

# **The Impact of Legislative Reforms on Industrial Relations in Romania**

Luminița Chivu, Constantin Ciutacu, Raluca Dimitriu, Tiberiu Țiclea

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# Foreword

In the midst of the financial and economic crisis, the Romanian Government assumed responsibility before Parliament for substantial changes to labour and industrial relations legislation and institutions, primarily through Social Dialogue Law No.62/2011 and amendments to the Romanian Labour Code as provided by Law No.40/2011. These measures were among the structural reforms aimed at meeting Romania's budget deficit reduction targets, restoring macroeconomic stability and employment growth.

The ILO provided detailed technical comments on both draft laws, in particular with regard to their compliance with core international labour standards. The reforms that were enacted failed to address fundamental ILO concerns. With growing concern over the impact of the 2011 reforms, and following a formal request of the national trade union confederations, the ILO commissioned a study to consider the impact of these reforms on working conditions and employment relations.

This paper outlines the major changes made in 2011 to the legal and institutional frameworks relating to the social partners and their activities, including collective bargaining. It considers the negative impact of the reforms on workers' rights. In this regard, it makes an important contribution to the debate concerning Romanian labour market reforms and how best to ensure that they lead to decent job creating growth. Its insights are also highly relevant to wider questions about compliance with fundamental international labour standards and how to regulate the relationship between workers' and employers' organizations so as to strike a balance between workers' rights and enterprises' needs for sustainability and competitiveness.

By taking stock of current legal frameworks and practices relating to collective bargaining arising out of the adoption of the new Law on Social Dialogue in 2011, as well as of the outcomes of a round table involving the Romanian tripartite constituents, the ILO, the IMF, the World Bank and the European Commission, a number of recommendations are made in the Preface which follows. We strongly encourage the tripartite constituents to implement the full set of recommendations in order to meet the overarching objective of decent workplaces in sustainable enterprises in Romania.

We are grateful to the authors of the study, Professor Raluca Dimitriu, Assistant Lecturer Tiberiu Țiclea, Professor Luminița Chivu and Professor Constantin Ciutacu and commend the study to readers both in Romania and elsewhere. We hope that it will serve as a valuable contribution to debates now underway in Romania and to better understanding of the potential impact of reforms in other countries.

Furthermore, we would like to extend our appreciation to ILO colleagues Ms. Susan Hayter, Mr. Ovidiu Jurca, Mr. Robert Kylvoh, Ms. Cristina Mihes and Ms. Corinne Vargha for their valuable comments and assistance in the finalization of the study, as well as to Mr. Gearoid O'Sullivan who copy edited the English version.

Special thanks should also be expressed to the ILO's Romanian tripartite constituents, as well as to representatives of the IMF, the World Bank and the European Commission who have contributed comments and suggestions.

The opinions expressed in the study do not necessarily reflect the views of the ILO.

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# Preface

With concern growing over the impact of the 2011 legislative reforms on industrial relations in Romania, the ILO commissioned a study to consider the impact of these reforms on working conditions and employment relations. The study concluded that on the whole the social impact of the reforms appears to have been detrimental to social partnership, collective bargaining and the quality of employment:

- The reforms have made it considerably more difficult for trade unions and employers' organizations to operate effectively. Since 2011 when the Law on Social Dialogue entered into force, trade union membership has declined and there is a considerable reduction in the number of employers' organisations which are actually able according to the new statutory criteria to obtain the status of "representative".
- The reforms have had a negative impact on national institutions of social dialogue in general, one of the immediate consequences of which is that the Economic and Social Council no longer functions effectively.
- Regulation through collective bargaining in Romania has been significantly weakened. A number of terms of employment and working conditions including the national minimum wage had previously been negotiated and set by a national collective agreement which covered all employees in the country.
- The cumulative effect of a.) the abolition of collective bargaining at national level; b.) the tightening of extension criteria at sectoral level; and c.) the requirement of an absolute majority membership for a trade union to engage in collective bargaining at company level is that over 1.2 million workers, particularly those employed by companies with less than 20 employees are effectively excluded from collective bargaining with an immediate negative impact on wage levels and on working conditions in general.
- It has been very difficult for some organizations (both employers' organizations and trade unions) to retain their "representative status" at the sectoral level. Consequently, very few agreements have been signed at this level, mainly in the public sector where wage fixing is by law off the negotiations agenda.
- There has been a notable drop in collective bargaining activity at the sectoral and enterprise levels and provisions in agreements signed cover less workers and offer inferior protection compared with previous agreements.
- The absence of regulation through collective agreements places greater onus on the state to regulate workplaces. Indeed, labour inspectors reported a significant rise in undeclared work in 2012.

The draft study was discussed at a roundtable on "the 2010–2011 Reforms and their implications" that took place in the Human Rights Hall of the Palace of the Romanian Parliament, Bucharest, on 25 January 2013. The meeting brought together a wide range of participants including the Minister of Labour, Family and Social Protection, the Minister for Social Dialogue (who gave the opening remarks on behalf of the Romanian Prime Minister), national trade union confederations (CNS "Cartel ALFA", CNSLR – Fr ia, BNS, CSDR, CSN Meridian); and employers' organizations (umbrella Association of Confederations of Romanian Employers ACPR representing employers' organizations UGIR, UNPR, CNIMMPR, CNPR, CPISC, PNR, CoNPR; UGIR 1903 and CONPIROM). The ILO, the IMF, the World Bank and the European Commission, represented by DG Employment and DG Finance, also participated in the meeting. The diversity of participants ensured a wide range of perspectives, which were expressed during the meeting.

There was a broad consensus on the need to consider further amendments to the current legislation so as to ensure its full compliance with international labour standards. However, detailed reform proposals were yet to be developed. Both employers' and workers' organizations expressed the need to lower the "representativity" thresholds to be met by the parties to collective bargaining at sectoral and company levels. The role of collective bargaining at national level was also emphasized by both social partners. In this regard,

there was agreement on the need for real wage growth to reflect growth in productivity. All international organizations and national social partners urged the government to engage in a process of national tripartite dialogue on future labour law reforms.

Based on the 2011 observations of the Committee of Experts on Application of Conventions and Recommendations, the ILO takes the view that necessary changes are to be made in order to bring current legal and institutional frameworks, as enacted by the Social Dialogue Law and the recent amendments to the Labour Code, in conformity with fundamental principles and rights at work as embedded in the core international labour standards relating to collective bargaining and tripartite social dialogue.

In light of this paper and of the outcomes of the roundtable discussion, the ILO recommends in particular:

- i. Reviewing the minimum membership thresholds for formation of trade unions and employers' organizations in light of the prevalence of small businesses;
- ii. to guarantee in law and practice the effective realization of the right to free and voluntary collective bargaining at all levels, including at a national level;
- iii. to lower the "representativeness" thresholds for the social partners to engage in collective bargaining and to make collective bargaining possible at all levels;
- iv. to establish through tripartite consultations and negotiations with those concerned and in light of ILO Recommendation no. 91, new criteria for the extension of collective agreements at sectoral and national levels, so as to ensure that the largest possible number of workers are protected by collective bargaining outcomes;
- v. to improve the quality of collective agreements and to observe the direct relationship between wages and productivity at all levels;
- vi. to enhance employment protection pertaining to trade union membership or trade union activity;
- vii. to improve the functioning of the Economic and Social Council and of the new tripartite Council; and
- viii. to make use to the fullest extent of tripartite social dialogue in the process of designing and implementing labour market reforms.

# Executive Summary

Romanian labour and industrial relations law has undergone wide-ranging changes in recent years. The Social Dialogue Law No.62/2011 repealed and replaced several laws regulating industrial relations, while the Romanian Labour Code was extensively modified through the Law No.40/2011. This legislation followed the Romanian government's passage of a broad package of economic and labour reforms comprising wide-ranging cuts in entitlements and tax rises. These reforms were aimed at achieving macroeconomic stability and reducing government budget deficits, thus satisfying conditions Romania had signed up to in agreements it had made with various international financial institutions.

It is important to understand the economic context in which the most recent labour reforms took place. Romania's GDP had risen sharply in the five years preceding the onset of the global financial crisis, but had declined sharply in 2009 and declined further in 2010. Micro-enterprises with less than 10 employees make up the vast majority of employers, and employees with full-time, open-ended employment contracts forming a sizeable majority of the employed population. Wage levels in Romania remain among the lowest in the European Union. The number of labour disputes had been on the decline at the time that the industrial relations reforms were introduced.

The legislative reforms have a wide range of objectives.

The Social Dialogue Law states that it seeks to ensure better representativeness of trade union and employer organisations; ensure the participation of civil society organisations in dialogue; and improve the procedure for conflict resolution. The recent reforms to the Labour Code were underpinned by an overarching desire to remove "rigidities" from the system of labour regulation.

In the sphere of collective labour relations, legislative changes introduced new minimum membership thresholds for forming trade unions, making it very difficult to form trade unions at company level in the vast majority of employing enterprises. Moreover, the conditions under which trade unions can associate with one another have been modified: most notably, they may no longer associate on the basis of sharing a "branch of activity", but must instead fall within the same "sector of activity".

The new law also prescribes that national level collective agreements may no longer be concluded. Collective bargaining can now only take place at the company level, groups of companies, or the sector of activity. Combined with the new minimum membership thresholds, the abolition of national level collective bargaining excludes more than 1.2 million employees from collective bargaining. These employees work in 450,000 companies which employ less than 20 employees. The sectors of activity have since been determined by Governmental Decision no.1260/2011.

New provisions also have implications for the legal effects of collective agreements. Most notably, collective agreements concluded at the level of an activity sector only apply to the employees of the companies within the activity sector that the agreement was expressly passed to cover. Whereas the extension of collective agreements in a sector was previously automatically applicable *erga omnes*, now a Ministerial order is needed to extend the agreement's affect and application to all units of the sector at hand. The Social Dialogue Law also limits the duration of collective agreements to no longer than 24 months.

The reforms have also made changes to the criterion of "representativeness" which must be satisfied by a trade union and/or employer organisation if they are to negotiate collective agreements. Most notably, it is no longer possible for more than one trade union to be accredited as "representative" in a particular company, even though this helped strengthen company level collective bargaining. Workers can also turn to worker representatives where there are no effective trade unions, but there is confusion arising out of contradictory provisions on workers' representatives in the Social Dialogue Law and the reformed Labour Code.

The Social Dialogue Law also provides for a new National Tripartite Council for Social Dialogue, whose aim is to promote good practices in the field of tripartite social dialogue at the highest level. It is to co-exist with the established Economic and Social Council, which has been reformed so as to remove government participation and integrate the participation of civil society groups.

In the sphere of employment relations, various changes have been made to reduce worker entitlements. The revised Labour Code extends the “probationary period” which allows an employer to fire a worker at will for some time after the worker has started. The employer enjoys a new power to reduce working hours when certain economic circumstances arise, and if the employer includes a professional training clause in the worker's contract, the worker can be required to pay for training expenses if the worker subsequently resigns. Other changes seek to allow employers to adapt better to changing economic circumstances. Thus the revised Code allows an increased maximum term for fixed term contracts; allows an employer to favour job performance criteria over social criteria when deciding who to nominate in a collective dismissal; and stipulates new circumstances in which a *de jure* termination will take effect to end a worker's employment. The changes also reduce the time within which an employer which has made collective redundancies must hire the dismissed workers if it seeks to hire again.

It is necessary to consider the impact of the legislative changes with regard to the central objectives espoused by the Romanian government which sought to create jobs through increasing labour market flexibility and promote social dialogue by decentralising collective bargaining and introducing changes in representativeness criteria.

