

Chapter 6

Social dialogue during the economic crisis: the survival of collective bargaining in the manufacturing sector in Romania

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1. Reform of joint regulation and labour market policy

1.1 Introduction

In their seminal book on the models of eastern European capitalism, Bohle and Greskovits (2012) argue that Romania has a special type of neoliberal society with weak state institutions, a high degree of centralisation and collective bargaining coverage and relatively high mobilisation power on the part of the trade unions. Before the 2008 crisis, Romania had a comprehensive system of industrial relations with widespread collective bargaining at national, sectoral and establishment levels. The legal system supported the development of bipartite and tripartite consultation and negotiation between trade unions, employers and the government (Trif 2010). However, this system was radically altered by the government after the crisis, despite opposition from trade unions and the largest employers' associations (Ciutacu 2012). The legal changes led to the implosion of trade unions' fundamental rights to bargain collectively, to form trade unions and to take industrial action. As a result, cross-sectoral collective agreements ceased to exist and very few multi-employer collective agreements were concluded after the new labour code was adopted in 2011. The crisis was used as a pretext by the centre-right government to reform the industrial relations system, with the support of the 'Troika', comprising the European Union (EU), the International Monetary Fund (IMF) and the European Central Bank (ECB).

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1.2 Collective bargaining before the 2008 crisis

Romania had relatively protectionist labour legislation with high centralisation and collective bargaining coverage before 2008 (Bohle and Greskovits 2012; Trif 2008). The Romanian legal system has a strong French influence, being broadly based on the Napoleonic Code. 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 subdivisions) and company levels. Comparable only to Slovenia among the new EU member states, there was automatic extension of collective agreements to cover all employees in the bargaining unit. In Romania, all employees were covered by a cross-sectoral national agreement before the 2008 crisis. Additionally, employees were covered at industry level by collective agreements in 20 out of the 32 branches eligible for collective bargaining. Collective agreements existed in the main manufacturing sectors, namely extractive industry, the metal industry, the white goods industry, the automobile industry, the food industry, the textile industry and the wood industry (Preda 2006: 13). Collective agreements concluded at national and sectoral levels set the minimum terms and conditions of employment. Thus, they were used as minimum standards for the negotiation of collective agreements at company level in unionised companies. Nevertheless, it was difficult to enforce the provisions of collective agreements (and the statutory labour legislation), particularly for the lowest paid employees (Trif 2008).

Romanian law requires employers to initiate collective bargaining annually in any company with more than 20 employees (Hayter *et al.* 2013). In large unionised companies, wages, social benefits, holidays and working conditions are generally negotiated between trade unions, employers and, sometimes, the state (Trif 2008). In most non-unionised companies, employers unilaterally imposed terms and conditions. In contrast to Slovenia and Slovakia, in Romania the company was the most important level for establishing the terms and conditions of employment, even before the crisis (Carley *et al.* 2007).

The EU accession process led to legislative change that affected collective bargaining. In order to harmonise Labour Code provisions with the EU social *acquis*, the restrictions on concluding individual fixed-term employment contracts were relaxed in countries that had relatively

protectionist labour legislation, such as Romania and Slovenia (Carley *et al.* 2007). However, when the Council of Foreign Investors tried to remove the legal obligation on employers to bargain with trade unions or employee representatives during the 2005 Labour Code revision, Romanian trade union officials managed to preserve the collective bargaining mechanism with the support of the European Trade Union Congress and the International Labour Organization (Trif 2008).

Although the formal Romanian labour market regulation before 2008 was considered protectionist, particularly by foreign investors, in practice, the issues with the enforcement of the labour legislation and collective agreements made it fairly flexible (Bohle and Greskovits 2012). Furthermore, low wages were one of the key factors that led to massive labour migration before (and after) the crisis and low labour force participation (Stoiciu 2012; Trif 2014). Thus, labour market regulations were not perceived as hindering Romania's competitiveness. Furthermore, labour market regulations could have been used to address the labour market issues of massive emigration and low labour force participation (Stoiciu 2012; Trif 2013).

Trade unions before the 2008 crisis

After 1989, the organisation and functioning of trade unions were regulated primarily by the Constitution, the Labour Code and the Law on Trade Unions. The law allowed a minimum of 15 employees to form a union. Two unions from the same industry can form a union federation if their combined membership is at least 60, and two federations can form a confederation. This legal framework contributed to the development of a decentralised and fragmented trade union movement.

Trade union fragmentation is common in central and eastern Europe, particularly due to the division between the old reformed unions and newly established organisations. In Romania, however, the reformed and the largest new union organisations merged in 1993 to create the largest confederation, the National Free Trade Union Confederation of Romania – Fratia (CNSRL-Fratia). There are four additional nationally representative union confederations in Romania: the National Trade Union Block (BNS); the National Democratic Trade Union Confederation of Romania (created in 1994 as result of a split from CNSRL-Fratia); the National Trade Union Confederation Cartel Alfa; and Meridian. Despite a widely publicised proposed merger of four of these five

confederations in February 2007, CNSRL-Fratia, BNS and Meridian only formed a loose alliance and maintained their independent status. Similar to all central and eastern European countries, the reformed union remained the strongest organisation after 1990. Most Romanian union confederations (except Meridian) are members of the European Trade Union Confederation (ETUC).

The period of transition from a centrally planned economy to a market-based economy has been very difficult for trade unions. They had to protect workers' interests during the transition, but also to support the move towards a more efficient economic system that would (hopefully) improve working conditions in the long term. By and large, Romanian unions did not obstruct the transformation process, although restructuring led to a massive decline in their membership. However, unlike the Polish Solidarity union they did not support shock therapy reform. Trade union density in Romania fell from 90 per cent at the beginning of the 1990s to around 35 per cent in 2006 but was still twice as high as in Poland (Trif 2008). Romanian and Slovenian trade unions were amongst the strongest in central and eastern Europe in terms of union density and influence over labour legislation before the crisis (Carley *et al.* 2007).

The manufacturing sector had the highest trade union density in Romania, although unions were fairly fragmented. In 2002, trade union density in heavy industry was over 75 per cent, while in the food and textile sectors it was around 50 per cent (Preda 2006: 13–15). The highest union density was in the metal industry (83 per cent). Ten union federations were operating in the metal sector, five of which were representative at the sectoral level (Preda 2006: 44). In the chemical sector, there were five union federations and 76 per cent union density in 2002. Eight union federations operated in the textile industry and four in the food, beverage and tobacco sector. Nevertheless, in each manufacturing branch the representative unions cooperated regularly to negotiate collective agreements, which covered all employees in the sector before the crisis.

Employers' associations before the crisis

In most new EU member states, employers' associations had a limited role in the development of industrial relations after 1989 compared with trade unions. The lack of experience and the slow pace of privatisation

were the main factors that resulted in the very weak consolidation of Romanian employers' associations. Additionally, foreign investors were not willing to join such associations. They preferred to join a trade association called the Council of Foreign Investors (Chivu 2005).

The fragmentation of employers' associations is common in the new member states (Kohl and Platzer 2004), but Romanian associations are amongst the most divided in the region. The number of nationally representative employers' associations increased from five prior to 2001 to 13 by 2008. A first attempt to merge the five largest confederations was made in December 1995 with support from the International Organization of Employers. An agreement to form Patronatul Roman was signed but conflict between the divergent interests of private and state-owned enterprises led to separation in 1996. In 1999, there was a second attempt to unify employers' organisations in an Employers' Confederation of Romania but this disbanded in 2003.

In 2004, the two largest member organisations of the former Employers' Confederation of Romania, together with four other employers' associations, established an umbrella organisation, the Alliance of Employers' Confederations of Romania, covering primarily large domestically owned companies. By May 2006, seven employers' confederations were members of this organisation, with four others announcing their intention to create a new alliance (Chivu 2007). The Alliance of Employers' Confederations of Romania was established primarily to represent members' interests at the international level, particularly in EU institutions. Moreover, the merger of these fragmented associations was a pre-condition for membership of the European employers' confederation, Business Europe. Employers started to combine their strength at the national level but there were still 13 nationally representative employers' associations in 2008, as the members of the umbrella organisations retained their representative status. In 2007, all 13 employers' associations signed the last cross-sectoral collective agreement valid from 2007 to 2010.

Sectoral employers' associations also remained fragmented. Before the crisis, there were 15 employers' associations in the food, beverage and tobacco sector, six employers' associations in the chemical sector and two in the metal industry (Preda 2006). Similar to union federations, the employers' federations in the manufacturing sectors managed to cooperate during the process of negotiating sectoral collective agreements.

1.3 The crisis and social partners' responses to it

Socio-economic developments since the crisis

The international financial crisis severely affected economic and social developments in Romania after 2008. GDP fell by 6.6 per cent in 2009, followed by a further reduction of 1.6 per cent in 2010, indicating a more severe economic downturn than in Bulgaria, which had a similar level of economic growth before the crisis, and the EU average (Eurostat 2014). The construction sector was the worst affected, dropping 14 per cent as a percentage of GDP in 2009, followed by agriculture (−7.8 per cent) and services (−5.9 per cent) (Zaman and Georgescu 2009: 618). After 2008, the average wage increases were below the level of inflation (Trif 2013). Also, wage earnings in Romania are among the lowest in the EU (Hayter *et al.* 2013), which indicates that the trade unions did not manage to safeguard employees' purchasing power.

