining internal legitimacy (Trif and Stoiciu 2017), the number of company-level collective agreements declined from 11,729 in 2008 to 8,726 in 2013 (Figure 24.1). There was a major reduction of approximately 3,000 collective agreements between 2008 and 2010, although their number was increased since 2011. Considerable growth was registered in 2015, reaching a total of over 14,000 agreements (Stoiciu 2016: 7). This could be linked to the 2015 legal change allowing union federations to conclude collective agreements in companies in which union density is below 50 per cent. Overall, however, the empirical findings show that the depth of bargaining under the new voluntary system is significantly lower.

Institutional developments since 2011 thus have weakened each of the three dimensions of depth. This indicates a radical shift, from reliance on statutory provisions to voluntary provisions in achieving depth in collective bargaining. This institutional change is associated with variation in depth, from relatively high to low. The ways in which the recent institutional changes have impacted on the implementation of collective agreements will be addressed in the next section.

## Degree of control of collective agreements

Level of control refers to the extent to which the actual terms and conditions of employment are set by collective agreements. This is contingent primarily on the type of articulation mechanisms governing the relations between different bargaining levels and the dispute resolution mechanisms enforcing collective agreements. A high level of control is achieved when there are stable articulation mechanisms specifying the distinct competencies of the social partners at each level (Crouch 1993). In addition, the level of control relies on mandatory dispute resolution procedures and enforcement mechanisms in order to reduce the incidence of industrial action. In contrast, weak dispute resolution mechanisms and overlapping social partner competencies across levels reduce control, thereby creating uncertainty and conflicts between parties.

Before 2011, the legal framework played a key role in providing control of agreements in Romania. Articulation provided by the favourability principle secured a stable hierarchy between levels of collective bargaining and distinct competencies for the social partners. In addition, the *erga omnes* mechanisms extended the minimum employment standards negotiated at national and industrial levels to all workers within companies, which meant that managers and shop-stewards could negotiate only better provisions. The *erga omnes* principle, together with the favourability principle obliged the social partners to coordinate their efforts both horizontally and vertically to produce a single collective agreement at national, industrial and company levels. Notwithstanding the formal mechanisms empowering social partners to negotiate at different levels, the capacity to enforce collective agreements at the company level was contingent on the balance of power between unions and managers. The fact that there were no specialised labour courts responsible for conflict resolution meant that labour disputes had to be referred to regular courts; according to union officials, this mechanism trapped them in a very lengthy process, ending up sometimes with either employees changing jobs or the company changing ownership.

The LDS destabilised articulation mechanisms in 2011, making control over bargaining dependent almost exclusively on the balance of power between managers and local unions. Although the favourability and the *erga omnes* principles continue to exist, they no longer represent a viable resource for joint regulation at the company level due to the very limited multi-employer arrangements. This weak articulation, combined with an already weak dispute resolution mechanism have worsened control over the enforcement of collective agreements. Furthermore, it has become more difficult to enforce certain court decisions in relation to collective bargaining since 2011. The agreement in the electrical and electronic manufacturing industry negotiated for 2010–2014, for instance, included wage scales and other benefits similar or superior to those stipulated in the cross-industry agreement. The agreement covered all companies in the industry, but after 2011 it could not be enforced. Likewise, an industrial agreement in the food industry was signed in 2010 and, despite its five-year validity, could never be enforced (Trif 2016). In both industries, unions have taken legal action against employers who refused to implement the agreement. Although their action was successful in the food industry, there was no mechanism to force the parties to abide by the judges' decision. There was a similar situation in retail; the 2010 collective agreement was negotiated

for one year, while it was specified that it should be extended until either one of the signatory parties denounced it or until a new collective agreement was signed. Although it satisfied the extension criteria, it has not been implemented since 2011 (Trif 2016). In reality, it was particularly difficult to enforce any industrial collective agreements between 2009 and 2015, in a context in which successive governments have taken a neoliberal view of collective bargaining decentralisation.

## Scope of agreements

The scope of agreements refers to the range of issues subject to negotiation at different levels. It concerns the extent to which terms and conditions of employment are set through joint regulation by the social partners. Scope is wide when employers have restricted prerogatives, but extensive when social partners negotiate over a wide spectrum of issues. Therefore it is affected by both the extent and depth of bargaining. Before 2011, there was wide scope of bargaining at the cross-industry, industrial and company levels. The law imposed no restrictions on bargaining items at different levels, except for the public sector, in which the government set wages, as long as collective agreements improved on minimum legal provisions and were in line with the favourability principle. There was, however, a provision indicating that wages, working hours and working conditions had to be covered by company agreements (Law 130/96). In addition, the Labour Code obliged employers to negotiate with unions on a number of aspects, such as workload (*norma de lucru*) and changes in job classifications and working time. The cross-industry and industry agreements covered a wide range of issues, from wage scales to procedural rules. The 2010 agreement in retail covered procedural rules defining the applicability and validity of agreements, for instance, as well as substantive rules concerning work organisation, such as working time, wages and training. This agreement also included detailed provisions on health and safety, management or employers' prerogatives, union consultation rights, regulation of individual contracts and dispute resolution mechanisms. At the company level, social partners could both improve the provisions negotiated at the industrial level and cover additional aspects, as long as they were in favour of the employees. Nevertheless, very few large retailers were unionised or concluded company-level agreements. This case shows that even in a context of low unionisation, such as in retail, the scope of bargaining was wide before 2011.