On the whole the social impact of the reforms appears to have been detrimental to social partnership, collective bargaining and the quality of employment..

First, the various reforms already mentioned make it considerably more difficult for trade unions to operate effectively, especially when combined with changes making it easier to dismiss trade union representatives after their mandate has expired, and eliminating their entitlement to paid days off for union activities. There are also questions about whether the sanctions for rules against trade union discrimination are sufficiently robust to meet ILO advice on Romania's international obligations. Since the law was passed, trade union membership has declined considerably, and there has been a considerable reduction in the number of employer organisations now accredited as “representative”.

Second, many of the social partners have complained that the reforms have blocked social dialogue. The Economic and Social Council has become dysfunctional, and there were delays in setting up the new Tripartite Council. Trade unions have already campaigned for changes to the legal regime and suspended their participation in the national tripartite bodies in protest.

Third, the reforms appear to have eroded the operation of collective bargaining in Romania. The prohibition on national level collective bargaining has removed a powerful instrument which the social partners jointly agreed to basic regulations. Indeed there is concern that the interference with bargaining levels likely constitutes a contravention of the principles of freedom of association embodied in ILO Convention no.98. The national agreement had previously been the forum where the national minimum wage had been negotiated, and wages will likely decline without it, especially for young people and those workers in enterprises with fewer than 20 employees.

Evidence of the decline can already be found in the failure to meet the target for minimum wage rates set in a national Tripartite Agreement signed in 2008. While the Agreement planned for the minimum wage to equal 44% of the national gross average salary by 2012, it in fact amounted only to 33.3% in the first 7 months of 2012. Furthermore, the national agreement ensured coverage for far more Romanian workers than are now covered by other collective agreements, and this is exacerbated by the fact that all workers employed by companies with less than 20 employees are effectively excluded from company-level collective bargaining. Furthermore, while the reforms prevented the renewal of a national collective labour agreement in operation between 2007 and 2010, they failed to replicate many of its provisions leaving a void in worker protection.

There is also discontent among both trade unions and employer organisations at the state of sector-

level bargaining. From the introduction of the legislative reforms until the Decision no.1260/2011, sectoral bargaining was essentially in “limbo”, and as the sectors that have now been determined differ significantly from the “branches of activity” whose place they took, it is now very hard for some organisations (both employers and trade unions) to retain their “representative status”. More generally, the new criteria which must be fulfilled in order to be accredited as “representative” have proved difficult to satisfy, and the lack of interest from employer organisations to acquire “representative” status in the new regime has led trade unions to complain that they may not have anyone to negotiate with. Thus sectoral-level bargaining has been deeply disrupted by the recent reforms.

Multi-company level bargaining has been heavily affected by the new “representativeness” requirements as existing trade unions were not able to meet the new criteria. Only one non-public sector collective agreement has been signed at this level since the recent reforms were passed. Company level bargaining has also declined, with a sharp drop in the number of agreements signed at this level in 2011. This can largely be attributed to the prohibitive new membership thresholds for formation of trade unions, as a result of which no trade union can exist in more than 450,000 enterprises. This is compounded by new requirements that bargaining unions should have members representing at least half plus one of the total number of employees in the bargaining unit (a change from the previous threshold of one-third of employees). In the absence of a representative trade union, workers also have the option to have their interests advocated by worker representatives and trade union federations, but these are hard to operate in practice.

Public sector workers have also been especially badly affected by new laws which affect their wages and a wide range of other entitlements. These reforms have been combined with new rules restricting the scope for collective bargaining to take place about those very entitlements.

The reforms and incursions on workers' protection brought about by the new laws have not been balanced against improvements in economic performance. GDP returned to growth in 2011 and 2012, but the average monthly net salary earnings continue to stagnate and go down, and worker compensation forms an ever-smaller share of GDP. The Labour Code reforms are underpinned by a commitment to prioritise flexibility, but in practice, this stands to be a feature of the system which benefits employers far more than workers. Provisions such as the extension of the permitted probationary period, loosening of regulations on fixed term contracts and not requiring equal treatment of agency workers in relation to wages leaves the employer with an unprecedented freedom to deal with workers as it wishes.

On the other hand, there has been a significant rise in the detection by labour inspectors of undeclared work in 2012. This can partly be attributed to enhanced provision for labour inspection in the labour reforms: inspectors have new powers and can access information more easily, while tough sanctions have been introduced to disincentivise employers from taking on undeclared workers. It can also be attributed to the new requirement that the employment contract must be written, which expands the category of work which is “undeclared”, and which punishes workers in the view of some trade unions.

Nevertheless, permanent employees have also suffered from reductions in entitlements as well as the new restrictions on trade unions. In particular, the stagnation of minimum wages in light of the prohibition on national collective bargaining as well as the employer's ability to reduce the working hours of their workers represent serious incursions on fundamental entitlements. Thus both typical and atypical workers find themselves in a more “precarious” situation, and it may be wrong to separate these two groups when analysing worker protection.

In light of a detailed analysis of the content of the reforms and their impact, the following general conclusions can be drawn.

Ultimately, the reforms have had detrimental social impacts and not delivered the economic benefits promised. Workers and their representatives have lost a wide array of entitlements, leaving them in a very precarious working situation. There has been a decline in both the quantity and the quality of work and employment. There has also been a decline in the number of people in employment and in the average number of hours worked per week.

The reforms have also caused collective bargaining in Romania to stagnate. At all levels, there is a noticeable drop in the extent to which collective bargaining is taking place and the number of agreements being signed. Even those agreements which have been signed cover less workers and their provisions offer inferior protection to employees compared to previous agreements in similar contexts. This can be attributed to the changes to Romanian industrial relations law which have made the formation of unions and the conduct of bargaining much less accessible. This poses longer term concerns for regulation, working conditions and social stability.

# 1. Background to the Legislative Changes

## A. Review of labour legislation in force prior to the legislative reforms

Prior to the legislative reform of 2011, as far as labour legislation is concerned, Romania had already travelled through at least three different stages since 1989:

- The first period lasted until 2003, when the former Labour Law was still in force.
- The second period, governed by the new Labour Code, took it as far as accession to the European Union. Romania's accession to the European Union on 1 January 2007 led to a wide range of changes in Romanian legislation and labour relations practices, as well as to diversified approaches to industrial relations.
- The third was a period of relative legislative stability, from 2007 to 2010. This is, in fact, the period of the last collective contract concluded at national level.

Romania, as a founder member of the International Labour Organization (ILO), has thus far ratified 55 conventions, of which only 23 are still relevant today; 20 other conventions, albeit not ratified, are incorporated in the domestic legislation.<sup>1</sup>

At the time of reform, the most important Romanian normative documents in the field of industrial relations were:

- Law No. 130/1996 on collective labour agreements.<sup>2</sup> According to this law, the levels of collective bargaining were national level, branch level, group of companies level and company (enterprise) level.
- Law No. 168/1999 on the settlement of labour conflicts.<sup>3</sup> This law introduced the distinction between conflict of rights and conflict of interests.
- Trade Unions' Law No. 54/2003<sup>4</sup>. While the previous Trade Unions' Law No. 54/1991 provided for the right for employees to establish or join a trade union, the Trade Unions' Law No. 54/2003 was broader and granted unionization rights not only to employees, but also to civil servants, the self-employed, independent contractors, farmers, and apprentices.
- Law No. 356/2001 on Employer Associations.<sup>5</sup>
- Law No. 109/1997 on the organization and functioning of the Romanian Economic and Social Council.<sup>6</sup>
- Government Decision No. 369/2009 on the establishment and functioning of the commissions of social dialogue, operating at the level of the central public administration and at territorial level.<sup>7</sup>

The Social Dialogue Law No. 62/2011<sup>8</sup> repealed all the aforementioned normative acts.

The reform also implied the end of the collective agreements concluded at national level. The last such

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1 For an analysis of these conventions, in Romanian law, see: Al. Țiclea, *Tratat de dreptul muncii* [Treatise on Labour Law], 6th edition, Universul Juridic Publishing House, Bucharest, 2012, p. 75 et seq., I.T. Ștefănescu, *Tratat teoretic și practic de drept al muncii* [Theoretical and Practical Treatise on Labour Law], 2nd edition, Universul Juridic Publishing House, Bucharest, 2012, p. 58 et seq., A. Popescu, *Dreptul internațional și european al muncii* [European and International Labour Law], 2nd edition, C.H. Beck Publishing House, Bucharest, 2008, p. 173 et seq.

2 Published in the *Official Gazette of Romania*, No. 184, 19 May 1998

3 Published in the *Official Gazette of Romania*, No. 582, 29 November 1999

4 Published in the *Official Gazette of Romania*, No. 73, 5 February 2003

5 Published in the *Official Gazette of Romania*, No. 380, 12 July 2001

6 Published in the *Official Gazette of Romania*, No. 141, 7 July 1997

7 Published in the *Official Gazette of Romania*, No. 227 7 April 2009

8 Republished in the *Official Gazette of Romania*, No. 625, 31 August, 2012; as regards the content of the repealed normative acts, see Annex 1

agreement was the Collective Labour Contract concluded at national level for the years 2007–2010.<sup>9</sup> It included a protection level of workers' rights superior to the one provided by the Labour Code, and was applicable to all employees and employers in the entire country.

The Labour Code, adopted by Law No. 53/2003, was amended previously by several reforms and normative acts, including the Government Emergency Ordinance No. 65/2005<sup>10</sup>, and the Government Emergency Ordinance No. 55/2006.<sup>11</sup>

The Labour Code has been seriously modified by Law No. 40/2011,<sup>12</sup> and republished with a new numbering of its Articles.<sup>13</sup>

The labour legislation also included other normative acts, which remained in force after the reform. For example:

- Law No. 108/1999 on the establishment and organization of the Labour Inspection.<sup>14</sup>
- Law No. 279/2005 regarding the apprenticeship in the workplace.<sup>15</sup>
- Law No. 319/2006 on health and safety at work.<sup>16</sup>
- Law No. 467/2006 on creating the general framework for informing and consulting employees.<sup>17</sup>
- Law No. 67/2006 on the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses.<sup>18</sup>
- Law No. 202/2002 on equal opportunities for men and women.<sup>19</sup>

## B. The main labour market indicators before the reforms

During the crisis period, management of the economy, employment, and industrial relations all followed a course influenced by the conditions set forth in the Stand-By Agreement signed by the government of Romania with the International Monetary Fund (IMF), the World Bank (WB) and the European Commission (EC) in 2009, and of the Precautionary Agreement made with the IMF in the spring of 2011.

For this purpose, the government, seeking to achieve macroeconomic stability and stay within the budget deficit targets, took a number of steps in 2009 by way of emergency ordinances or through legislation enacted without parliamentary debate. These steps included the framework unitary pay system for employees paid from public funds (November); legislation reshuffling public authorities and institutions through dissolution or merger, or personnel restructuring; unpaid leaves of absence; abolition of meal tickets and gift tickets; job cuts in pre-university education; and the application of compulsory social security contributions on earnings from copyright contracts.

Starting from 2010, public employees' salaries were reduced by 25%, and unemployment and other social protection benefits were cut by 15%. Not long after, value added tax (VAT) was also augmented from 19% to 24%.