Nevertheless, Romania has one of the lowest unemployment rates in the EU. Although the crisis led to massive lay-offs in manufacturing, construction, retail and the public sector (Stoiciu 2012: 2), unemployment has increased by less than 2 per cent since 2008 to a high of 7.5 per cent in 2013 (Eurostat 2014). While the government took measures to encourage employment, such as exempting companies from paying tax on reinvested profit and social security contributions for six months if they hired unemployed people (Stoiciu 2012: 2), it appears that the main reason for the low unemployment rate is the fact that Romanian workers used individual 'exit' either into the informal economy or by emigrating abroad (Stan and Erne 2014). The size of the informal economy increased from around 22 per cent in 2007 to 29 per cent in 2012 (European Commission 2013: 5). Eurobarometer data from 2007 indicate that the main reason for working in the informal economy is the low wages in regular businesses. These data also show that only 27 per cent of the Romanian population trust trade unions, which suggests that the majority of workers do not believe that unions can improve their working conditions.

Although reliable statistics on emigration since 2008 are not available, trade union officials have suggested that wage cuts in the public sector in 2009 and 2010 boosted the emigration of public sector employees. A senior official interviewed in 2013 indicated that around 2,700 doctors have emigrated every year in recent years and their number increased

by 400 in 2011, after the implementation of the austerity measures. The total number of Romanian emigrants from 1990 to 2012 is 2.4 million (Institutul National de Statistica 2014: 9). Unlike in the other EU countries severely affected by the crisis, such as Greece and Spain, unemployment and labour market regulation have not been a major issue during the crisis or considered a cause of the crisis in Romania.

There are three sets of interrelated causes of the economic downturn in Romania. First, despite the limited proportion of toxic assets in its banking system, Romania has been exposed to the adverse effects of the global financial crisis primarily due to its openness to foreign capital (Ban 2014). For instance, foreign stakeholders account for over 85 per cent of total banking assets (Trif 2013). The second set of factors is related to the reduction of external and internal demand for goods and services. Romanian exports to the EU shrank by 25 per cent in 2009 (Trif 2013). The manufacturing sector was among the first affected by the crisis, suffering a 7.7 per cent contraction in the last quarter of 2008, due to a decline in domestic and external demand (Constantin *et al.* 2011: 7). Wage cuts for many workers, coupled with declining remittances from abroad, reduced private consumption by 9.2 per cent (Constantin *et al.* 2011). The third set of factors is related to the economic weaknesses and imbalances that existed before 2008 (Ban 2014). Economic growth before 2008 was based primarily on the consumption of imported goods and real estate sales. Despite economic growth between 2000 and 2008 (approximately 6 per cent per annum on average), the budget deficit increased continuously, reaching 9 per cent of GDP in 2009 (Stoiciu 2012: 2).

In order to deal with the budget deficit, Romania borrowed 20 billion euros from the Troika in 2010. Additionally, Romania signed a Precautionary Agreement with the IMF in 2011. The conditions set by the two international agreements for financial assistance had a great influence on the way in which Romanian governments responded to the crisis (Hayter *et al.* 2013; Trif 2013).

Government response to crisis: austerity measures and structural reforms

A combination of international pressure from the Troika, the ideology of the centre-right coalition and lobbying by foreign investors led to two main sets of government response to the 2008 crisis: (i) 'austerity' measures aimed at reducing public debt and (ii) structural reforms aimed at addressing macroeconomic imbalances through structural

reforms (Ban 2014; Stoiciu 2012). From 2009, the government started to introduce fiscal consolidation measures, seeking to reduce the budget deficit by reducing the wage bill for public sector employees, cutting pensions and limiting welfare benefits (Stoiciu 2012; Ministry of Public Finance 2014). In 2009, a new public wage law was introduced by the government (as part of their negotiations with the Troika) which reduced public wages (Hayter *et al.* 2013). Apart from changing wage grids by tying all public sector employees to a wage scale defined in terms multiples of a base wage of 700 RON (165 euros), the provisions of the new law obliged the management of public institutions to reduce personnel expenditure by 15 per cent in 2009. This forced employees to take ten days of unpaid leave. In addition, pensioners were forbidden to obtain additional income on top of their pensions by working in paid employment.

In 2010, the centre-right coalition introduced some of the most restrictive austerity measures in the EU, cutting the wages of public sector employees by 25 per cent, reducing numerous social benefits by 15 per cent and increasing VAT from 19 per cent to 25 per cent (Trif 2010). These measures (which were part of the conditions attached to the Troika's financial assistance) reduced the budget deficit from 9 per cent of GDP in 2009 to 3 per cent of GDP in 2012 (Eurostat 2014). They helped the government to achieve financial consolidation, but the budget savings were made at the expense of living standards (Hayter *et al.* 2013).

Since 2011, Romanian governments have focused on structural reforms, such as 'restructuring' the public sector – in other words, cutting jobs and privatising public hospitals and public companies – and the 'flexibilisation' of the labour market and industrial relations institutions (Ban 2014; Ministry of Public Finance 2014). Labour market reforms were considered important for addressing the issues of low labour force participation and migration (Romania has one of the lowest labour force participation levels in the EU and around a third of the active labour force has immigrated since 1990s) (Stoiciu 2012). Although labour market 'rigidities' are not considered a cause of the recession in Romania (Ban 2014), the Troika pushed for a radical decentralisation of collective bargaining and more restrictive criteria for extending collective bargaining (Schulten and Müller 2013: 6). In 2011, the centre-right government took the opportunity to dismantle the existing collective bargaining institutions and reduce the trade unions' role and influence

by means of legal changes (see Appendix). It unilaterally introduced a new Social Dialogue Act, which abolished all the previous laws governing employees' collective rights (Trif 2013; see further discussion of the effects of the Social Dialogue Act in Section 4).

The government also adopted a new Labour Code in 2011, which primarily affected individual employee rights (Stoiciu 2012). First, the probation period was extended from 30 to 90 days for workers and from 90 to 120 days for managers (Clauwaert and Schömann 2013). Second, it made it easier for employers to use non-standard employment contracts by extending the maximum length of fixed-term employment contracts from 24 to 36 months and by relaxing the conditions for utilising temporary agency workers. Also, employers are allowed to unilaterally reduce the working week – and the corresponding wages – from five to four days. Furthermore, it made it possible for employers to grant free days in advance and to order employees to work overtime (Clauwaert and Schömann 2013). The period of time off as compensation for overtime has increased from three to four months. Finally, it reduced dismissal protection, particularly by diminishing protection for union leaders. The new provisions of the Labour Code make it easier for employers to hire and fire employees and to utilise flexible forms of employment contract.

The austerity measures and the arbitrary way of pushing the reforms through without social dialogue led to a substantial decline in the popularity of the centre-right coalition in power between 2008 and 2012 (Daborowski 2012). Although the government increased wages for public sector employees by 15 per cent in January 2011, the controversial privatisation of companies that extract natural resources and the attempt to privatise the health-care system led to growing social resistance and contributed to the collapse of the government in February 2012. A new government was put in place by the centre-right political coalition, but it collapsed after less than three months.

In May 2012, a new centre-left coalition came to power. The centre-left government decided to take measures to enhance its social support, such as increasing wages in the public sector by 8 per cent from June 2012 and by 7 per cent from December 2012 to restore public sector base wages to their 2008 level (Trif 2013). However, wage increases were not negotiated with the unions. Furthermore, the centre-left government had neither reversed the legal changes made by the previous government,

nor restored the other benefits (meal and holiday vouchers) and pay cuts for public sector employees (thirteenth month salary) by 2014 (Ministry of Finance 2014). The government also does not pay for overtime worked by public sector employees. For instance, the embargo on public sector employment and massive emigration of medical staff has led to staff shortages, which in turn requires nurses and doctors to work overtime in public hospitals to ensure patients' well-being (Trif 2013). Furthermore, all the main changes in labour laws since 2008 have been introduced unilaterally by the centre-right and centre-left governments by means of emergency ordinances (without public or parliamentary debate), which indicates a return to authoritarian decision-making.

Trade union responses to the crisis: militancy against austerity measures

Trade unions opposed the austerity measures in 2009 and 2010, but they did not manage to resist the centre-right government's attack on employees' rights and the deterioration of employment conditions for public sector employees. Although the five union confederations consulted with the government on public sector pay reform, unions were dissatisfied with its provisions. They organised local meetings, marches and a one-day national strike of public transport employees in May 2009 against wage cuts, lay-offs and compulsory unpaid leave. Also, unions picketed two-thirds of the county prefectures in June 2009 and threatened a general strike to force the government to consider their proposals with regard to the public wage law. These included a reduction of the existing ratio of 1:70 between the highest paid to the lowest paid to 1:15 by freezing wages for five years for high earners and accelerating increases for the lowest paid employees (Ciutacu 2010). Despite talks between government representatives and unions in June 2009 and further mass protests and picketing of the Parliament in September 2009, the labour unrest has had no tangible result for employees.