The 2011 legal changes reduced the scope of bargaining by increasing employers' prerogatives to set the terms and conditions of employment at company level (Trif 2016). The disappearance of cross-industry, as well as the majority of industrial agreements automatically decreased the number of items that are subject to joint regulation at these levels. In this context, the scope of bargaining is decided primarily by the social partners at the company level. Furthermore, the 2011 legal provisions narrowed the bargaining agenda at company level. Apart from abolishing the requirement to negotiate on specific items, the obligation of employers to involve unions in decisions on workload and job classifications was removed. This increase in managerial prerogatives has resulted in work intensification and made it more difficult for unions to negotiate bread-and-butter issues, such as wages and working time. Nevertheless, the degree of the reduction in the scope of bargaining has varied across industries and companies since 2011.

Public sector collective bargaining has registered the fewest changes, as legal restrictions concerning joint regulation of wages and working time existed prior to 2011. In contrast to the private sector, highly unionised education continues to have an industrial collective agreement covering similar issues to those negotiated prior to 2011. Nevertheless, the law plays a more important role in setting all aspects of remuneration, as the social partners are no longer entitled to negotiate variable pay (*Contractul colectiv de munca la nivel de ramura invatamant 2017*). In addition, the 2009 public wage law significantly reduced public wage funds in order to satisfy the Troika's preconditions for financial assistance (Hayter *et al.* 2013). Apart from changing the wage grids by tying all public-sector employees to a wage scale defined in terms of multiples of a base wage of 600 New Leu (around €150), this law obliged managers to reduce personnel costs by 15 per cent in 2009 (Trif 2016). In addition, the government imposed a 25 per cent wage cut for all public-sector employees (Trif 2013). Despite talks between government and unions, as well as mass protests against 'austerity' measures, the labour strife had no tangible result for employees. The 2009 public wage law remained in place until 2017, while the 25 per cent wage cuts were gradually restored by 2015 (Trif 2016). Although there was limited reduction of the number of items subject to joint regulations in the public sector, as there was limited scope before 2011, the capacity of collective bargaining to improve working conditions has been drastically reduced. This shows that not only the quantity of issues negotiated matters for the scope of bargaining, as Clegg's framework (1976) suggests, but also the quality of the agreements reached. Thus both qualitative and quantitative aspects need to be considered when examining the scope of bargaining.

The case of the metal industry illustrates an average degree of change in the scope of bargaining. The reduction of joint regulation in this highly unionised industry is linked to the absence of both cross-industry and industrial agreements after 2011. The majority of employees work in large unionised companies covered by collective agreements. The evidence in four large unionised metal companies exhibited great variation in the impact of the reforms on the actual terms and conditions of employment (Trif 2016). The degree of change in the scope of joint regulation varied from major alterations in the case of an employer who sought to avoid collective bargaining after 2011 to a large degree of continuity in a company at which the relations between the union and management have been fairly cooperative, following industrial action in 2010; the other two cases fall between those two extremes. In companies at which demand decreased during the recession, employers used the new provisions of the Labour Code to achieve more flexible working time and introduce atypical employment contracts. While working time arrangements have been changed unilaterally by employers, wages and other terms and conditions of employment have been negotiated through collective bargaining in all four metal companies. In companies with strong unions that were not severely affected by the crisis, such as Dacia, the scope of bargaining has not been reduced.

Finally, empirical evidence from retail reveals a drastic reduction in the scope of bargaining. Apart from a lack of multi-employer bargaining, the majority of workers are no longer covered by collective agreements in a context of very low union density in this industry (Trif and Stoiciu 2017). Furthermore, the scope for negotiating working time and workload has been reduced even in the four large multinationals covered

by collective agreements, due to the legal provisions entitling employers to set them unilaterally (Trif and Stoiciu 2017). Additionally, the company-level bargaining agenda began with a blank canvas after 2011. In contrast, the 2010 industrial agreement set several provisions that could only be improved at the company level, including wages. The minimum industry-wide wage negotiated by the social partners was 50 RON above the national minimum wage and represented the basic coefficient for indexation; the unskilled workers' wage index equalled one, that of skilled workers and experienced workers without formal qualifications equalled 1.2 and that of graduates equalled 1.5 or higher, depending on their qualifications (Contractul colectiv de munca la nivelul ramurii de comert pe anul 2010). According to a senior union official, the wage indexes were generally preserved after 2011 in the four company-level agreements, while the large majority of workers in retail no longer benefit from joint regulations, since 2011.