9 Published in the *Official Gazette of Romania*, No. 5, 29 January 2007

10 Published in the *Official Gazette of Romania*, No. 576, 5 July 2005

11 Published in the *Official Gazette of Romania*, No. 788, 18 September 2006

12 Published in the *Official Gazette of Romania*, No. 225, 31 March 2011

13 *Official Gazette of Romania*, No. 345, 18 May 2011

14 Republished in the *Official Gazette of Romania*, No. 740, 10 October 2002; recently modified by Law No. 51/2012, published in the *Official Gazette of Romania*, No. 182, 21 March 2012

15 Republished in the *Official Gazette of Romania*, No. 552, 25 July 2011

16 Published in the *Official Gazette of Romania*, No. 646, 26 July 2006

17 Published in the *Official Gazette of Romania*, No. 1006, 18 December 2006

18 Published in the *Official Gazette of Romania*, No. 276, 28 March 2006

19 Published in the *Official Gazette of Romania*, No. 135, 14 February 2005; amended by Government Emergency Ordinance No. 56/2006, published in the *Official Gazette of Romania*, No. 768, 8 September 2006

## 1. Gross domestic product and sectoral structure of the economy

According to National Institute of Statistics (INS)' data, Romania's gross domestic product (GDP) registered spectacular growth during the period 2003–2008: from €0.7 billion in 2003 to €9.8 billion in 2008.

As a result of the impact of the economic and financial crisis, GDP decreased significant in 2009, at €8.3 billion, while in 2010, it registered an increase at €23.3 billion<sup>20</sup>.

In real terms, the GDP growth indicator took sudden upward leaps in 2004 (8.6% from the previous year), 2006 (7.9%), 2008 (7.3%), then sank down to -6.4% and -1.5%, in 2009 and 2010, respectively<sup>21</sup>.

The contribution of the private sector to the generation of GDP increased from 67.7% in 2003 to 72% in 2007 with a slow decrease to 71.3% in 2010.

## 2. Number and size of companies

The dynamics of both economic growth and industrial relations are greatly influenced by the fluctuation in number and size of the active companies in an economy.

The total number of active enterprises rose significantly during the period 2003–2008, from 363, 100 to 555, 100. Distribution by size range reveals the preponderance of micro-enterprises (0–9 employees), which accounted for 97.2% of all corporate businesses in 2003, and for 89% in 2010.

In 2009 and 2010, for example, the approximately 450,000 enterprises operating with fewer than 20 employees in the industrial, construction, commerce, and services sectors had aggregate employees of more than 1.2 million (accounting for 31.0% of the number of employees in these sectors). Even though the law did not make collective bargaining mandatory for these companies, their workers were under the safeguard of the National Unique Collective Agreement for the period 2007–2010, which applied to all workers employed by all companies in Romania.

## 3. Characteristics of employment

The number of employed persons increased constantly during the period 2003–2008, from 8.3 million to 8.7 million in 2008 (approximately 5%), decreasing at 8.4 million in 2010 and 8.1 million in 2011<sup>22</sup>. In the same period, in the overall structure of the employed population, the share of employees grew from 62.5% to 67.4%.

Practically, of the employed population, only employees (some two-thirds) are interested and involved in collective bargaining and social dialogue.

In the Romanian labour market, according to the provision of the Labour Code (Law 53/2003), the rules cover both individual open-ended, and full-time employment contracts: 98.3% of employees in 2008 and 98.5% in 2010 were hired with open-ended contracts; while 90.1% in 2008 and 89.0% were hired with full time contracts<sup>23</sup>.

## 4. Wage earnings and productivity

The national gross minimum wage, after an important increase during the period 2003–2008 (more than doubling, from €67 to €139), was put on hold under the impact of the economic and social crisis at €142

20 Own processed INS data regarding gross domestic product value in Lei and the annual average exchange rate Lei/Euro, published National Bank of Romania (BNR).

21 'Romanian Statistical Yearbook', National Institute of Statistics, Bucharest, various editions.

22 'Labour force balance', INS, Bucharest, various editions.

23 'Household Labour Force Survey' (AMIGO), INS, Bucharest, various editions.

in 2009 and €143 in 2010. Monthly gross wage earnings grew steadily until 2008, went down in 2009, and then up again in 2010<sup>24</sup>.

Nevertheless, Romania continues to hold 26th place among EU member states in terms of wage earnings.

At the time of legislative reform, the highest gross average earnings were in the financial and insurance sector, and the lowest were in the hotel and restaurant sector.

In terms of average gross added value at 1 wage costs, the highest productivity was found in 2010, in the construction (€6.47), and the hotel and restaurant sectors (€5.21). The lowest rate was found in financial brokerage and insurance, a sector that pays the highest salaries (€1.65)<sup>25</sup>.

## 5. Labour conflicts

In 2011, at the time of repealing the law on solving labour disputes, the number of labour disputes was in regress, from 121 in 2003 to 116 in 2008 and 73 in 2010<sup>26</sup>.

In 2010, the top claims that triggered labour disputes were restructuring, collective bargaining and social rights (59.7% of all labour disputes), followed by wage claims (40.3%); while in 2008 and 2009 in the first position were wage claims, causing more than 70% of total conflicts, and restructuring, collective bargaining and social rights representing 29.1% of conflicts.

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24 Own processed Ministry of Labour, Family, Social Protection and Elderly data regarding minimum wage in Lei (site: [www.mmuncii.ro](http://www.mmuncii.ro)) and annual average exchange rate Lei/Euro, published by National Bank of Romania.

25 Own processed INS data regarding gross added value, labour cost in Lei and annual average exchange rate Lei/Euro, published by National Bank of Romania.

26 'Romanian Statistical Yearbook, INS, Bucharest, various editions.

## 2. Description of the Legislative Changes

### A. Declared objectives of the legislative reforms

The Chapter *Social Impact* of the recitals of the Social Dialogue Law Draft, mentions that the new law 'ensures the optimization of the social dialogue by clarifying the representativeness of the social partners, the coverage of employees under collective agreements, the involvement of Civil Society in the debates on social and economic issues, and procedural celerity in labour dispute resolution'.

In the same recitals, both sections *Macroeconomic Impact* and *Impact on the Business Environment* assert that 'the Project does not concern this matter.'

The modifications to the Labour Code were expressly aimed at 'rendering flexible labour relations and adapting them to the present social and economic realities, in connection with the dynamics of the labour market, which, in context of the economic crisis, as it has been observed, faces numerous difficulties'. The 'relative rigidity of the statutory provisions on the flexibilization of the labour market' was not considered to be a stimulus for the development of the national economy.

Several of these provisions laid down a higher protection than that indicated in the relevant European Directives, and so the decision seems to reduce the protection to the minimum standards.

### B. Collective labour relations

The new vision of the legislator led to the diminution of the rights of employees and of trade unions. The new Social Dialogue Law restricted several trade union rights and the possibility of the social partners to organize and tighten up the conditions of representation and representativeness of trade unions. These changes led to a significant decline in Trade Union membership and hence affected their influence.

Furthermore, the new regulation modified the levels at which collective bargaining can be carried out, limiting it to the following levels: company, group of companies, and activity sector. As a result, the national level was eliminated and the branch level was replaced by a newly defined sectoral level.

#### 1. Trade unions

The establishment of a basic trade union organization – at company (enterprise) level – requires membership of at least 15 employees who carry out their activity for the same employer [Article 3(2) of the Social Dialogue Law].

Under the old regulation, the establishment of a basic trade union was also possible by associating at least 15 employees of the same branch or profession, even if they carried out their activity for different employers. The new orientation of the legislator thus eliminates the possibility that the same trade union could comprise employees of different companies, which were frequently in competition, thereby impeding

eventual abuses. This change is highly controversial, however, since it leads to the impossibility of constituting a trade union in any small economic entity.<sup>27</sup>

We should notice that the citizens' legislative initiative for the draft law on the modification of the Labour Code<sup>28</sup> proposes to grant pensioners and unemployed persons the possibility to join lawfully established trade unions.

Under the previous Law No. 54/2003, trade union organizations had the possibility of associating based on the criterion of activity branch, the criterion of occupation, or on a territorial criterion. Therefore, besides replacing the notion of branch of activity with that of sector of activity, the new regulation eliminated the possibility of trade unions associating on the criterion of occupation.

## 2. Employer organizations

Employer organizations are freely established associations, set up in activity sectors, on a territorial basis, or at national level (Article 55, Social Dialogue Law). In accordance with these criteria, employers may associate with a view to establishing a basic employer organization. Two or more basic employer organizations may constitute a federation of employers. Similarly, two or more employer federations may set up a confederation of employers.

## 3. Levels of collective bargaining

According to Article 128 of the Social Dialogue Law, collective contracts may be negotiated at the following levels: company (enterprise), groups of companies, and activity sectors.<sup>29</sup> The sector became the highest level of collective negotiation.

As a result of negotiations with social partners, the sectors have been agreed upon recently; consequently, from now on, collective bargaining agreements could be negotiated and concluded under the Governmental Decision no. 1260/2011 regarding the sectors of activity.<sup>30</sup> There are 29 sectors of activity.

According to Article 133 of the Social Dialogue Law, the clauses of the collective bargaining agreements concluded at sectoral level shall be applicable for all employees of the companies belonging to the respective sector of activity for which the collective labour contract has been concluded and who belong to those employers' associations that have signed the contract. If a company has several objects of activity, the criterion to allocate it to a sector of activity is the main object of activity registration with the Trade Register.

In 2011, the collective labour agreement concluded at national level, previously regulated in the period 1991–2010, expired and was not renewed.

## 4. The representativeness of social partners

Under Romanian Labour Law, the representativeness of trade unions is established as a condition (or quality) for trade union organizations to negotiate collective bargaining agreements, to declare conflicts of interests

27 For that matter, this issue was already anticipated in the Memorandum of ILO Technical Comment on the Draft Labour Code and the Draft Law on Social Dialogue of Romania (2011). The Office recommended that 'the requirement of 15 workers to establish an enterprise level trade union be assessed against the prevalence of small businesses in the labour market with a view to ensuring that it will not hinder the establishment of unions in an important segment of enterprises.'

28 Draft Law No. 843, 22 October 2012, on the modification and amendment of the Law No. 53/2003 – Labour Code, published in the *Romanian Official Gazette* No. 933 16 November 2012

29 See Annex 2.

30 Published in the *Romanian Official Gazette* No. 933, 29 December 2011

and call strikes, and to participate in various tripartite institutions – for instance, in the Economic and Social Council.

The representativeness of trade unions and of employer organizations is regulated by the Social Dialogue Law, and is centered mainly on the number of members.<sup>31</sup>

Under the old regulation, multiple different trade unions established at company level had the possibility of being representative, a solution that occasionally proved difficult to implement when trade union representatives were unable to agree on a common platform. Today, under the Social Dialogue Law, only one trade union may be representative at the level of a certain unit.

## 5. Legal effects of collective agreements

In accordance with the provisions of Article 133(1) of the Social Dialogue Law, collective bargaining agreements produce effects that are specific to the level at which they are concluded, namely for:

- all employees of a company, in the case of contracts passed at this level;
- all employees of the companies that comprise the group that the collective contract was passed for; and
- all employees of the companies within the activity sector that the contract was passed for, and that make part of the employer organizations that subscribed the contract.

We must underline that only one collective labour agreement may be passed and registered at either of the above-listed levels [Article 133(2)].

The list of companies that these contracts apply to must be drawn up for each agreement passed at the level of activity sector or of the group of companies. Moreover, it is possible that the application of a registered contract at the level of an activity sector may be extended at the level of all units of the respective sector by order of the Minister of Labour, Family and Social Protection, with the approval of the National Tripartite Council for Social Dialogue. The extension is a completely new concept in Romanian legislation; until the labour law reform there was no need for extension of collective contracts since they were *erga omnes* opposable.

Collective agreements are placed in a hierarchical pyramid; there are as many hierarchies (pyramids) as activity sectors in which this type of agreement is passed.