Furthermore, the reform of the public sector pay aggravated the divisions between union confederations and federations. The sectoral unions in education, health care and public administration were unhappy with the provisions of the new law and the fact that there was no scope for them to participate in negotiations with the government (Ciutacu 2010). Consequently, 11 union federations from the public sector formed a new organisation, the Alliance of Budgetary Employees. Their aim was to fight against austerity measures and modify the proposed reforms of public sector pay (Trif 2010). The Alliance organised a series of national

protests in 2009, culminating in a one-day general strike on 5 October 2009. Around 750,000 public sector employees (out of a total of 1.35 million public sector workers) were involved in the biggest strike since 1990. The strike's main goals were to renegotiate the public sector wage law, which reduced their incomes, to get the lay-off plans scrapped and to prevent changes to the Labour Code. Despite talks between the Alliance and government representatives, the strike failed to achieve its main goals and the wage law remained unchanged. As the government had the support of the EU and the IMF, this law was passed unilaterally without parliamentary debate or consideration of the key principles negotiated by the unions (no reduction of existing wages) in November 2009 (Ciutacu 2010). This defeat made the centre-right government more confident that it could introduce further austerity measures.

In 2009, the five national union confederations set up a crisis committee to protest against the austerity measures. First, they asked the Romanian President to reject the austerity measures agreed by the Prime Minister with the Troika, but the President endorsed them. Second, the union confederations filed a complaint with the ILO in June 2010, claiming that the government was breaching union rights and freedoms. They also alerted EU bodies that the government was shifting the burden of the economic crisis onto employees and other vulnerable sections of the population (Trif 2010). Third, the unions identified over 400 measures to deal with the crisis. However, their proposals were largely ignored. As a result, unions withdrew from most tripartite bodies. Finally, the unions organised a series of protests against austerity measures in May 2010, demanding that the government make no unilateral decisions on austerity measures, ensure implementation of collective agreements and eliminate restrictions on free collective bargaining from legislation. As unions did not get much support from the international bodies or the public (63 per cent of Romanians distrust unions, 15 per cent more than in 2007, according to Eurobarometer 2010), they did not manage to safeguard the employment conditions of their members and their own right to have meaningful involvement in collective bargaining and social dialogue. The failure of the protests against austerity measures in 2009 and 2010 ultimately weakened the unions' capacity to mobilise.

Furthermore, during the crisis, union officials suggested that there had been an organised campaign to intimidate and discredit the leaders of the five main confederations. The most notorious case was the arrest

of Marius Petcu in 2011 (the leader of the largest union confederation, CNSRL-Fratia), following an argument with President Basescu about the health-care budget, according to a senior union official. Nevertheless, many commentators have stated that certain union leaders are corrupt. Petcu was arrested for allegedly accepting a bribe from a businessman who was supposed to carry out construction work at a union centre (Barbuceanu 2012). The media reports about the alleged corruption of union leaders damaged their legitimacy and led to a decline in union membership (Trif 2013). The corruption allegations and unsuccessful strike action against the austerity measures greatly weakened trade union capacities to mobilise against the centre-right government's attack on unions' fundamental rights through legal changes in 2011.

Employers' divergent responses to the crisis

In contrast to the unions, employers' organisations did not have a unified response to the crisis and the labour law changes. In 2009 and 2010, the Council of Foreign Investors and the American Chamber of Commerce were involved in drafting the new labour laws and they were satisfied with the employment deregulation brought in by the new Labour Code and the Social Dialogue Act. In contrast, the four largest employers' organisations (out of 13 confederations), covering almost two-thirds of the active labour force, joined the five trade union confederations in their protest against the Social Dialogue Act by withdrawing from the national tripartite institutions in September 2011 (Ciutacu 2012). It appears that the largest four employers' confederations were against the Social Dialogue Act, primarily because its provisions brought to an end their main role as representatives of employers in national collective bargaining. Also, the national collective agreements maintained social peace and set minimum labour standards to ensure fair competition between their members. A senior official representing one of the largest employers' associations considered that the suppression of national-level collective bargaining and the new requirements for the extension of sectoral collective bargaining had a negative effect on the capacity of their members to deal with the economic crisis, while the increased flexibility of labour relations had a positive effect (Hayter *et al.* 2013: 48–49). Many employers appear to be happy with their boosted prerogative to set the terms of conditions of employment at the company level.

1.4 The impact of the crisis on collective bargaining

The substantive and procedural austerity measures introduced by the government with the support of the Troika during the recent crisis led to the dismantling of the multi-level collective bargaining system which operated in Romania before the crisis. The Social Dialogue Act makes it far more difficult to negotiate collective agreements at all levels due to the implosion of fundamental trade union rights (see Appendix).

First, the Social Dialogue Act forbids collective bargaining across sectors. Before 2011, the five union confederations and their employers' counterparts negotiated a single national collective agreement each year. This agreement stipulated minimum rights and obligations for the entire labour force in Romania. Only five (out of the 13) employers' associations are still nationally representative, while all five union confederations maintain their representative status (Hayter *et al.* 2013). Nevertheless, four union confederations lost a considerable number of members (CNSRL-Fratia has 306,486 members compared with 850,000 in 2008; CNS Cartel Alfa has 301,785 compared with 1 million in 2008; BNS has 254,527 compared with 375,000 in 2008), while membership of CSN Meridian has increased from 17,000 to 32,000 (Hayter *et al.* 2013: 13). Overall, the data suggest that trade union density has declined a great deal, from approximately 33 per cent in 2008, but there is no reliable information concerning trade union density or membership since the crisis (there is no information about CSDR membership) (Barbuceanu 2014). Also, there are no recent data about employers' organisation density, which in 2007 was 60 per cent (Barbuceanu 2014: 11). Since 2011, the four largest employers' confederations (Employers' Confederation of Romanian Industry - CONPIROM, Patronatul Roman, Uniunea Nationala a Patronatului Roman and UGIR-1903), together with the five union confederations have been militating for the modification of the Social Dialogue Act to allow them to negotiate cross-sectoral agreements and to have meaningful involvement in the tripartite bodies.

Second, the provisions of the Social Dialogue Act made it very difficult to negotiate collective agreements at sectoral level. Previously, the social partners that met the representativeness criteria could negotiate collective agreements that covered all employees and employers in a specific branch. In 2011, the social partners agreed to have 32 branches eligible for collective bargaining, out of which 20 had collective agreements (Trif

2013). The new law redefined 29 industrial sectors eligible for collective bargaining according to NACE activity codes. It requires the social partners to restructure and re-register with local courts and prove that they are representative of the redefined sectors. Trade union federations were keen to re-register to regain representativeness in this way (see Barbuceanu 2014: 13–15 for a list of union federations that reapplied to become representative, including those in manufacturing) to enable them to bargain collectively on behalf of their members. A total of 57 union federations demanded the restoration of their representative status, while only seven employers' federations had reapplied to become representative at the sectoral level by the end of 2012 (Hayter *et al.* 2013: 56–59). There is a disincentive for employers' associations to become representative, as the new sectoral agreements apply only to employers who are members of the employers' organisations that signed the collective agreement, unless those organisations cover more than 50 per cent of the labour force in the sector (see Appendix). As trade union federations had no counterparts to negotiate sectoral collective agreements in most sectors in 2012 and 2013, no new agreements were concluded in the private sector after 2011 (Barbuceanu 2014). Very few collective agreements were concluded for groups of hospitals or other public-sector sub-sectors, such as education, research and public water supply and sewage (Hayter *et al.* 2013).

Third, the Social Dialogue Act makes it more difficult for trade unions to negotiate agreements at the company level, due to major procedural changes (see Appendix). Local unions had to re-register with local courts to be entitled to negotiate collective agreements. Many local unions lost their representative status as the new law stipulates that union density needs to be at least 51 per cent of the total labour force, compared with one-third under the previous law (if union density is lower or there is no union representation in a company, elected representatives of employees are allowed to negotiate collective agreements). Also, the new law requires a minimum of 15 workers from the same company to form a union, while previously 15 employees working in the same profession could form a union. The Social Dialogue Act makes it impossible for unions to bargain collectively in over 90 per cent of Romanian companies with fewer than 15 employees (Barbuceanu 2012). Not surprisingly, the number of collective agreements at company level has declined (Hayter *et al.* 2013: 23).

Finally, the Social Dialogue Act makes it more difficult for unions to take industrial action. Employees are no longer allowed to go on strike if the provisions of a collective agreement are not implemented by the employer. Also, it is obligatory for the parties in conflict to undertake conciliation before taking industrial action under the current law, which was not the case before 2011. During a strike, the workers involved lose all their employment rights, except their health-care insurance, while previously they lost only their wages. Furthermore, union officials were protected for two years after their mandate had expired under the old laws, while an employer can fire them immediately after their mandate expires under the provisions of the current Labour Code. Additionally, employees and their representatives are not allowed to organise industrial action if their demands require a legal solution to solve the conflict, which makes it almost impossible to organise protests against legal changes. By 2011, unions had a very weak capacity to mobilise against the centre-right government's attack on fundamental trade union rights, following unsuccessful mass demonstrations and strike action against austerity measures in 2009 and 2010 and the corruption allegations concerning national union leaders.