Overall, in a context of disorganised decentralisation of collective bargaining associated with a major increase in employers' prerogatives, it is not surprising that there is great variation across industries and companies. Empirical studies reveal that unions' capacity to push certain items onto the bargaining agenda is contingent on their power resources, particularly their capacity to mobilise, as well as employers' power resources, such as the availability of qualified workers in a context of high emigration and their willingness to become involved in collective bargaining (Trif and Stoiciu 2017). Thus the statutory support for a wide scope of bargaining was radically changed by the 2011 laws by making the bargaining agenda entirely dependent on the power relations between parties. As workers' voice and working conditions have deteriorated since 2008, many of them have 'exited' the Romanian labour market (Trif 2016). It is estimated that around three million people have emigrated over the past 25 years, more than half since 2008 (Guga *et al.* 2018).

## Conclusions

Developments in collective bargaining in Romania since 2000 reveal two stories. The first refers to 'path-dependent' institutional changes until the 2008 recession, when the legal changes introduced by the 2003 Labour Code, as well as those associated with EU accession in 2007 generally sought to strengthen the role of collective bargaining in regulating terms and conditions of employment. In contrast, the second refers to 'path departure' in the form of a frontal attack on collective bargaining institutions, primarily through major legal changes in 2011 aimed at weakening the role of collective bargaining (Marginson 2015). The undermining of statutory rights in relation to security of bargaining resulted in the dismantling of the multi-layered bargaining system, which, in turn, led to its decentralisation and a massive decline in its coverage. Nevertheless, the 'path departure' period began in 2009, when the Romanian government started imposing procedural and substantive austerity measures, such as the 25 per cent wage cuts for all public-sector employees. This chapter argues that Romania illustrates an extreme case of disorganised decentralisation of collective bargaining following the 2008 recession, particularly due to unilateral statutory changes in relation to the security, level and the extent of bargaining.

The shift of the statutory provisions from supporting to hindering collective bargaining revealed the limited internal legitimacy of the social partners. In this new institutional context, the capacity of unions to organise and mobilise workers for collective bargaining purposes relies primarily on their internal power resources in both the public and private sectors. Apart from affecting the security of bargaining, the absence of external support has had a negative impact on all dimensions of collective bargaining. Unsurprisingly, the lack of cross-industry bargaining and the reduction of industrial coverage increased the variation in the social partners' ability to jointly regulate terms and conditions of employment. Many employers have taken advantage of deregulation to undermine multi-employer arrangements and to reduce joint regulation at company level. Nevertheless, their capacity to do so is also contingent on unions' bargaining power. Consequently, joint regulations vary from multi-employer agreements in highly unionised industries, such as metalworking, to single-employer or no collective bargaining in the low unionised industries, such as retail.

The path-dependent statutory institutions were disrupted in 2011 and rarely replaced by voluntary collective bargaining institutions. There are isolated cases in which unions with strong leadership and international linkages have managed to deploy voluntary arrangements to improve labour standards for both low and highly skilled employees, despite the grim legal framework (Trif and Stoiciu 2017). This allows one to be cautiously optimistic about the future of collective bargaining in Romania. Major uncertainty remains, however, concerning the trade unions' capacity to (re)build the trust and support necessary to enact a new collective bargaining system. This requires extreme dedication and commitment on the part of leaders who face the enormous challenge of breaking with the legacies of the past and turning public discourse around; they have to gain security by involving their rank-and-file members, who are not used to participating, without being able to rely on institutional resources, which historically have been their main lever of power.

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All links were checked on 23 August 2018.

## Abbreviations

<b>BNS</b>	Blocul Național Sindical (National Trade Union Bloc)
<b>CNIPMMR</b>	Consiliul Național al Întreprinderilor Private Mici și Mijlocii din România (National Council of Private Small and Medium-sized Enterprises)
<b>CNPR</b>	Confederația Națională a Patronatului Român (National Confederation of Romanian Employers)
<b>CNSRL- Frația</b>	Confederația Națională a Sindicatelor Libere din România - Frația (National Confederation of Free Trade Unions from Romania - Frăția)
<b>CNS Cartel Alfa</b>	Confederația Națională Sindicală Cartel Alfa (National Trade Union Confederation Cartel Alfa)
<b>CSN Meridian</b>	Confederația Sindicală Națională Meridian (Meridian National Trade Union Confederation)
<b>Concordia</b>	Confederația Patronală Concordia (Concordia Employers' Confederation)
<b>CONPIROM</b>	Confederația Patronală din Industria României (Employers' Confederation of Romanian Industry)
<b>CSDR</b>	Confederația Sindicatelor Democratice din România (Confederation of Democratic Trade Unions of Romania)
<b>FSC</b>	Federația Sindicatelor din Comerț (Federation of Commerce Unions)
<b>LDS</b>	Legea dialogului social (Social Dialogue Act)
<b>PNR</b>	Patronatul Național Român (Romanian National Employers)
<b>RON</b>	Romanian New Leu (Romanian currency)
<b>UGIR 1903</b>	Uniunea Generală a Industriașilor din România 1903 (General Union of Romanian Industrialists 1903)