In the Romanian industrial relations system, collective bargaining cannot take place in *pejus*. It can only be built on minimum standards for workers' rights set out in statutory provisions and the collective labour contract concluded at the next higher level.

Under the old law, a collective bargaining agreement could be concluded for a minimum term of 12 months; there was no maximum duration provided. According to the new law, collective bargaining agreements can only be concluded for a period of between 12 and 24 months.

## 6. Representatives of employees

The notion of representatives of employees is defined by the Social Dialogue Law, but their organization and functioning is regulated by the Labour Code.<sup>32</sup>

Between the two normative acts there are several contradictions, for example, according to the Social Dialogue Law, there can be simultaneously both trade union representatives and workers' representatives

31 Regarding the conditions for obtaining representativeness, see Annex 3.

32 For details about the current regulation of employees representatives, see Annex 4.

in the same company, whereas the Labour Code recognizes only the possibility of either trade union representatives or employees' representatives being present in a company.<sup>33</sup>

## 7. Tripartite social dialogue

Tripartite social dialogue is an institutionalized relationship between trade union organizations, employer or employer organizations, and public administration bodies.

The Social Dialogue Law provides for a new tripartite advisory structure – *The National Tripartite Council for Social Dialogue* – established at the national level of social partners, with a view of 'promoting good practices in the field of social dialogue at the highest level'. It is presided over by the Prime Minister of Romania, who can be replaced only by the Minister of Labour, Family and Social Protection.

The Constitutional Court of Romania ruled<sup>34</sup> that there is 'no overlap of powers' between the National Tripartite Council for Social Dialogue and the Economic and Social Council;<sup>35</sup> the legislative reforms do not attempt 'to reduce the Economic and Social Council to a purely formal structure'. The first is 'an advisory structure at national level of social partners', while the second is 'a public institution of national interest, and with constitutional status', both having 'powers clearly defined by law'.<sup>36</sup>

## 8. Strike action

The most important modification regarding strike action consists of establishing a new condition that must be met prior to calling a regular strike: carrying out a token (warning) strike.<sup>37</sup>

In addition to this modification, the new conditions established for acquiring representativeness have also diminished the power of trade unions to effectively commence and carry out collective conflicts, including strike action.

## C. Employment relations

1. The trial employment period. Upon conclusion of the employment contract, in order to evaluate the skills of the employee, the parties may establish a longer probationary period than before. A probationary period can last up to 90 calendar days for executive positions and 120 calendar days for management positions [Article 31(1) of the Labour Code].
2. The new law extended the autonomy of the employer in establishing the performance standards expected of an employee. Employee appraisals are done today according to criteria established unilaterally by the employer, included in the Internal Regulations and communicated to the employee upon hiring.

33 For instance, Article 69 of the Labour Code, with regard to the procedure on collective redundancy, provides for the obligation of the employer to consult with the trade union or the representatives of the employees; this norm creates difficulties in practice where both a trade union and representatives of the employees are simultaneously established in the same company.

34 Decision No. 368/2011, published in the *Official Gazette of Romania*, Part I, No. 368, 26 May 2011

35 According to Article 212(1) of the Labour Code and Article 82 of the Social Dialogue Law, the Economic and Social Council is a 'public institution of national interest, tripartite, autonomous, established with the purpose of achieving, at national level, the social dialogue between employer organizations, trade unions and the representatives of organized non-trading companies'.

36 Nonetheless, the social partners have noticed a diminution in the functionality of the Social and Economic Council (Annex 5). The latter has been changed from a tripartite body of social dialogue between Government, trade unions, and employer organizations, to 'an institution of civic dialogue between employer organizations, trade unions, and the representatives of Civil Society'.

37 The literal translation of this category of strike is in fact 'warning strike', *greva de avertisment* in Romanian. However, the *OECD Economics Glossary English-French* (OECD Publishing, 2006, p. 476), uses the expression 'token strike', *grève d'avertissement* in French. For the new legal conditions of token strike, see Annex 6.

3. The employment contract became a formal contract; it can only be concluded in writing, a form imposed *ad validitatem*. One of the changes in the 2011 Labour Code covered temporary agency work, and aimed at transposing the Directive 2008/104/EC on temporary agency work into Romanian law.
4. The new law provides for the possibility of the employer reducing the working time to four working days per week and reducing salaries accordingly.
5. If a professional training clause has been negotiated, the employee may be asked to pay back the expenses incurred by his professional training, should he resign, whether he was excepted from the working activities or not. The duration of this interdiction to resign is no longer limited by law but is mutually established by the parties.
6. The maximum term for which a fixed-term contract may be concluded is no longer 24 months, but 36 months. More reasons than before are accepted to motivate this option.
7. In the case of collective dismissal, the employer is now allowed to give priority to performance criteria (as opposed to social criteria, as previously prescribed). Prior to applying any social criterion to establish the order of priority in cases of collective dismissals, the employer will first assess workers' objective performance. The performance criterion will prevail over the social criteria.  
The rules regarding collective dismissal are no longer applicable to public employees (workers employed by public administrative bodies). Until March 2011, Romanian legislation had not excluded them from the rules of collective dismissal, even though the Council Directive 98/59/EC on the approximation of the laws of the member states relating to collective redundancies are not applicable to these employees.  
If the employer resumes activity within 45 days of a collective redundancy, the employees dismissed shall be rehired (the deadline up to now has been 9 months). It should be stressed that the citizens' legislative initiative for the draft law<sup>38</sup> on the modification of the Labour Code proposes the reestablishment of the term of 9 months.
8. The law includes new cases of *de jure* termination of employment contracts. Dissolution of the employer (legal person) and the death of the employer (natural person) were previously considered to be reasons for dismissal and the rules regulating collective redundancy were applicable. Consequently, if the other requirements were met, the provisions regarding protection of the employees in case of collective redundancy were directly applicable.
9. As a result of the changes, the dissolution of the employer is not considered anymore to be a ground for dismissal but a ground for *de jure* termination of employment contracts. One of the direct consequence of this change is that there is no obligation of consultation and information prior to the termination of the employment contracts for this reason. Some academics are questioning the compatibility of this new provision with the Council Directive 98/59/EC, especially in light of the ECJ judgement in *Claes case* (C-235/10).

Another new case of *de jure* termination of the employment contract is where an employee obtains in court the cancellation of their dismissal. If they do not request re-instatement, their dismissal shall be annulled but the contract shall end *de jure*.

One of the most controversial chapters in the new Law on Social Dialogue is the one dedicated to labour jurisdiction. The law that distinguished conflicts of rights from conflicts of interests – Law No. 168/1999 – was fully repealed; only some of the provisions on how to resolve labour disputes in courts were retained. As a result, certain areas of labour jurisdiction remained unregulated. For example, there is no provision specifying the territorial competent court to solve labour disputes where the applicant is the employer. Moreover, many procedural rules – particularly on jurisdictional terms – have a contradictory character in relation to recently amended provisions of the Labour Code. The doctrine states that we are in the presence of a conflict of laws that should be resolved soon by a new legislative intervention.

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38 Draft Law No. 843 of 22 October 2012 for the modification and amendment of Law No. 53/2003 – Labour Code, published in the *Official Gazette of Romania*, No. 773 of 16 November 2012

Additionally, a new Code on Civil Procedure has been adopted, entered into force in February 2013. This new code will lead to many changes in respect of labour law jurisdiction. Some of the changes have already been integrated in the Law on Social Dialogue, republished in August 2012. Others will have a tremendous effect on labour jurisdiction, such as the choice of courts that will have competence in this regard. If nothing is changed in the procedural law, tribunals will no longer solve labour disputes, but cases will be referred to lower, non-specialised courts.

### 3. Review of the Impact of Legislative Changes

The Government pursued labour law reform in Romania with the twofold objective of creating employment through increased labour market flexibility and promoting social dialogue through decentralized collective bargaining and new representativeness criteria. In the following sections, we review what has been the impact of the labour law reforms during the first year: on the social partners (A), on collective bargaining processes (B), and on employment and collective bargaining outcomes related to working conditions and dispute resolution (C).

#### A. The impact of legislative changes on the social partners

##### **Diminution of several union leaders' rights**

Certain provisions of the Law on Social Dialogue regulate and protect membership of elected bodies of trade union organizations: Elected Trade Union leaders are legally protected against any form of conditioning, coercion, or limitation of their office (Article 9); and the period in which they are salaried by the trade union organizations constitutes seniority (Article 11). Furthermore, other protection measures can be provided by collective agreements (Article 12).

The 2011 reforms reduced the protection of union leaders against dismissal after the termination of their mandate, together with the suppression of the right to paid time off for performing union activities. Furthermore, some of the protective measures are not guaranteed by sufficiently dissuasive sanctions.

1. Before the adoption of Law No. 40/2011, Article 223(2) of the Labour Code stated: 'For the entire duration of their office, and also for 2 years after its termination, the representatives elected in the leading bodies of trade unions cannot be dismissed on the grounds of redundancy, of capability, or for reasons pertaining to the accomplishment of the mandate received from the employees of a company.'

The new Article 220(2) of the Labour Code provides that: 'For the entire duration of their mandate, the representatives elected in the leading bodies of trade unions cannot be dismissed for reasons pertaining to the accomplishment of the mandate received from the employees of a company.'

The intention of the legislator, through the legal reforms, was to reduce the protection of trade union leaders against dismissal, in the sense that during their mandate, the employer could dismiss them on any grounds (including redundancy and capability), with the exception of those related to the accomplishment of said mandate.

However, this last intention was impeded by a defective lawmaking method, which led to frequent non-correlations between the recent amendments and the former regulation. More precisely, the legislator did not modify Article 60(1)(g) of the Labour Code accordingly, which prohibits the dismissal of employees 'for the duration of exercising an elected office in a trade union body, with the exception of the dismissal for cause, in case of a serious breach of work duties or repeated breaches of work duties'.

Therefore:

- The modification or termination of the employment contracts of trade union leaders, for reasons pertaining to their trade union membership or trade union activity, is forbidden.
- Employees elected to a trade union body that accomplish a certain mandate, including trade union leaders, cannot be dismissed on any grounds, with the exception of dismissal for disciplinary cause.

- The duration of the protection against dismissal of trade union leaders is to be limited only for the duration of their office, thereby eliminating the two-year extension.
2. According to the previous Trade Union Law No. 54/2003, the union leaders had the right to 3–5 days per month, which could be used for union activities, without reducing their wage.

According to Article 35 of the Law on Social Dialogue, today they have no such right; should the applicable collective contract provide, they may have a number of days off to be used for union activities, but without any payment.

3. The Social Dialogue Law prohibits ‘the modification and/or the termination of the employment contracts of trade union members, for reasons pertaining to their trade union membership or to their trade union activity’ (Article 10). This provision is applicable in the case of civil servants as well.

Regarding this provision, in the Memorandum of ILO Technical Comments on the Draft Labour Code and the Draft Law on Social Dialogue of Romania it has been said that ‘to be fully in compliance with Convention No. 87, the grounds should include *union membership* and the law should foresee sufficiently dissuasive sanctions’.