Nevertheless, the union leaders of the five confederations signed a protocol in 2011 with the opposition. This promised to reverse the employment regulations introduced by the centre-right coalition in exchange for unions' support for the 2012 elections. The centre-left coalition came to power in 2012, but the new government made virtually no legal changes to the Social Dialogue Act until March 2014. The ILO representatives held discussions with the centre-left government as well as representatives of the Troika about the need to amend the current labour laws to comply with ILO Conventions (Hayter *et al.* 2013). However, the EU and the IMF opposed most changes proposed by the social partners. While the Troika endorsed legal changes adopted unilaterally by the centre-right government (without parliamentary debate or consultation with unions and employers' representatives) which reduced the protection of employees in 2011 (Trif 2013), in their joint comments, the EU and the IMF objected to the use of a slightly more democratic process to modify the Social Dialogue Act (Law 62/2011) to comply with the ILO Conventions:

We understand that the present draft was prepared by trade union confederations that are representative at the national level and by

only four employer confederations. Given the importance of Law 62/2011 for labor relations in Romania, which embodies a key reform, we think it is inappropriate to amend this law through an emergency ordinance and consider it of the utmost importance to go through the normal legislative process which ensures a thorough preparation and proper consultation of all social partners, including all employer organisations representative at the national level ... we 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: 1)

The European Commission and the IMF opposed proposed changes concerning the extension of national and sectoral collective agreements. Specifically, they were against changes that would make it easier for employees to take industrial action and also asked for a further reduction in trade union influence by limiting the legal protection of local employee representatives involved in collective bargaining. However, they agreed with the proposed changes in the local union representativeness criteria from over 50 per cent to 35 per cent and a reduction of the number of members required to form a union from 15 to five. In contrast with the expectation that joining the EU would support workers' rights (Kohl and Platzer 2004), the EU has played a crucial role in *reducing* employment rights and the capacity of trade unions to negotiate collective agreements during the recent crisis.

1.5 Concluding remarks

The first section of this chapter examines the main changes in collective bargaining since 2008 based on secondary data. It argues that the centre-right governments had a primarily ideological motivation for dismantling the multi-level collective bargaining system in place prior to the 2008 crisis, with the support of the Troika. There was a need for structural reforms to redress economic imbalances, but the labour market regulations were not among the key factors requiring substantial modifications (Ban 2014). The centre-right governments offered a 'technical' justification to introduce certain structural reforms, particularly those required by the Troika to provide the promised loan (Stoiciu 2012). However, there was an ideological motivation for privatising public utilities, reducing social and welfare provisions

and diminishing the role and influence of trade unions in collective bargaining (Stoiciu 2012; Trif 2013).

Although both the austerity measures and the structural reforms have affected collective bargaining, labour law changes (associated with structural reforms) have led to a radical transformation of the industrial relations system and will damage collective bargaining mechanisms in the long run. The biggest change in collective bargaining is at the national level, with the Social Dialogue Act making it impossible for the social partners to negotiate cross-sectoral collective agreements. Moreover, the Act had made it very difficult to negotiate new sectoral agreements, due to the new legal requirements for the social partners. As a result, no new sectoral collective agreements were concluded in the private sector between 2012 and March 2014. There has also been a massive decline in the number of collective agreements at the company level since 2008 (Hayter *et al.* 2013). Thus, the scope for the joint regulation of terms and conditions of employment has decreased significantly, while there has been an increase in employers' (and managers') prerogatives at the company level due to the erosion of collective and individual employees' rights.

Nevertheless, the extent to which employers are using these new prerogatives is unclear. Although national-level data indicate that labour costs as a proportion of GDP have declined since 2008 (Hayter *et al.* 2013: 36), the available studies provide limited evidence concerning the outcomes of the collapse on national and sectoral-level collective bargaining for employees, particularly for those working in the manufacturing sector. Previous studies focus primarily on the impact of the austerity measures on the terms and conditions of public sector employees (Hayter *et al.* 2013; Trif 2013). No study was found to investigate the scope and the quality of the company-level agreements after the collapse of national and sectoral-level collective agreements. It could be expected that local unions in large manufacturing companies would be the most likely to maintain or improve the terms and conditions of employment of their members, as manufacturing sectors had the highest union density in the country. The second part of this chapter examines the actual impact of labour market reforms on collective bargaining in manufacturing and their implications for continuity and change in Romanian industrial relations, based on primary data.

2. The impact of the reforms of joint regulation and labour market policy on collective bargaining in manufacturing

2.1 Introduction

The recent crisis led to different levels of change in industrial relations in the EU member states (Marginson 2015); Romania is an extreme case of disorganised decentralisation of collective bargaining. The deregulation of the labour market by the centre-right government with the support of the Troika has affected both the individual and collective rights of employees.

The Labour Code amendments made it easier for employers to hire and fire employees and to use flexible working time arrangements, while the Social Dialogue Act (SDA), adopted in 2011, diminished employees' fundamental rights to organise, strike and bargain collectively (Trif 2013). This 'frontal assault' on multi-employer collective bargaining (Marginson 2015) led to a transformation of the regulatory framework from a statutory system that supported collective bargaining at the national, sectoral and company levels to a so-called 'voluntary' system (interview, state official, 2014). Nevertheless, the extent to which these legal changes have affected company-level collective bargaining is not known, particularly in the private sector.

This study investigates the impact of the labour market reforms on collective bargaining in the manufacturing sector, in which trade unions are relatively strong. It focuses on the effects of the labour law changes on collective bargaining in six companies operating in the metal and food sectors, where trade unions have managed to prolong the sectoral collective agreements negotiated before the adoption of the Social Dialogue Act until 2015. The selection of the six case studies aimed to cover a wide range of developments in collective bargaining. While in all six cases, the recent legal changes made collective bargaining far more difficult for trade unions, the degree of change in the terms and conditions of employment varied from radical changes in Food 4 (the worst case scenario) to a large degree of continuity in the Metal 5 case (the best case scenario), with the other cases being between these two extremes. The findings suggest that the degree of change and continuity in the terms and conditions of employment at company level is contingent on three

sets of inter-related factors: (i) the attitude of the employer (and senior management) towards employees and their representatives, (ii) the local labour market and (iii) the mobilisation capacity of the company trade union.

2.2 Methodology

As this study seeks to examine the impact of labour market reforms on collective bargaining in manufacturing and their implications for continuity and change in Romanian industrial relations, it is based on in-depth interviews with 25 key informants at the national, sectoral and company levels. At the national level, two trade union officials, an employers' association official and two government officials were interviewed. At the sectoral level, five trade union officials were interviewed, three from the metal sector and two from the food sector. Finally, 15 interviews were conducted in five metal companies and a food company; in four companies, both union officials and managers were interviewed, while in two metal companies only trade union officials were interviewed (see Table 1).

The selection of the companies was based on recommendations by sectoral trade union officials, aiming to cover a wide range of companies in relation to the level of change and continuity in their terms and conditions of employment and collective bargaining developments since 2008. All six companies are subsidiaries of multinational corporations; two of them have more than 1,000 employees (Metal 1 and Metal 5), two of them have between 500 and 1,000 employees, while the other two have between 200 and 500 employees (see Table 1). Apart from Food 4, employees are covered by a company collective agreement concluded by a representative union (which means that union density is over 50 per cent).

The preliminary findings were presented at a one-day workshop attended by six trade union officials and an expert in Romanian industrial relations. The participants provided feedback on the preliminary findings, as well as additional information regarding the degree of change and continuity in Romanian industrial relations.

Table 1 Profile of the case studies

Case studies	Number of employees (approx.)	Main products	Interviews			Degree of deterioration of terms and conditions of employment since 2011	
			Total	Trade unions	Employer/HRM/Line managers	Collective bargaining (SDA)	Individual rights (Labour Code)
Metal 1	>3000	Automotive cables	5	✓	✓	Moderate	High 50 per cent of labour force on fixed-term contracts
Metal 2	700	Auto components	2	✓	✓	Small	High 4 (instead of 5) day working week
Metal 3	300	White goods	3	✓	✓	Small	High Labour force reduced by 40 per cent
Food 4	>800	Mill and bread	3	✓	✓	No change (no company collective agreement)	Very high Change from paternalistic to autocratic management style
Metal 5	1 500	Steel pipes	1	✓	No	Small	Small
Metal 6	500	Electric and electronic equipment	1	✓	No	High	Moderate

2.3 Implications of the reforms for the *process and character* of collective bargaining

Frontal assault on national and sectoral collective bargaining

Empirical findings indicated that the labour market reforms led to the destruction of national and sectoral collective bargaining. It was suggested that post-communist legacies rather than the crisis led to these reforms. According to state officials, the government had to change the statutory system that supported collective bargaining into a so-called 'voluntary' system (interviews, 2014), due to ownership changes linked to the privatisation of state-owned enterprises. It was argued that most employment laws were passed before the mid-1990s, when the majority of companies were state-owned. In that context, the national trade unions managed to establish a regulatory framework in favour of employees and trade unions. Additionally, 'there was a cascading increase in the obligations imposed on employers by collective agreements concluded at national, sectoral and company levels' (interview, government official, 2014). Consequently, the government sought to develop a 'voluntary' collective bargaining system by abolishing the legal obligations of the representative employers' associations and trade unions to get involved in collective bargaining at cross-sectoral and sectoral levels. According to government officials, the main aim of the labour market reforms was to get collective bargaining at the company level to reflect the new economic and social circumstances of private companies.

Most respondents (except government officials) indicated that labour market reforms were initiated by the American Chamber of Commerce and other foreign investors in Romania. Respondents indicated that there was an informal government committee which consulted the representatives of foreign investors, while the government ignored the official channels of consultation with the trade unions and employers' associations. Also, specific large multinational corporations, such as Arcelor Mittal Galati – which employs around 8,000 employees – influenced the provisions in the Social Dialogue Act. Following a two-day strike in 2008 – workers asked for a 30 per cent pay increase but the strike was declared illegal by a local court – Arcelor Mittal made a complaint that the provision of the trade union law (Law 54/2003) that required employers to provide up to five days paid time off per month to local union officials for union activities is unconstitutional. This case was sent to the Constitutional Court, which upheld Arcelor Mittal's claim.

This decision was incorporated into the new labour law (SDA). Thus, there is no longer a statutory requirement for employers to provide paid time off for union activities.

Although all employers held the view that the former labour laws favoured employees and needed to be reformed to re-establish a balance of power between employers and employees, their views varied in terms of the degree of change needed. The employers' associations official (representing one of the four employers' confederations which was against the adoption of the Social Dialogue Act) argued that national and sectoral collective agreements were needed to ensure social peace, to avoid social dumping and to set the national minimum wage. Additionally, this respondent made reference to the broader consequences of unilateral decision-making by the government:

In fact, Law 62 [SDA] has divided and significantly reduced the influence of both social partners, employers' associations and trade unions. ... This is very convenient for the government, as it allows it to impose any decisions very easily. (Employers' association official 2014)

In a similar vein, the CEO of Metal 3 indicated that multi-employer collective bargaining is needed to avoid social dumping and, more broadly, he considered that trade unions should have the right to bargain collectively at different levels. The view of this CEO is fairly exceptional, which seems to be linked to his extensive work experience in France. According to the employers' association official, many members opted out of employers' organisations (or threatened to opt out) in order to avoid the implementation of the provisions of multi-employer collective agreements. Findings suggest that the vast majority of employers and senior managers welcomed the labour law reforms that led to the decentralisation of collective bargaining.

Nevertheless, the extent to which labour law reforms damaged the employers' associations was rather surprising; only five (out of 13) representative employers' associations in 2010 were still representative in 2014. Furthermore, representative employers' associations seem to have only a perfunctory role in bi- and tripartite institutions, as they are no longer involved in collective bargaining. The fact that employers'

associations have a very limited role and influence at the national and sectoral levels seems to be the main reason for the refusal of other employers' association officials to be interviewed or to participate in the workshop related to this project.

Similar to employers' associations, the role and influence of the national and sectoral union organisations in collective bargaining has decreased considerably since the adoption of the SDA in 2011. The recommendations and the support of the Troika of the European Union, IMF and ECB for labour market deregulation made it almost impossible for the unions to defend against the destruction of the multi-employer collective bargaining institutions (Trif 2014). Nevertheless, union officials mentioned that the attack on employment rights and fundamental union rights did not lead to an increase in the internal cohesion and solidarity of the union movement. As statutory employment rights had been achieved primarily through national tripartite consultation in the 1990s, the national unions found it very difficult to mobilise workers and local unions, as they are not used to fighting for their legal rights.

Although national union confederations and federations have not been able to negotiate new collective agreements that cover all employees at national or sectoral levels since 2011, a number of sectoral unions negotiated multi-employer collective agreements. According to the data provided by a trade union confederation (CSDR), 24 multi-employer collective agreements were valid in 2014. Out of those, seven are labelled sectoral collective agreements but they cover solely employees in companies in which the employer is a member of the employers' association that signed the collective agreement. The unions in the health care sector are seeking to extend the current multi-employer collective agreement to the entire health care sector using the provisions of the Social Dialogue Act. Although the quantitative requirements for extension are fulfilled in this sector – the employers who signed the collective agreement cover more than 50 per cent of the sectoral labour force – the new procedures for extending sectoral collective agreements are ambiguous and allow a minority of private employers to block extension. Union officials mentioned that this is a very important case (a rule-maker), as it is likely to be used as a reference for further requests to extend sectoral collective agreements.

Out of the seven sectoral collective agreements² three are in the private sector. All three are in manufacturing and were negotiated under the old labour laws (before 2011) and extended through additional acts until 2015. The collective agreement in the glass and ceramic products sector covers 39 companies. It provides a higher sectoral minimum wage (an additional 25 RON – 5.6 euros – to the national minimum wage per month). The collective agreement in the food, beverage and tobacco sector covers 770 companies, but it does not cover Food 4, as the employer is not a member of the employers' association that negotiated this agreement. In contrast, Metal 5 case is covered by the collective agreement concluded for the electronics, electrical machinery and other equipment production sector, which applies to a total of 108 companies. Similar to most Romanian companies, the other four case studies are not covered by multi-employer collective agreements.

Although the number of sectoral agreements has decreased a great deal since the recession,³ the number of collective agreements for groups of companies has increased from four in 2008 to 16 in 2013 (Table 2). A trade union official who participated in the negotiation of a multi-employer collective agreement in the automotive industry indicated that there have been significant changes in the process of collective bargaining since 2008. In 2010, the two representative trade unions' federations for the automotive sector negotiated (under the old legislation) an addendum to the sectoral collective agreement for 2011–2012 with the Employers Federation of the Machine-Building Industry (FEPA). Ford Craiova joined the FEPA in 2010 to lead these negotiations.

Ford wanted to get a vague sectoral collective agreement to provide more scope for negotiations at the local level (that is, to get rid of wage scales, to decentralise the setting of working time, including lunch breaks and the payment for overtime and weekends at company level). Ford employed a consultancy law firm to negotiate the addendum on behalf of the FEPA. As this was the first time that the unions had to negotiate with a consultancy firm, union officials found the bargaining process very difficult. The lawyers based their negotiations on the minimum

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2. Similar to the agreements for a group of companies, the existing sectoral agreements cover only the members of the organisations that signed the agreement but the sectoral agreements have to be negotiated by representative trade unions and employers' associations at the sectoral level.
 3. There was a decline from 20 sectoral collective agreements in 2010 to seven in 2013.

legal provisions of labour laws, as well as other laws covered by the Romanian Civil Code. It took four months to negotiate the addendum in 2010, while the previous negotiations of the sectoral agreement took 30 days. Although this addendum provided more flexibility for individual employers (to set overtime payments and pensions for workers who had work accidents at company level), a third of employers (148) opted out of FEPA in 2011, including Dacia Renault, which is the largest employer in the sector. Thus, employers that do not want to be covered by multi-employer collective agreements opt out of the employers' associations.

In 2012, the two representative trade union federations negotiated another multi-employer collective agreement with the representatives of FEPA, to last for two years, which covers only 40 companies from the automotive sector, representing less than 10 per cent of the companies covered by the sectoral collective agreement in 2010. Although workers at Dacia Renault are no longer covered by a multi-employer agreement, they have the best employment terms and conditions in the sector, as the company continued to be profitable during the recession and it has a very strong local union (Interview, union federation official, 2014). All the respondents indicated that the company is the main level at which actual terms and conditions of employment are established. Although this was also the case before the crisis, the company-level negotiations used to start from the provisions negotiated at higher levels.

Table 2 Number of valid collective agreements between 2008 and 2013

Year	Group of companies	Company/workplace
2008	4	11 729
2009	9	10 569
2010	7	7 718
2011	8 (a new collective agreement plus seven additional articles to existing collective agreements)	8 317
2012	8	8 783
2013	16	8 726

Source: Ministry of Labour, Family and Social Protection (2014).

Increasing the imbalance of power in favour of employers at company level

The number of company-level collective agreements has also declined, from 11,729 in 2008 to 8,726 in 2013 (Ministry of Labour, Family and Social Protection 2014). There was a major decline of approximately 3,000 collective agreements between 2008 and 2010, while their number increased by around 1,000 in 2011 and 2012, again registering a slight decrease in 2013 (see Table 2). Overall the number of company-level agreements declined by 25 per cent between 2008 and 2013, while the biggest reduction took place before the adoption of the Social Dialogue Act in 2011.

The legal reforms made the collective bargaining process more difficult at the company level, although in the five cases which had a collective agreement (except Food 4) local unions were representative under the Social Dialogue Act (union density was over 50 per cent of the total labour force). In these companies, local union officials indicated that they start negotiations from 'zero', while before 2011 they started the negotiations from the provisions agreed at the sectoral level. Better provisions were negotiated at the sectoral level regarding minimum wages, wage increases linked to inflation, payment of overtime, holiday entitlements and so on, while wage scales were negotiated at the national level. Two local officials revealed that they almost took for granted the provisions of the national and sectoral agreements, while they realised their importance when those agreements ceased to exist.