Upon the adoption of Act No. 62 of 10 May 2011, the issue was examined by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) which noted in its 2011 Observation on the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)* that the new legislation does not seem to foresee sanctions in the case of violation of Section 10 of the Social Dialogue Act and Section 220(2) of the Labour Code and recalled that the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. Therefore, the CEACR requested that the government take the necessary measures to guarantee full protection against acts of anti-union discrimination including the provision of sufficiently dissuasive sanctions.<sup>39</sup>

### Social partners in social crisis

4. The legislative reforms did not result in improved social dialogue or in better representation of employers and workers. The processes of structural reform, privatization, and liquidation of state-owned companies led to the reduction of the number of employees at 4.4 million in 2011<sup>40</sup>, reducing considerably the membership basis of trade unions. This phenomenon, along with some failures of trade unions to generate interest towards the trade union movement yielded an important drop in unionization rates. At the peak of the free trade union movement, in the year 1993, the unionization rate was approximately 70% for the total number of employees. Even if this rate seems excessive, the difference is obvious: at present, only about 2 million employees are trade union members, leading to a unionization rate of approximately 40%.

The efforts made by trade unions since the reform mostly focused on finding the necessary means to reshape the labour legislation in such a way that trade union representation, social dialogue, collective bargaining, and the conclusion of collective agreements (including at national level) were no longer blocked.

At the beginning of 2012, by a common decision of the five trade union confederations that were representative at national level, participation of trade union representatives in the tripartite bodies and structures was suspended as a protest against the government for not meeting certain trade union claims. The participation was resumed by a new agreement between the five confederations, starting from 14 March 2012.

Romanian trade unions are calling for reform of the 2011 Social Dialogue Law with the objective of reinstating an enabling legal framework in which worker and employer representation as well as collective bargaining can be effectively promoted at all levels, including national level.

5. The answer of the last government was not favorable, on the grounds that the World Bank and the International Monetary Fund expressed reservations about national level collective bargaining. Similar

39 See the 101st Session of the International Labour Conference, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) General Report and observations concerning particular countries, p. 219

40 According with INS data.

views were also expressed by the Foreign Investors Council. Thus far (December 2012), 4 of the 5 union confederations that were representative at national level have regained their representative status under the new legislation, namely: the National Trade Union Confederation Cartel Alfa (CNS Cartel Alfa), the National Confederation of Free Trade Unions in Romania (CNSLR Frăția), the National Trade Union Confederation Meridian (CSN Meridian), and the National Trade Union Bloc (BNS)<sup>41</sup>.

However, as mentioned earlier, three confederations witnessed an important decline in membership. In order to regain representativeness, BNS presented evidence of a total of 254 527 members (compared to 375,000 members according to the data available in 2008), CNS Cartel Alfa 301,785 members (compared to approximately 1 million in 2008), CNSLR Frăția 306,486 members (compared to 850,000 members in 2008). The only confederation recording an increase in membership is CSN Meridian, which presented evidence of 320 204 members (compared to 170,000 in 2008)<sup>42</sup>.

The fifth union organization that is representative at national level, the Democratic Trade Union Confederation in Romania (CSDR), will continue to have the representative status it acquired under the previous regulations until March 2013.

In the case of employer confederations, the process of reacquiring representative status is under way, but the situation remains uncertain.

Of the 13 employer organizations that were representative at national level according to the old rules, none of them requested to be granted representative status under the new Social Dialogue Law. Only the Romanian Employer Organization (PR), previously a national confederation, submitted such a demand for representativeness at sectoral level.

According to the 'European Social Dialogue Legal information guide on European dialogue'<sup>43</sup>, nine of the employer organizations are still representative at present according to the old rules.

One of the novelties introduced by the 2011 Social Dialogue Law is that 'representative confederations of employers at national level may establish a unitary representative structure to represent their interests, provided this structure comprises at least half plus one of the total number of employer confederations that are representative at national level' [Article 64(2)].

In practice, the Alliance of Employer Confederations from Romania (Alianța Confederațiilor Patronale din România, ACPR) seems to meet this criterion and could possibly become the unique employer confederation. It remains unclear what the role will be of those employer confederations that are not part of this structure.

There is no similar provision related to trade union confederations.

### Social dialogue is blocked

6. According to the opinions of several social partners (all union confederations and some employer associations<sup>44</sup>), the 2011 reforms seem to have led, at least, to the suspension and blockage of social dialogue, and to the lack of functionality of the tripartite bodies for social dialogue at national level.<sup>45</sup>

An important change set forward by the new regulations in the field of social dialogue is the withdrawal of government representatives from the Economic and Social Council (CES), which was converted from a tripartite body of social dialogue between the government, trade unions, and employer organizations, into 'an institution of civic dialogue between employer organizations, trade unions and representatives of Civil Society'.

A new social dialogue institution – the National Tripartite Council for Social Dialogue (Consiliul Național

41 MMFPSPV site: [www.mmuncii.ro](http://www.mmuncii.ro).

42 MMFPSPV site, [www.mmuncii.ro](http://www.mmuncii.ro) for 2012 and "Anticipating and managing restructuring in Romania ", ITC ILO, ARENAS, VC/2008/0667, <http://ec.europa.eu/social/ajax/countries.jsp?langId=en&intPagId=965>, for 2008 data.

43 [http://www.mmuncii.ro/nou/images/Documente/Dialog\\_Social/European%20Social%20Dialogue.pdf](http://www.mmuncii.ro/nou/images/Documente/Dialog_Social/European%20Social%20Dialogue.pdf)

44 The Confederation of Employers in Industry, Agriculture, Constructions and Services of Romania (CONPIROM), PR, the General Union of Industrialists in Romania 1903 (UGIR 1903) and the National Union of the Romanian Employers' Organization (UNPR).

45 For the answer of the social partners to a series of questions on this matter, see Annex 5.

Tripartit pentru Dialog Social, CNTDS) – was created with representation of employers, employees, and government.

The setting-up of the new CNDS witnessed some delay while the CES became dysfunctional at a time when numerous issues were calling for social partner consultations. In September 2011, as a sign of protest, the five representative trade union confederations decided to self-suspend from CES and from all social dialogue commissions.

Moreover, on 30 September 2011, four of the thirteen national confederations of employers – namely, the Confederation of Employers in Industry, Agriculture, Constructions and Services of Romania (CONPIROM), PR, the General Union of Industrialists in Romania 1903 (UGIR 1903) and the National Union of the Romanian Employers' Organization (UNPR), united in the framework of the Union of Independent Employer Confederations in Romania (PATROROM, which, according to its representatives, brings together 62% of the active workforce and 65% of the internal gross domestic product) – signed a written agreement with the five representative trade union confederations jointly urging the Prime Minister to summon a meeting of the CNTDS<sup>46</sup>.

These organizations pursued the aim, among others, of making common proposals on the modification of the Social Dialogue Law and of the Labour Code. The setting up of CNTDS was decided in the Government Meeting of 27 October 2011. After two meetings at the end of 2011, the CNTDS reached another deadlock situation, as the union confederations were unsatisfied with the manner in which they were informed about the items of the meetings' agenda and boycotted the last meeting of 2011, so that only the representatives of the government and of the employer organizations attended.

Some of the interviewed leaders of employers' organizations considered that the Social Dialogue Law has been at the origin of the malfunctioning of the CES since May 2011, when all the national trade union confederations and some employer confederations withdrew from this body.<sup>47</sup>

## B. The Impact of the legislative changes on collective bargaining

Any impact analysis of the legal reform from May 2011 to December 2012 must be based on an assessment of predictable and quantifiable effects of the substantive amendments brought to the collective bargaining system with respect to the bargaining levels, content of negotiations, scope of collective agreements, and representativeness criteria for both employer organizations and trade unions.

Under the previous legislation (Act 130/1996), collective bargaining agreements could be made at company level, group of companies' level, economic branch level, and national level.

The Law on Social Dialogue No. 62/2011 provides in Article 128 that: 'Collective agreements may be negotiated at company level, group of companies' level, and sectoral level.'

### **The Impact of the suppression of the unique national collective bargaining agreement**

The collective bargaining agreement concluded at national level was a powerful instrument in the hands of social partners. Invoking the economic crisis, the public authorities decided to act towards its suppression and an employer confederation was 'persuaded' to oppose the extension of this contract, and to call for the termination of the one in force, which should have extended in law in 2011 as well.

According to part of the legal doctrine, this suppression is considered to be an unlawful action; only one national employer confederation, out of the many that are representative at national level, does not legally

46 "Effect of the national bipartite Agreement", European Industrial Relations Observatory, European Foundation for the Improvement of Living and Working Conditions, <http://www.eurofound.europa.eu/eiro/2012/02/articles/roi202039i.htm>.

47 Marius Opran, President of UGIR-1903, see Annex 5.

represent a contractual party under Romanian law, and thus it could not solely call for the termination of the collective labour contract concluded at national level.

In any case, nowadays, after the entry into force of Law No. 40/2011 (which radically modified the Labour Code) and of the Social Dialogue Law, Romanian labour legislation no longer provides for the national level as a bargaining level for collective labour contracts. Therefore, under the present regulation, we construe that the conclusion of a new collective labour contract at national level is not henceforth possible. This situation can be seen as a restriction of the principle of free and voluntary collective bargaining, provided for by Article 4 of Convention No. 98, ratified by Romania.

Nevertheless, it should be mentioned that the Constitutional Court of Romania ruled that this suppression is possible and does not violate the fundamental law (the Constitution). The Court's reasoning is based upon the fact that 'Article 41(5) of the Constitution does not provide for and does not guarantee collective bargaining at national level.' Therefore, the framework in which collective bargaining negotiations take place 'is that established by the legislator'. If it were not so, 'the right to collective bargaining, which is a right that must take into consideration the economic and social conditions existing in society at a certain time, would become absolute. Hence, a just balance between the interests of employer organizations and those of trade unions must be had in view'.<sup>48</sup>

The abolition of the national unique collective bargaining agreement, which, according to the old legislation, produced effects 'for all employees working in any of the companies operating in Romania', may cause, as a prime effect, the exclusion from collective bargaining of all workers employed by companies with fewer than 20 employees.

As previously shown, this represents some 450,000 companies totaling over 1.2 million employees, which account for approximately one-third of the number of employees in the non-agricultural sectors of the economy.

One of the most important components of collective bargaining at national level used to be the minimum wage. Since the minimum wage was negotiated each year, as a rule, it was at least indexed for inflation.

Previous legislation did not permit stipulations in collective bargaining agreements for wages below the levels agreed upon in a collective bargaining agreement of a higher rank. In other words, the minimum wage set forth in the unique national collective bargaining agreement was the baseline for all employees in the Romanian economy.

The huge gap between wages in Romania and the other EU member states (Chart 1) explains why the gross monthly minimum wage is the crucial subject of negotiation in any collective bargaining in this country.<sup>49</sup>

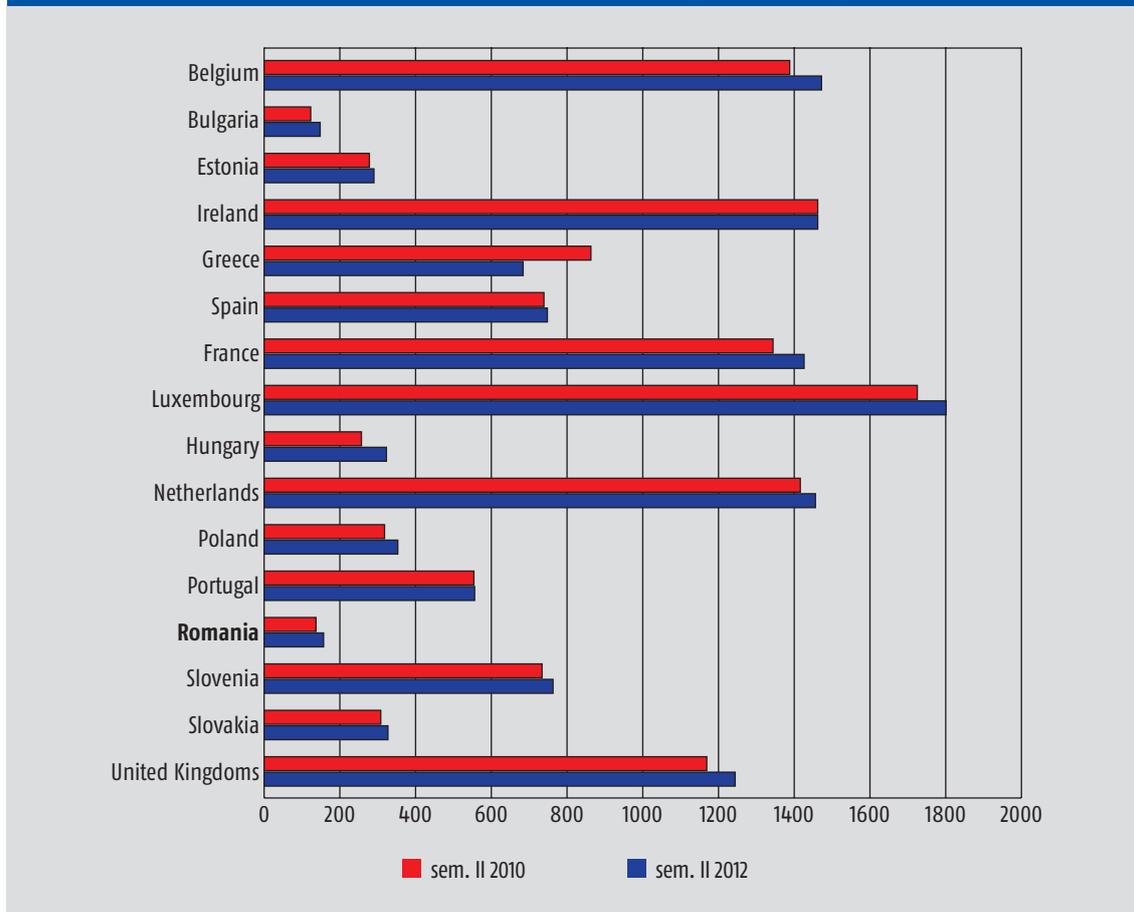
When expressed in the Romanian national currency (Lei), the monthly gross minimum wage was 510 Lei in 2008 and 600 Lei in 2009 (equal to a nominal growth of 17.6%). It stayed at 600 Lei in 2010, grew to 670 Lei in 2011 (by 11.7%), and to 700 Lei in 2012 (i.e. a nominal growth of only 4.4%)<sup>50</sup>.

48 Decision of the Constitutional Court of Romania No. 574/2001

49 See Annex 7.

50 MMFSPV site, [http://www.mmuncii.ro/nou/images/Date\\_lunare/s1.pdf](http://www.mmuncii.ro/nou/images/Date_lunare/s1.pdf).

CHART 1. THE EVOLUTION OF THE MINIMUM WAGE IN ROMANIA AND OTHER EU MEMBER STATES (EUR/MONTH)



Source: Eurostat.

In euro, and by comparison to other countries, the minimum wage in Romania followed the fluctuations, in percentage points, given in Chart 2.<sup>51</sup>

It would be interesting to say that the *Tripartite agreement on the evolution of the minimum wage and on the minimum wage/average salary ratio over the period 2008–2014* (signed on 25 July 2008 by the government of Romania with all 13 employer confederations and all 5 national trade union confederations that were representative at the time), stipulated a minimum wage of 860 Lei for 2011 (of which only 670 Lei was obtained), and 1030 Lei for 2012 (compared to the current 700 Lei).

Under the Tripartite Agreement, the monthly gross minimum wage was planned to equal 40% and 44% of the national gross average salary in 2011 and 2012, respectively.

In actual fact, the minimum wage/average salary ratio was only 33% in 2011 and 33.3% in the first seven months of 2012.

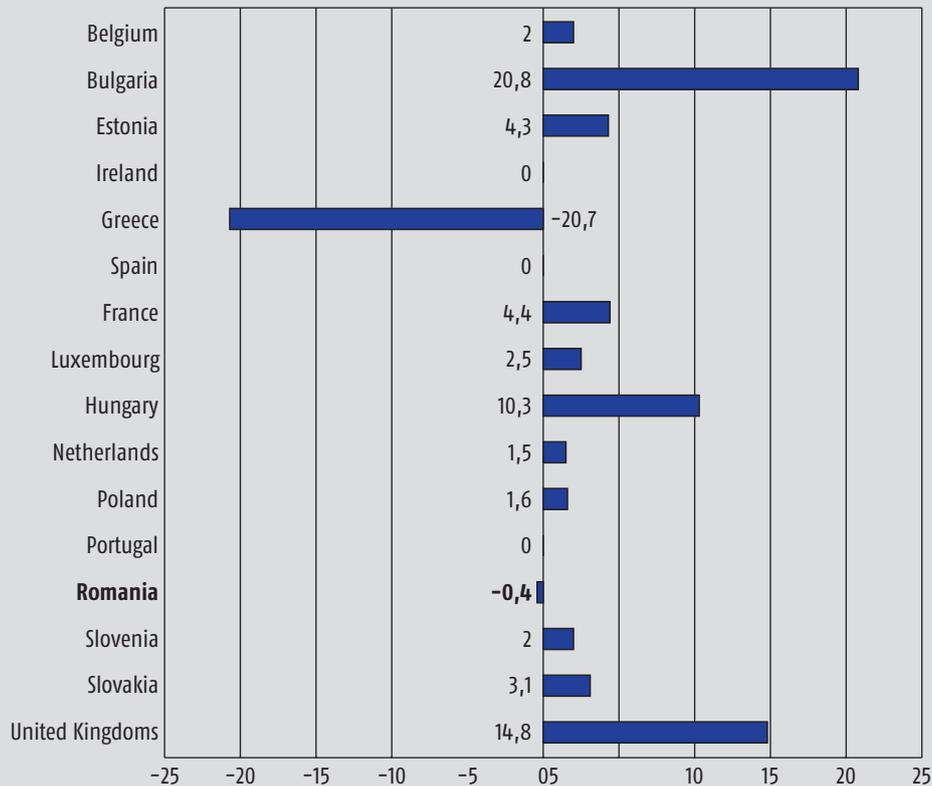
The unique national collective bargaining agreement also provided differentiated gross minimum wages for all levels of qualification and vocational/professional training, based on multiplication factors to the minimum wage corresponding to the unqualified workers. For example, the minimum wage would be multiplied by 1.5 for a person with a high-school education (which, in 2012 would result in a minimum wage

51 See Annex 8.

of 1050 Lei), and by 2.0 for the holder of a higher education diploma (the minimum wage being, in this case, 1400 in 2012).<sup>52</sup>

The abolition of the unique national collective bargaining agreement may also have as a consequence much lower wages, particularly for young people, many of whom contemplate emigration for better earnings.

**CHART 2. THE EVOLUTION OF THE MINIMUM WAGE IN ROMANIA AND OTHER EU MEMBER STATES (S II 2012/S II 2011, %)**



Source: Own processed Eurostat data.

In the context of the abolition by law of the unique national collective agreement and the lack of functionality of CNTDS, the absence of a minimum wage reference at national level may have important consequences if we take into consideration the existing important gaps between the level of wage earnings in small private companies and the average salary earnings at national level.

52 Article 40 of the National Collective Agreement concluded for the years 2007-2010 established the following minimum pay grade scale, for the following categories of employees:

a) workers:

1. unqualified = 1;

2. qualified = 1,2;

b) administrative personnel where the office can be held depending on the level of education:

1. for secondary education = 1,2;

2. for post-secondary education = 1,25;

c) specialized personnel where the office can be held depending on the level of education:

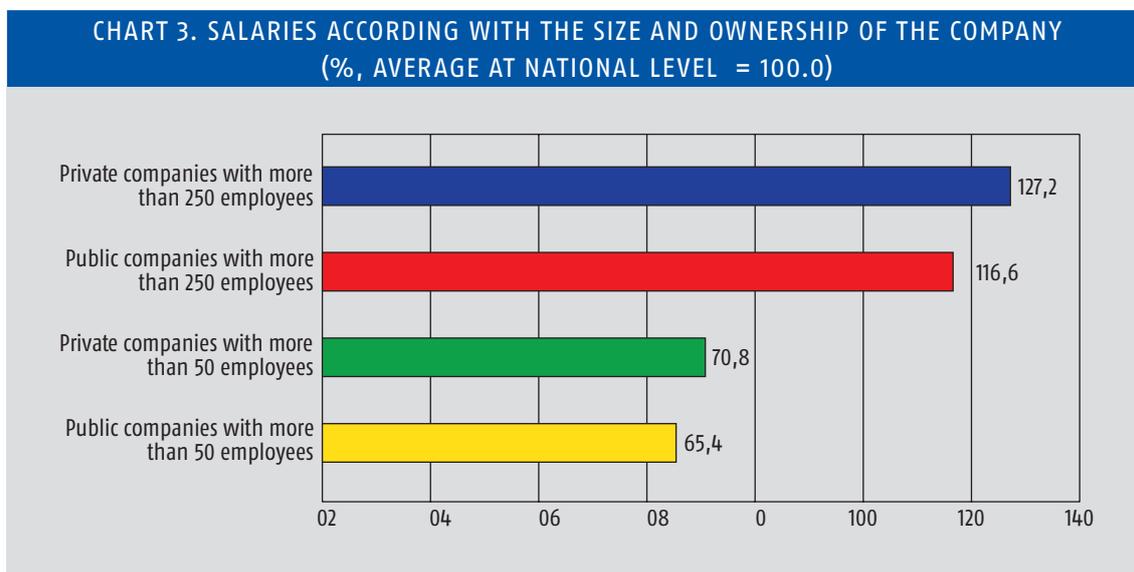
1. for vocational education = 1,3;

2. for short-term higher education = 1,5;

d) personnel holding offices that require higher education = 2.

These grade levels apply to the minimum wage negotiated in the company.

In 2011, for example, salaries in private companies with fewer than 50 employees represented 65.4% of the average gross salary at national level and approximately half of the salary registered in private companies with more than 250 employees (Chart 3).<sup>53</sup>



Source: Own processed data based on salary earnings provided by INS.

Regarding suppression of the national labour contract, the interviewed trade union leaders considered that:

*'The first significant effect* resides in the fact that this collective agreement was a source of law for the contracts concluded at all subsequent levels (sectors, groups of companies, and company), and its clauses were considered minimal and mandatory standards.

*The second effect* is that the provisions of the collective agreement at national level were also mandatory with regard to employment contracts. And yet, collective bargaining at company level is compulsory only when the company in question has at least 21 employees. In these circumstances, the employees of small and medium-sized enterprises that have less than 21 employees, and where collective bargaining is not mandatory, are deprived of the protection provided by the collective agreement at national level; consequently, the compliance with its provisions in the employment contracts is henceforth excluded.

*The third effect* consists in the significant diminution of the role of social dialogue and partnership at national level between the parties that used to negotiate and subscribe the collective agreement at national level".<sup>54</sup>

It has also been said that the combined effect of the suppression of the unique national collective bargaining agreement and of more stringent rules regulating collective bargaining at the sectoral level, led to a loss of protection for the great majority of Romanian employees. According to one Trade Union Leader, most of the members of his confederation are nowadays not covered by any collective agreement. Our studies show that, after the adoption of the legislative reforms, the situation regressed from complete coverage through collective agreements (due to the *erga omnes* applicability of the agreement at national level), to coverage of less than a third of Romanian workers.