According to the respondents, the main factor that affects the company collective bargaining process is the attitude of employers and senior management towards the local union. For instance, the senior managers have been fairly hostile towards trade unions since the 2000s at Metal 6, when the majority of the shares were bought by an investor. The relations between management and union were very good previously, when managers and employees owned the company (the company was initially privatised through the management and employee buy-out method in the 1990s). Immediately after the legal reforms, the management told unions that they were going to apply the new legal provisions. First, the company stopped collecting the union fees and encouraged supervisors and workers to leave the union. According to a union respondent, the senior management changed most of the middle managers (around 60–70 per cent) and asked the new managers to use both the 'carrot' ('bribe' supervisors – the respondent indicated that he has seen lump

sums on their payroll) and the 'stick', by threatening to fire them. These tactics led to a decline in union membership by 25 per cent in a couple of months. Second, the senior management made it far more difficult for unions to communicate with their members, prohibiting union officials from discussing with members during their hours of work or posting any information regarding union activities in the company. Third, the management divided the company into seven independent undertakings and made it far more difficult for unions to get relevant information for bargaining purposes. The union had to re-register with the local court and prove that they were representative for each undertaking in order to be able to negotiate a collective agreement for each unit. Overall, the process of collective bargaining has become more adversarial and more difficult for unions in the case of Metal 6 since the legal reforms.

In the other four case studies from the metal industry, the attitude of employers and senior managers towards unions was fairly cooperative. In Metal 1, the HR manager indicated that the company preferred not to take advantage of the new provisions of the legislation regarding collective bargaining, as the 'labour laws might change again' (interview, 2014). Nevertheless, the collective bargaining process has become far more difficult, as the union finds it difficult to organise and represent half of the labour force which is on fixed-term contracts. The company used the new provisions of the Labour Code, which makes it easier for employers to employ workers on fixed-term contracts and virtually all new employees were hired on this basis after 2011. In a similar vein, in Metal 3, the union has very good relations with senior management and their relationship has not changed since 2011. However, the union was unable to defend against the reduction of the labour force by 40 per cent due to the new provisions of the Labour Code, which makes it easier to hire and fire employees.

Similar developments took place in the case of Metal 2. The union has good relations with the current senior management team and there have been no changes in the process of collective bargaining, but the management reduced the working week from five to four days during the summer months, as permitted by the new provisions of the Labour Code. Somewhat surprisingly, the union official mentioned that the collective bargaining process was far more difficult before 2008, when there was a different main shareholder of the company, who was not very keen to negotiate with the union. In a context of decentralisation of

collective bargaining and legal reforms that provide more prerogatives to employers to decide the terms and conditions of employment, it is not surprising that the power of individual employers and senior managers, even in companies in which trade unions managed to negotiate collective agreements.

The large degree of continuity in the bargaining process in four (out of the five) case studies in which unions are relatively strong, as well as in the case of Dacia Pitesti (which has the strongest company union⁴ in Romania, according to national union officials), indicate that individual employers did not really need the new labour laws to redress the power balance in their favour. As these cases are among a minority of companies in which union density is over 50 per cent, the empirical findings support the unions' view that the legal reforms have further tilted the balance of power in favour of employers. According to a senior union official

the previous legal framework ensured a degree of equilibrium of power between the two parties [trade unions and employers]; the new laws are solely about the needs of employers. Trade unions do not count, even if they have 100 per cent union density. (Union confederation official, 2014)

In the next section we examine the impact of the reforms on the terms and conditions of employment.

2.4 Implications of the reforms for the content and outcome of collective bargaining at sectoral and company level, on wages and working time in particular

Impact of the reforms on workers

Although the legal reforms substantially reduced joint regulation of the terms and conditions of employment by the social partners,⁵ there are still three sectoral collective agreements in the manufacturing sector. As these agreements were negotiated before the major changes in the labour

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4. It refer to a trade union representing workers in a specific company, site or undertaking (not a yellow union).
 5. Until 2010, all legally employed workers were covered by the multi-employer collective agreements at the national level and many of them were also covered by sectoral agreements, while currently all employees working in companies with fewer than 20 employees are no longer covered by any joint regulations.

laws in 2011, there have been no marked alterations in their content and outcome. In the food, drinks and tobacco industry, the latest sectoral negotiations took place in 2010, when the 2006 collective agreement was prolonged until 2015 by means of an addendum. This addendum changed only an article in the sectoral agreement, increasing the sectoral minimum wage to 650 RON. The national minimum wage was increased to 670 RON in 2011 and thus the sectoral minimum wage has become the same as the national minimum wage, while in the previous sectoral agreement it was 20 per cent higher. A union official considered that they were rather lucky that they managed to prolong the 2006 sectoral agreement (which expired in 2010) before the legal reforms of 2011. Different from the automotive sector, where a collective agreement was negotiated after the legal changes in 2011,⁶ there were no changes regarding wage scales, payment of overtime and working time in the sectoral collective agreement in the food, drinks and tobacco industry.

The biggest change in the outcome of current sectoral agreements is the fact that they cover only employers that are members of the employers' association that signed them. According to the union officials interviewed, the new legislation is unclear regarding the extension mechanism for the agreements signed before the adoption of the Social Dialogue Act. Trade unions argued that those collective agreements should cover all companies in the sector. In 2012, the representative union federations from the food industry took this claim to the relevant court and got a decision in their favour, but this decision has been contested by government officials. They indicate that sectoral agreements should cover only those employers that signed the agreement, in accordance with the new labour legislation. Despite having a valid sectoral collective agreement in the food, drinks and tobacco industry, local unions affiliated to a representative federation (which negotiated the sectoral agreement) are unable to use it as a starting point for local negotiations if the employer is not part of the employers' association. In practice, it appears that all sectoral agreements are implemented according to the provisions of the Social Dialogue Act, as indicated by the case of the Food 4 company.

Unilateral management decision-making is well illustrated by the worst case scenario for employees found in the Food 4 case. This company, which has approximately 900 employees, is one of the leaders in the Romanian milling and bread manufacturing market. It was privatised

6. The automotive sector is no longer covered by a sectoral collective agreement.

in the late 1990s, bought by a Greek family business. The company had a strong company trade union before privatisation (interview, sectoral union official, 2014). In the early 2000s, when the company moved its main location to the outskirts of the city, the employer decided to improve the terms and conditions of employment unilaterally and encouraged workers to leave the union. In these circumstances, the company union was dissolved. Respondents indicated that the Greek employer and senior management team had a paternalistic approach to managing people, offering good wages and individual financial support to their workers (personal loans and financial help if somebody was sick in the family). Hence, employees were reasonably happy with their terms and conditions of employment.

The change of ownership led to major changes in management style. During the recent crisis, the Greek company sold its shares to an Austrian holding company, which obtained over 95 per cent of the Food 4 company shares in 2013. Respondents suggested that the holding group wished to restructure the company very quickly and sell it on after a couple of years. In order to do so, the new owner decided to change all the managers (a similar tactic to that used in Metal 4). The company initially employed a new senior management team on fixed-term contracts to make sure that the employer had control over them. Their first task was to replace virtually all middle managers. The management employed a new cohort of middle managers, initially by getting two managers for each middle/line manager position and then gradually firing the managers employed before 2013. According to a former HR manager, they initially fired the most vulnerable managers, such as single mothers, parents with small children and workers who had less than two years before they retired. The fired managers got a month's notice but they were prohibited from coming to work or visit their workplace during the notice period, which made it very difficult for those managers to talk to each other. The company provided the minimum redundancy compensation specified by law, not the seven months' wages indicated in the sectoral collective agreement. In this context, some line managers contacted a former HR director to ask for her advice.

A recently fired middle manager tried to bring in the former HR manager to help him negotiate with the new management to keep his job and/or get a better redundancy package but he was told in a very hostile manner 'if you don't like it, you can sue the company' (interview, 2014). The

respondents indicated that the employment climate in the company is very poor and most managers and workers are afraid that they will lose their jobs. The respondents did not know how many managers or non-managerial employees have already been fired. A middle manager, with the help of the union federation and the former HR director, approached other middle managers that had been fired and set up a company union to try to defend their rights. This new union had just registered with the relevant court when the interviews took place in 2014. The new union has asked the representative union federation in the sector to represent it for the purpose of collective bargaining at the company level, which is allowed under the provisions of the Social Dialogue Act. This was an extreme case of a non-unionised company in which a change of employer led to the alteration of the management's attitude towards employees, from a paternalistic management style to an autocratic one. These changes particularly affected job security and the employment climate.

In all case studies, respondents indicated that the attitude of the employer and local senior management team to employees and unions had the most important effect on the degree of change in the terms and conditions of employment. In Metal 6, the hostile attitude towards unions led to an increase in the number of conflicts, which were taken by the union to the relevant courts for resolution. In the other cases, the managers primarily used the new provisions of the Labour Code, which allow employers to make more flexible employment contracts and working time arrangements. In the case of Metal 1, the management changed full-time contracts to fixed-term employment contracts for half the labour force; in Metal 2, the management reduced the working week from five to four days when demand declined during the summer; finally, the management of Metal 5 reduced its labour force by 40 per cent, due to a reduction in demand. Overall, respondents indicated that managers use the flexible working time arrangements provided by the reformed laws to deal with the fluctuation in demand for their products.