Many of the provisions of the collective agreement at national level were ignored by the Labour Code, as modified by the Law No. 40/2011, with omissions of particular concern being:

<sup>53</sup> See Annex 9.

<sup>54</sup> Mr. Iacob Baciu, President of the Democratic Trade Union Confederation of Romania (CSDR) (Annex 5)

- the obligation to conduct a preliminary enquiry in the case of dismissal on the grounds of capability;
- the obligation to conduct a disciplinary enquiry when the formal implementation of disciplinary action entails a written warning;
- the right of employees to be absent from work for 4 hours a day, during the period of notice, with the purpose of finding other employment; and
- certain forms of compensation for redundancy.

Since the termination of the collective bargaining agreement at national level, employees no longer benefit from these rights, unless they are included in collective bargaining agreements concluded at lower levels.<sup>55</sup>

It is worth mentioning that there are also leaders of employer organizations who noticed that the suppression of the national collective agreement was a misconception. At the round table that took place on 25 January 2013 involving members of the National Tripartite Council for Social Dialogue, the ILO, the International Monetary Fund, the European Commission and the World Bank to discuss the labour law reforms and their impact, representatives of both social partners, including Mr Stefan Varfalvi from the Alliance of Employer Confederations from Romania, express their opinion that erasing the collective contract concluded at the national level was a mistake<sup>56</sup>.

Besides the suppression of the collective agreement at national level, the legislative reforms tightened the procedures and conditions regarding the negotiation and conclusion of collective bargaining agreements at all other levels.

### **The impact on industrial relations at the sectoral level**

The 2011 Social Dialogue Act impacted considerably the second level of collective bargaining and representation. The replacement of branches with sectors of activity generated a series of difficulties concerning the negotiation and conclusion of collective agreements, some being similar to those mentioned at the level of group of companies:

- The sectors of activity which have replaced the branches of activity of the previous legislation, gather activity domains defined in accordance with the NACE Code [Article 1(r) of the Social Dialogue Law]. However, the sectors of activity are not established in consultation with the social partners; they result solely from a decision by the Government (at present, Government Decision No. 1260/2011). At the level of these newly constituted sectors, there are either no trade union federations specifically established to negotiate collective bargaining agreements or a concentration of several federations in a given sector.

Given that, according to the law, the sectors needed to be defined by Government Decision, and that this normative act was passed only in December 2011 (seven months after the entry into force of the Social Dialogue Law), the entire collective bargaining system at sectoral level was practically blocked.

On the other hand, the new sectors did not overlap with the former branches of activity, thereby impeding the federations that acquired representativeness under the old legislation to be representative at sector level after the entry into force of the Social Dialogue Law. As a result, these federations, in order to accomplish their mission and represent their members, had to regain representativeness according to new legislation, but under more difficult conditions. For this reason, the passage from branches to sectors generated dissatisfaction and frustration among social partners, whose structures/federations need to be reorganized, including through eventual mergers, new elections, etc.

To be granted collective bargaining rights at sector level also requires re-application for recognition by a court of a social partner's representativeness, according to the new sectoral structure of the national economy.

<sup>55</sup> Mr. Bogdan Iuliu HOSSU, President of the National Trade Union Confederation "Cartel ALFA" (CNS Cartel ALFA) (Annex 5)

<sup>56</sup> See Annex 5

Although the minimum share for representativeness purposes is the same 7% of the number of employees in an economic sector for the trade union federations, and 10% of the employees in all the companies affiliated with an employer federation, the reshuffling of economic sectors, some of which now include several former industrial branches, has resulted in a sometimes significantly larger number of employees.

For example, in 2011, under the old legislation, the minimum number of members in an organization seeking to be representative for the Agriculture Fishery and Fishing branch was 4,137. For an organization in the Forestry and the Economics of Hunting Waters and Environmental Protection branch, a trade union became representative if it had at least 1,778 members. Under the new law, the two branches are now united in one sector, and a trade union should have at least 8,200 members for it to represent the entire sector.<sup>57</sup>

While a trade union representativeness threshold for the *Manufacture of textiles and clothing* branch used to be 12,700 members, and for the Leather and leather ware branch the minimum number was 4,030 members, the new sector that resulted from the amalgamation of the two branches requires a minimum number of 16,800 members.

In the Mass media branch, the legislation prior to 2011 permitted a trade union to take part in the bargaining if it had at least 2,591 members. Trade unions in the Culture branch needed a minimum of 3,294 members. In the new sector of Culture and mass media, a union must have at least 4,600 members for it to be recognized as representative.

According to Law No. 62/2011, Article 53, par. (1) and (2):

‘Before submitting the file necessary to obtain representativeness at Bucharest Court, the trade union federations and confederations must submit one electronic and one printed copy of the respective file to MMFPSPV, which will register it and give a prove in this purpose (2) MMFPSPV will display on the internet page of the institution ([www.mmuncii.ro](http://www.mmuncii.ro)) the file and all the other information regarding representativeness provided by the trade union.’

Similarly, Article 74, par. 1 and 2 require the same steps from employer organizations at sectoral level.

According to the information available on MMFPSPV website (December 2012), a number of employer organizations and trade unions submitted their documents to regain representativity at sectoral level.<sup>58</sup> While in the case of the trade unions, interest in regaining representativity at sectoral level in both public and private sectors is very high, in the case of employer organizations, interest in submitting all documents seems lower and may result in an absence of representative social partners for collective bargaining at sectoral level.

These problems were signaled also by the publication European Social Dialogue – Legal information guide on European dialogue, launched during the international conference on *European Social Dialogue*, organized by the government of Romania (*Guvernul României*, GR), the Ministry of Labour, Family, Social Protection and Elderly (*Ministerul Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice*, MMFPSPV), and the Authority for the State Assets Recovery (*Autoritatea pentru Valorificarea Activelor Statului*, AVAS) in Bucharest, on 1 November 2012.

The Guide describes and analyzes the national integrated system of institutionalized social dialogue in Romania after the promulgation of the Social Dialogue Act 62/2011. It carries information about employer organizations and trade unions that had regained, by 1 September 2012, the right to be representative at national level, in accordance with the new social dialogue legislation.

57 See Annex 10 and Annex 11.

58 See Annex 12 and Annex 13.

One of the novelties introduced by the Social Dialogue Act was the replacement of economic branches by economic sectors for collective bargaining purposes. This first required a redistribution of economic areas into the new sectors, and, once accomplished, approval by Government Decision 1260/December 2011.<sup>59</sup>

The opinion of the Guide's authors is that the size of the newly formed economic sectors 'will be a major stumbling block against the bargaining and execution of sectoral collective agreements'.

To rectify the situation, the proposal made was to call 'new consultations with the social partners interested in access to bargaining at this level, i.e. with the federative structures of the social partners, for the purpose of reviewing the government decision with effect to increasing the number of sectors so that each sector could be indeed specific for a certain economic domain'.

Arguments for these are provided also by two other Romanian authors – Vasilica Ciucă PhD and Cristina Lincaru – who published, on 29 May 2012, a study on Recent Ample Labour and Social Protection Laws Reforms in Romania, as a contribution to the LIBRA Project *Lets Improve Bargaining Relations and Agreements on Work and Life Time Balance*, conducted by an international consortium of experts in social dialogue, equality between genders, industrial relations and labour law, and financed by the DG Employment, Social Affairs and Inclusion, European Commission (EC). The main conclusions of their report are related to the Romanian new Labour Code and the new Social Dialogue Act.

One of the important findings of the Report was that, in the absence of new economic sector definitions, as the trade unions had cautioned, in November 2011, in Romania no trade union federation was representative at sectoral level at that date.

Both the representative trade unions and employer organizations criticized the new industrial relations system that had been put in place. It annihilated the previously well-functioning tripartite social dialogue mechanisms and further complicated obtaining representative status for collective bargaining purposes.

The interviewed trade union leader considers that 'under the law, the course of collective bargaining at activity sector level is dependent upon the measure in which both social partners previously acquired representativeness at this level. Therefore, if the employer organizations do not demand and do not acquire representativeness, and if the number of employees represented by the federations of employers have at least a half plus one of the workforce in the sector, the trade union organizations – even representative – have no one to negotiate with.'<sup>60</sup>

– In the views of the trade union leaders interviewed, the most affected sectors are:<sup>61</sup>

- Agriculture, Aquaculture and Fishing, Forestry and Hunting, Economics
- Food, Beverage and Tobacco Industry
- Chemical, Petrochemical and Connected Activities Industry
- Metallurgical Industry
- Tourism, Hotels and Restaurants
- Culture and Mass Media
- Higher Education and Research

At present, the only collective agreement concluded and registered at sectoral level is for pre-university education, No. 59276/2012.

It contains provisions on:

- the recognition of certain paid days off, in addition to those of general application, provided by the Labour Code;
- a shorter trial period than provided by statutory law;

59 The Guide states that the 'redefinition of sectors is the result of the negotiations between national trade union and employer confederations, which the Government only facilitated as a moderator'. The Guide further states that the 'result of the negotiations was the creation of oversized sectors, which has generated and will continue to generate difficulties in observing the legal requirements for the perfection of a collective agreement at sector level. Things are worsened by the lack of correspondence between the existing trade union and employer representative structures at this level and the new composition of sectors'.

60 See Annex 5.

61 See Annex 5.

- the establishment of a procedure for dismissal on grounds of capability (similar to that provided by the national collective agreement concluded for the years 2007–2010);
- the application of certain social criteria for the selection of employees in the case of redundancy;
- the obligation of the employer to communicate the reopening of a job for a term of 12 months from the dismissal of the employee on grounds of its suppression (redundancy). [We recall that, according to the Labour Code, such an obligation is limited to 45 days in case of collective redundancy, whereas in the case of individual redundancy there is no such obligation]; and
- a shorter period of notice for resignation than that provided by law.

We should emphasize that the employer organizations have also shown their discontent with the actual state of social dialogue. Thus, some interviewed leaders of employer organizations have declared that ‘the Social Dialogue Law made the conclusion of collective agreements difficult, by including statutory provisions that are not only unfavorable to trade unions, but also to the employers. Not only the trade unions have difficulties in ensuring the required representativeness at sector level, but also the employer organizations, to the same extent’.

### **The impact on industrial relations at the level of group of companies**

Collective bargaining at the level of groups of companies is characterized by the following features:

- the existence of a group of companies is possible only as a result of the employee’s own free will, and therefore its establishment is an option, not an obligation;
- the group of companies must consist of two or more companies having the same main object of activity, in accordance with the codes enlisted in the Classification of National Economy Activities – CAEN or NACE [Article 1(e) of the Social Dialogue Law]; and
- the trade union(s) must have the status of federation, and a number of members of at least 7% of the workforce.

In such circumstances, the designation of the trade union(s) entitled to negotiate and conclude the collective agreement at the respective level proves to be highly problematic.

Moreover, where there are no representative trade union organizations that represent at least half of the group’s workforce, the employees are represented in the process of collective bargaining as follows:

- the representatives mandated by the representative trade unions of each company that decided to establish the group; and
- for the member-companies of the group in which there are no representative trade unions, but where there are trade unions affiliated to representative trade union federations established in the same activity sector as the group, the employees are represented by the respective federations, on the basis of the demand and mandate of the trade unions, and by the representatives of the employees of those companies.

Representative trade union federations at the level of activity sectors can participate in collective bargaining at the level of group of companies in which they have affiliated trade unions, on their demand or on the basis of the mandate given by these trade unions.