The respondents also indicated that the influence of employers and senior management teams in setting wages has increased due to the major reduction of the coverage of multi-employer collective agreements, as well as specific legal reforms. The new Labour Code specifies that it is the management's prerogative to decide the targets for specific job categories unilaterally; previously, managers were obliged to negotiate those targets with unions. This prerogative makes it fairly easy for managers to increase

employees' workloads by raising the targets for specific jobs, without pay increases. In sectors in which there are multi-employer collective agreements, if employers are not willing to implement the relevant provisions, they can opt out of the employers' association. Previously, all employers in the sector had to implement collective agreements concluded at higher levels by representative social partners.

Also, the influence of local senior management over pay has increased, as in most companies they do not have to consider the provisions negotiated at the higher levels. For instance, in the case of Metal 1, an increase in wages in line with inflation applied automatically to all companies covered by the sectoral agreement until 2011; now, however, inflation is included in the percentage of wage increases negotiated at the company level. The wages for newly employed low-skilled employees were above the minimum wage before 2011, but currently they get only the minimum wage. All respondents indicated that the influence of employers and senior managers on determining wages has increased greatly since the recent legal reforms.

In addition, the decentralisation of collective bargaining has led to an increase in local benchmarking. Union officials (and other respondents) indicated that the local labour market and wage levels in similar companies in the area represented the main reference for wage bargaining. In the case of Metal 1, the union benchmarked their wages against those of Metal 2, which has the highest wages in the region. Union respondents at Metal 1 indicated that wages are currently higher in another factory, which is located in the same area as Dacia Renault, which has the highest wages in the manufacturing sector. As local benchmarking has become more important since the collapse of national and sectoral agreements, the unions from Metal 1 and Metal 2 decided to withdraw their affiliations with two different national federations and created a regional union federation to enable them to coordinate their local collective bargaining. Thus, the importance of wage developments in the local market has increased since the recession, while there have been no changes regarding the influence of firms' economic performance, labour productivity and the quality of goods produced on setting wages.

Finally, findings suggest that the ability of local unions to increase wages and defend against the deterioration of other terms and conditions of employment is contingent on their capacity to mobilise members to take

industrial action. The best-case scenario was found at Dacia Renault Pitesti, where workers' terms and conditions of employment have not deteriorated since the recession. Apart from having one of the largest company unions in terms of membership (over 13,000 members), the union at Dacia Renault Pitesti managed to increase the annual wage by 350 RON (80 euros), following a 16-day strike in 2008. In a similar vein, in the cases of Metal 5 and Metal 1, union officials indicated that the fact that they have proven to management that members are willing to go on strike to support the union's position during collective bargaining enabled them to increase wages after the 2011 labour reforms. In contrast, a union official indicated that his organisation has very limited influence during the collective bargaining process because the union is unable to mobilise workers who are worried about job insecurity, despite the fact that virtually all workers are union members (workshop discussion, 2014).

Summing up, in a context of disorganised decentralisation of collective bargaining, the case studies illustrate great variation concerning the impact of reforms on the terms and conditions of employment. The degree of change in such terms and conditions for employees varied from radical changes in Food 4 and Metal 6 to a large degree of continuity in Metal 5, with the other cases lying between those two extremes (Table 2). In the companies in which demand decreased since the recession, employers used the new provisions of the Labour Code to impose more flexible working time and atypical employment contracts (Metal 1, Metal 2 and Metal 3). While working time arrangements have been changed unilaterally by employers, wages and other terms and conditions of employment have been negotiated via collective bargaining in five cases which have representative unions. The ability of unions to maintain or improve the terms and conditions of employment through collective bargaining has been affected by three main interrelated factors, namely (i) the attitude of the employer and senior management to employees and their representatives, (ii) the local labour market and developments in collective bargaining in other large companies in a specific area and (iii) the union strength and the history of the relations between the local unions and management.

Implications of the reforms for the social partners

As the main purpose of the labour market reforms was to give more power to individual employers to set the terms and conditions of employment,

it is not surprising that the reforms have led to a reduction in the role and influence of trade unions and employers' associations. All respondents indicated that the national confederations and many federations have lost their main role in collective bargaining. Additionally, their role in the tripartite and/or bipartite bodies has been reduced substantially, while the government's role in industrial relations has increased. According to an employers' association official:

Law 62 [SDA] has fragmented unions and employers' associations in Romania and reduced their power. It is clear that having weak social partners is convenient for the Romanian government; without strong social partners, the government can easily impose its decisions. (Interview, 2014)

Representatives of both employers' associations and unions revealed that there is very limited dialogue between the social partners and the government. While prior to 2011 the minimum wage was negotiated by the social partners, currently it is decided unilaterally by the government. Also, a new National Tripartite Council was established under the provisions of the Social Dialogue Act, but it has largely a decorative function (interview, 2014). Apart from the fact that its administrative procedures are unclear, it currently comprises 30 government representatives, six employers' representatives and five union representatives, which makes it very easy for the government representatives to impose their views on any matter. Thus, state intervention in industrial relations has increased. Furthermore, since 2011 the state has supported employers' prerogative to set the terms and conditions of employment at company level, in contrast to its role prior 2010, when it primarily supported workers' rights.

The decentralisation of collective bargaining has led to the disorganisation of employers' associations. Only five (out of 13) employers' organisations are still representative at the national level. In a context of favourable regulations, employers do not need to be members of employers' organisations. By and large, individual employers are content with the provisions of the new Labour Code and the Social Dialogue Act. They have used the new provisions of the Labour Code, which allow more flexibility, to deal with fluctuations in demand for their products (Metal 1, Metal 2 and Metal 3). Most employers prefer to set terms and conditions at the company level, sometimes with the help of consultancy law firms. As a result, many employers opted out of employers' associations.

Furthermore, union officials revealed that employers often select representatives for multi-employer bargaining and/or bi- and tripartite institutions that do not have a mandate to take any decisions.

The Social Dialogue Act enhanced the influence not only of individual employers but also of local unions in relation to other echelons in the union movement. The tensions between the company-level unions and (con)federations have increased a great deal since 2011. As confederations and many federations are no longer negotiating collective agreements, the company unions (which collect the membership fees) are contesting the distribution of membership fees. Local unions have started to retain a higher percentage of the membership fees, which has led to financial difficulties for some federations and confederations. Also, it was revealed by respondents that some local unions report a lower number of members to reduce the amount of fees paid to federations and confederations.

According to national union officials, in many highly unionised large companies, local union officials use their position to obtain personal benefits:

The large majority of local leaders (not all of them) act like they are owners of the company unions. Very few of them consult their members and involve them in the decisions taken. With these 'ownership rights' over the union organisation, union leaders use their position to get involved in local politics, make money and to acquire high power status in the local community. (Interview, national union confederation, 2014)

This behaviour leads to a vicious circle; if federations and confederations try to do something about it, the local unions threaten withdrawal from federations and confederations, and the (con)federations lose their financial resources and their representative status.

Additionally, legal reforms and declining resources due to falling membership for many unions have led to tensions between federations and confederations. While confederations cooperated to fight austerity measures and the legal reforms in the first years of the recession (Trif 2014), there seems to have been less cooperation since the adoption of the legal reforms in 2011. For instance, it was revealed that the BNS initiative to change the new Labour Code had rather limited support

from the other union confederations. Although the Social Dialogue Act is a threat to the union movement in Romania, it has resulted in divisions within and among organisations rather than solidarity.

Nevertheless, some union federations have acquired a more active role in local bargaining since 2011, although their role and influence depend on the willingness of local unions to involve them. While the status of local unions within union hierarchies has been enhanced, their influence vis-à-vis employers has declined. In companies in which unions have more than 50 per cent density, local unions negotiate the collective agreements from a weaker position (lower legal labour standards, less legal protection for union officials, more difficulties in striking, reduction of union membership, such as in the cases of Metal 1 and Metal 6). In companies in which unions are no longer representative, the local unions need to cooperate with the 'elected' representatives of employees during the bargaining process. As employees' representatives are generally selected by the management team and have no collective bargaining experience, according to respondents, they often undermine unions during the negotiation process (interviews, 2014). Nevertheless, collective bargaining is still possible in unionised companies, particularly if the local union is affiliated to a representative federation, which can negotiate (if asked) on their behalf.

In contrast, companies with fewer than 20 employees (and the majority of larger non-unionised companies) are no longer covered by any joint regulations, and this has boosted the grey labour market. The number of workers without an employment contract or paid the national minimum wage plus cash in hand has increased due to the lack of national and sectoral agreements,⁷ particularly in small enterprises. This has negative consequences for all parties: for the state, it reduces the financial contributions of workers and employers to the budget; for employers, there is unfair competition from those who avoid paying payroll taxes; for unions, it reduces their capacity to organise vulnerable workers and makes it more difficult to improve wages for legally employed workers. The state officials indicated that the government has increased the number of labour inspectors and fines for illegal work, but they recognised that the new legal provisions have not yet managed to tackle this issue. According to some respondents, there are not enough labour inspectors and some of them are corrupt.

7. Reliable data are not available on changes in the grey/black labour market since the recession.

Representatives of both employers' associations and unions have fairly negative views of state intervention in industrial relations. They consider that Romania was used as a 'guinea pig' by foreign investors with the support of the IMF and the European Union to radically decentralise collective bargaining. According to a union official,

The Romanian government has been very weak. Romania is a case study, a 'guinea pig'. All the labour market reforms were initiated and adopted at the recommendation of two players; one is the American Chamber of Commerce and the other is the Foreign Investors Council. The Romanian model has been exported to other central and eastern European countries and foreign investors wish to extend it in western European countries. (Interview, union confederation official, 2014)

Romania is perceived by unions and Romanian employers to be a 'rule-maker' in terms of the decentralisation of collective bargaining in the EU.

Summing up, the labour market reforms led to three interrelated consequences for the social partners: (i) it resulted in a considerable decline in the role and influence of the union movement and employers' associations, while the influence of individual employers and the state in setting the terms and conditions of employment has increased; (ii) although the legal reforms threaten the existence of the employers' associations and unions, they led to divisions within both unions and employers' organisations rather than solidarity; and (iii) the reduction of joint regulation and the decentralisation of collective bargaining made it easier for employers not to implement labour laws and the provisions of collective agreements (Food 4), which led to an increase in the grey labour market.

2.5 Discussion and conclusion: general trends regarding change and continuity in industrial relations

This chapter examines the impact of labour market reforms on collective bargaining in strongly unionised manufacturing sectors, highlighting the main implications in terms of continuity and change in Romanian industrial relations. The empirical findings suggest that the legal reforms have led to a radical decentralisation of the Romanian industrial relations system, as the national confederations and many sectoral unions' and employers' organisations lost their main *raison*

d'être, namely to negotiate collective agreements. Although there are multi-employer collective agreements in the metal and food sectors, the empirical findings indicate a decentralisation and fragmentation of collective bargaining, even in these strongly unionised sectors.

The degree of change and continuity in the terms and conditions of employment at company level is contingent on three sets of inter-related factors:

- (i) The attitude of the employer (and senior management) to employees and their representatives; the attitude of the employer varied from fairly cooperative in Metal 5, Metal 2 and Metal 3, to hostile in Food 4 and Metal 6. Although this is not surprising, given the decentralisation of collective bargaining, it is interesting that some union respondents perceived that the attitude of the employer/senior management to employees affected developments in company collective bargaining more than the recent legal changes.
- (ii) It was somewhat unexpected that union officials, as well as managers interviewed, considered that the local labour market and developments in collective bargaining in other large companies in a specific area affect the provisions of collective agreements more than the strength of the company trade union (in terms of union membership, density and mobilisation capacity). In all five companies that had a collective agreement, both unions and managers considered that the outcomes of collective bargaining in other companies in the area affected the process and the outcomes of collective bargaining in their company; Metal 6 was considered by a union official to be a 'rule maker', in the sense that it was the first company in the area where the senior management implemented the new provisions of the Social Dialogue Act, despite having a fairly strong trade union.
- (iii) Finally, union strength and the history of relations between local unions and management have affected company collective bargaining, particularly in Metal 5 and Metal 1, where the unions have proven their capacity to mobilise their members in the past five years; also, the worst deterioration of the terms and conditions of employment was in Food 4, which was not unionised; the hostile attitude of the senior managers towards middle managers and employees in Food 4 led to the creation of a new trade union.

The reforms have led to a great increase in the influence of individual employers in setting the terms and conditions of employment, while the role and influence of national and sectoral unions and employers' organisations has decreased a great deal. While the reduction of the influence of unions' and employers' associations in industrial relations was expected, the extent of the decline and divisions within these organisations was surprising; many national level organisations, particularly employers' associations, appear to be on the verge of collapse, as they no longer have a role in collective bargaining and their role in tripartite institutions is minimal (if any). In this context, it could be expected that these organisations would seek solutions to survive.

One of the five union confederations, BNS, used this crisis as an opportunity to restructure itself and change its main role from collective bargaining to providing individual services for its members. The union did a survey of all its members to find out their current and future needs. Primarily based on the information collected through this survey, the union created an electronic platform which focuses on providing individual services, ranging from support in finding jobs and career progression, to health and safety regulations and support with individual negotiations and grievances. This system was established well before 2008 but it could not be implemented before the crisis due to resistance from local union leaders. The new system provides transparency regarding the activities of local unions and to some extent reduces the power of local union leaders, as it makes it easier for members to get access to services provided by union federations and confederations. Also, the platform makes it easier for members to communicate with union federations or confederations. Last but not least, it makes it easier for members to obtain union support when they change jobs, even if they decide to work abroad. Nevertheless, the new system was operating only on a pilot basis when the research was conducted in 2014. Therefore, it is not yet possible to assess its effectiveness.

Most respondents revealed that they want the state to 'rescue' and revive industrial relations institutions through labour law changes but this seems unlikely in the near future. None of the respondents were optimistic that the current centre-left government would provide more statutory support for employee and union rights. The view of the state officials interviewed was that Romania needs a decentralised 'voluntary' system, in which individual employers negotiate with unions

or representatives of workers at the company level. They indicated that the government would consider legal changes only if the employers and unions reach an agreement on specific modifications. As individual employers are happy with the current legal framework, it is unlikely that this will happen in the near future. Union officials mentioned that in some companies there have been unorganised protests by discontented workers in the past couple of years. If this trend continues, employers may wish to change the legal framework to ensure social peace.

The Romanian government changed the regulatory framework from a statutory system that supported collective bargaining at the national, sectoral and company levels to a so-called ‘voluntary’ system, which made it almost impossible to negotiate new national and sectoral collective agreements between 2011 to 2014. State officials argued that the main reason for those changes was the privatisation of companies, not necessarily the recent crisis. Findings indicate that ownership changes had a key role in triggering the transformation of the industrial system in Romania. Although these changes appear to be linked to the post-socialist legacies of the privatisation of the state-owned companies, representatives of both unions’ and employers’ organisations argued that the new legal framework was initiated by foreign investors. Moreover, a national union leader suggested that ‘the actual text of the labour laws was given to Boc’s government by foreign investors and transposed *verbatim* into legislation’ (interview, 2014). Thus, the deregulation of the Romanian labour market seems to be better explained by the rise of neoliberal policies and globalisation.

Similar to other southern European countries, especially Greece, the Romanian labour laws that supported collective bargaining have been changed radically since 2008, which has led to a rapid demolition of the collective bargaining institutions at national and sectoral levels (Koukiadaki and Kokkinou 2016; Marginson 2015). These changes have empowered employers to reduce employment rights and have weakened the influence of trade unions in many unionised companies. These developments in collective bargaining and industrial relations support the view that statutory labour laws are not sufficient to uphold employment rights (Hyman 2014).

In contrast to Bohle and Greskovits’ (2012) argument that Romania has a weak state that concedes to union demands, the recent changes

in collective bargaining point instead to a relatively strong state (due to the external support of the Troika) and weak unions. The government's disregard for the provisions of collective agreements, the legislative changes and the alleged intimidation of union leaders have led to a decline of union legitimacy and influence in collective bargaining. The recession was used as a pretext by the centre-right government to reform the industrial relations system. The Social Dialogue Act was passed unilaterally by the government without being debated in Parliament and without involving the social partners. Also, the government made statutory changes to the terms and conditions of employment agreed by the social partners. The non-democratic procedures used to alter industrial relations resemble the authoritarian rule before 1989. Evidence points to a large degree of continuity in terms of strong state intervention in industrial relations. This institutional arrangement seems to be a type of authoritarian neoliberalism (Trif 2013), as changes in industrial relations are driven by an interventionist state in the field of wage setting that, at the same time, is pushing forward labour market deregulation and dismantling workers' rights. Similar to other countries severely affected by the crisis, the Romanian government has managed to introduce these neoliberal policies with the strong support of the Troika.

Appendix

Key changes in fundamental unions' rights after the adoption of the Social Dialogue Act (SDA)

		Before SDA (until 2011)	Key changes after the adoption of SDA (since 2011)
Collective bargaining	National level	Unions negotiated annual national collective agreements at cross-sectoral level, which covered all employees.	Unions are not allowed to negotiate cross-sectoral collective agreements.
	Sectoral level	20 sectors (out of 32) were covered by collective agreements in 2011. There was statutory extension of collective agreements.	Unions unable to negotiate new sectoral collective agreements in the private sector until March 2014. Collective agreements can be extended only if the members of employers' associations that signed the agreement employ more than 50 per cent of the labour force in the sector.
	Company level	Unions were considered representative if their density was ≥ 33 per cent. Shop stewards could take up to five days of paid leave to deal with union issues.	Unions are representative if their density is ≥ 51 per cent. => Unions with less than 51 per cent density are not eligible to conclude collective agreements on their own Shop stewards can take up to five days of unpaid leave to deal with union issues.
Freedom of association	Minimum of 15 employees working in the same profession could form a union.	Minimum of 15 workers from the same company is required to form a union. => Unions cannot organise workers in over 90 per cent of Romanian companies, which have fewer than 15 employees (Barbuceanu 2012).	
Industrial action	No obligatory conciliation before strikes. Unions were allowed to organise industrial action to enforce the implementation of collective agreements.	Obligatory conciliation before strike action. Workers are not allowed to go on strike if collective agreement provisions are not implemented. The solution to conflicts requires legal changes.	

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