Until now (November 2012) collective agreements at group of companies’ level<sup>62</sup> were concluded, in accordance with the provisions of the new Social dialogue law, mostly in the public sector with only one exception:

- Collective agreement No. 59382/12/2012 at the level of group of units from Ministry of Health and subordinate units (Ministerul Sănătății). Collective agreement No. 59395/11/2012 at the level of group of units from Ministry of Administration and Internal Affairs (Ministerul Administrației și Internelor, MAI). Collective agreement No. 58692/06/2012 at the level of group of units under the aegis of Hospitals and Healthcare Services Administration (Administrația Spitalelor și Serviciilor Medicale București) for

62 <http://www.mmuncii.ro/nou/index.php/ro/dialog-social/info/60-protectia-sociala/dialog-social/952-ccm-grup-de-unitati>.

the period 2012–2014. Collective agreement No. 58705/06/2012 at the level of group of hospital sanitary units under the coordination of the Public Health Department Maramures (Direcția de Sănătate Publică Maramures), for the period 2012/2013. Collective agreement No. 58804/2012 at the level of Group of Units from Sanitary Network of the Ministry of Transport and Infrastructure, for the period.

- The unique collective agreement at the level of group of operators from public services of water supply and sewerage, for the period 2012/2013, registered at MMFPSPV with the number 1011/02.2012. Collective agreement No. 964/01/2012 at the level of 'Group of road units', for the period 2012/2013.

Of the seven collective agreements concluded, only the latter applies to companies in the private sector, whereas all the others apply to the public sector. The national trade union confederations representatives stated that, according to their information, no other collective agreement was signed at group of companies' level in the private sector.<sup>63</sup>

These contracts include clauses such as (not common to all agreements):

- the establishment of pay grade scales;
- higher protection of union leaders;
- the creation of a social fund for supporting employees in case of childbirth, death, disease, etc.;
- annual leave for longer periods, depending on seniority; and
- paid leave for education, etc.

### The impact on industrial relations at company level

The data from the MMFPSPV indicate the following figures:

- 7,372 collective agreements at company level plus 4,357 addenda were on record at the end of 2008.
- 2,801 collective agreements at company level plus 2,990 addenda were on record at 30 June 2011.
- 4,335 collective agreements at company level plus 951 addenda were on record at 30 June 2012.

The decreasing number of collective agreements may be caused by the economic crisis, but it is also an effect of the changes in the industrial relations legislation.

According to the information available, the collective agreements negotiated and concluded at company level by the 'representatives of the employee' (if there is no trade union, or the trade union is not representative) represent a very rare practice on the Romanian industrial relations landscape, at least until now.

To comply with the new regulations (Art. 3, par. 2, Law No. 62/2011), at least 15 employees from the same unit are needed to establish a trade union, while before, in the old regulations, the 15 employees needed to be from the same branch or profession, even if they were hired by different employers.

According to the most recent data, published by the INS in 2012, in Romania, the proportion of companies with fewer than 10 employees in the total number of companies from industry, construction, commerce, and market services was 87.2% in 2003, 89.2% in 2008, and 99.1% in 2010.

Even if official information regarding the trade unions at company level, are not available, we can estimate that as a result of the promotion of the new rules for establishing a trade union, the number of trade unions at company level will decrease significantly.<sup>64</sup>

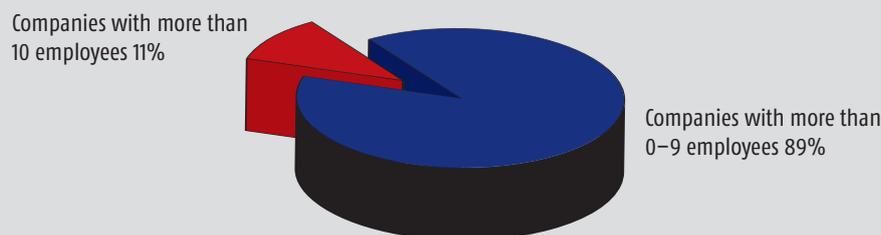
In 2010, for example, we are talking about 483,300 companies (from a total of 491,900 companies), in which according to the new regulation it is impossible to establish a trade union organization at company level, because fewer than 10 persons are employed; the 2011 Social Dialogue Law requires at least 15 employees in the same company to establish a company level trade union. (Chart 4<sup>65</sup>).

63 See Annex 5.

64 Regarding the opinion of trade union leaders in this respect, see Annex 5

65 See Annex 14

CHART 4. PROPORTION OF COMPANIES WITH FEWER THAN 10 EMPLOYEES, IN WHICH IS IMPOSSIBLE TO ESTABLISH A TRADE UNION ORGANIZATION AT COMPANY LEVEL (2010)



Source: Own processed data from "Romanian Statistical Yearbook", INS, Bucharest, 2011.

The new legislation requires that those unions seeking to bargain and execute a collective agreement should have members representing at least half plus one of the total number of all employees (as opposed to one-third previously), which, again, may explain why the number of collective agreements at company level diminished significantly in 2011.

The positive side of the new legislation, if we are to find one, is that it deters the fragmentation of union organizations.

Therefore, at company level, the difficulties lie with the fact that an established trade union must be declared representative by the competent court of law, in order to hold the legal right to participate in the negotiation and conclusion of the collective agreement. The condition to have a minimum number of members of a half plus one of the employees in the company is almost impossible to fulfil; before the entry into force of the Social Dialogue Law, one-third of the number of employees was the minimum threshold required.

In the absence of a representative trade union, the law provides for two other forms of employee representation; however, these also prove difficult to achieve in practice. More precisely, in such circumstances, the employees are represented by:

- their representatives, if no trade union is established, or if the existing trade union is non-representative and it is not affiliated to a representative trade union federation set up in the same activity sector as the company in question [Article 135(1)(b) of the Social Dialogue Law];
- by the representative trade union federation, together with the representatives of the employees, if the non-representative trade union established at the level of the company is affiliated to that federation [Article 135(1)(a) of the Social Dialogue Law].

Some of the consequences of the economic crisis have also been analyzed in a study, *Working Conditions, Satisfaction and Performance at Work* published by the National Trade Union Bloc (BNS) in 2012, under the SOP HRD project regarding the Office for the Monitoring of the Labour Market and Quality of Workplaces and financed from the European Social Fund.<sup>66</sup>

One of the questions was whether company managerial structures take into consideration the initiatives and proposals made by employees. The answer was 'No' in a proportion of 71.5% in 2010, and 72.6% in 2011.

The question regarding the preliminary consultation of employees in the event of organizational changes in the company received a 'No' answer in a proportion of 51.3% in 2010, and 52% in 2011.

Another finding of the Study is the growing discontent of employees with the level of their pay (48% were dissatisfied in 2010, 55% in 2011), and one of the elements contributing to the workers' malcontent regarding wages is management's failure to involve them in the decision-making process through dialogue and consultation.<sup>67</sup>

<sup>66</sup> The Study reflects the findings of statistic research based on questionnaires distributed in 2010 and 2011 among a sample of 4471 employees, chosen as representative at national level

<sup>67</sup> Mihail IVAȘCU – Secretary-General of CONPIROM (Annex 5)

### The impact on collective negotiation in the public sector

State employees were one of the categories most seriously affected by the legislative modifications operated in 2011.

Thus, based on Law No. 118/2010 regarding the required measures to restore the budget balance, the gross quantum of salaries and of all other financial rights owed to state employees<sup>68</sup> were diminished by 25%. According to Law No. 285/2010, as of 1 January 2011, the gross quantum of base salaries and of all other financial rights, as granted to State employees paid from public funds for the month of October 2010, increased by 15%.

The significant diminishing of the incomes of state employees was accompanied and reinforced by limiting the possibility of such employees to submit to collective negotiation any aspects referring to their financial rights.

Thus, according to Article 138 of the Law on social dialogue, collective labour contracts/agreements concluded with state employees cannot include clauses referring to financial rights or in kind rights, other than those stated by current legislation for the respective category of personnel. The wages of public employees are established by law within precise thresholds which cannot be subject to negotiation and cannot be modified through collective labour contracts. In cases where wages are established by special laws within minimum and maximum thresholds, concrete wage levels are determined through collective negotiations, but only within these legal thresholds.

Any provision of a collective agreement which breaches the abovementioned legal restrictions is void.

Consequently, wages are excluded from collective bargaining in the public sector although it is one of the most important negotiation topics, especially for Romanian workers who have low incomes compared to workers in other European states. This restriction may raise some question marks regarding the correct application of Article 4 of the ILO Convention 98 as collective bargaining becomes void of content if wages are excluded from the negotiation.<sup>69</sup> Although Article 6 of Convention No. 98 excludes civil servants from its scope of application, it shall not be construed as prejudicing their rights or status in any way. Furthermore, the Convention only excludes civil servants, whereas Romanian regulations regard all the persons paid from the public budget, e.g. public employees.

## C. The impact of the legislative changes on employment, working conditions and collective bargaining outcomes

### 1. Main macroeconomic indicators

The evolution of some of the macroeconomic indicators after May 2011 show that Gross Domestic Product (GDP) had a real growth of 2.5% in 2011, and a growth of only 0.7% in the first half of 2012, compared to the first half of 2011<sup>70</sup>.

Knowing that this GDP growth was mostly generated by an auspicious 2011 for agricultural production, and that the changes in the legislation governing industrial relations have little bearing on this sector (of a

68 Established according to the provisions of Framework-Law No. 330/2009 regarding the unitary wage of the staff paid from public funds and of Emergency Government Ordinance No. 1/2010 regarding some measures to reinstate in their positions some staff categories in the budget sector and establishing their wage rates, as well as other measures in the budget sector.

69 On the occasion of the 101st Session of the International Labour Conference, with reference to this matter, the Committee had recalled that 'if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards'. 'The Committee observes with concern that Act No. 284/2010 which replaces Act No. 330/2009, continues to globally preclude collective bargaining on salary rights and pecuniary entitlements in the public budget sector'. Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) General Report and observations concerning particular countries, pp. 220-221

70 "Monthly Statistical Bulletin", INS, Bucharest, various editions.

total employment of 2.2 million, only 100,000 are employees), one can conclude without fear of error, that the new regulations in the labour market can hardly be associated with GDP evolution, and definitely not for such a short period as one year.

Due to this slight economic re-launch, the total number of employees in the national economy (4.3 million) increased by 150 000 between May 2011 and June 2012, according to INS sources,, which is still much below the number of employees in 2008 (4.8 million) and even 2009 (4.6 million).

In euro denomination, average monthly net salary earnings continued to drop, from €355 in May 2011 to €348 in June 2012<sup>71</sup>.

Important information is provided by the correlation between the evolution of GDP and the evolution of compensation of employees and gross operating surplus.

According to INS data, if, in 2008, employee compensation represented approximately 45% of GDP and the gross operating surplus only 47.2% of GDP, then in 2009, 2010, and 2011 the proportion of employee compensation in GDP decreased to 40.6%, 39.9%, and 37.4%, respectively, while the proportion of gross operating surplus increased to 49.8%, 50.3%, and 50.8%, respectively. Salaries and gross indemnities decreased their proportion in GDP from 35.3% in 2008, to 33.9% in 2009, 33.6% in 2010, and 31.9% in 2011.

In conclusion, during the crisis period, the proportion of salaries decreased and the proportion of gross operating surplus increased, the financial impact of the crisis being absorbed especially by employees and their revenues.

At the sectoral level, the available data also reveals evolutions that seem to result from the recent legislative reforms, though these effects are not necessarily positive.<sup>72</sup>

The brief period that has passed since enforcement of the labour market legislative reform does not allow us to perform an accurate evaluation of the impact of the reform from the perspective of macroeconomic coordination, but the evolution recorded to the present allows us to say that the reform does not have the anticipated impact on economic growth and development of the business environment.

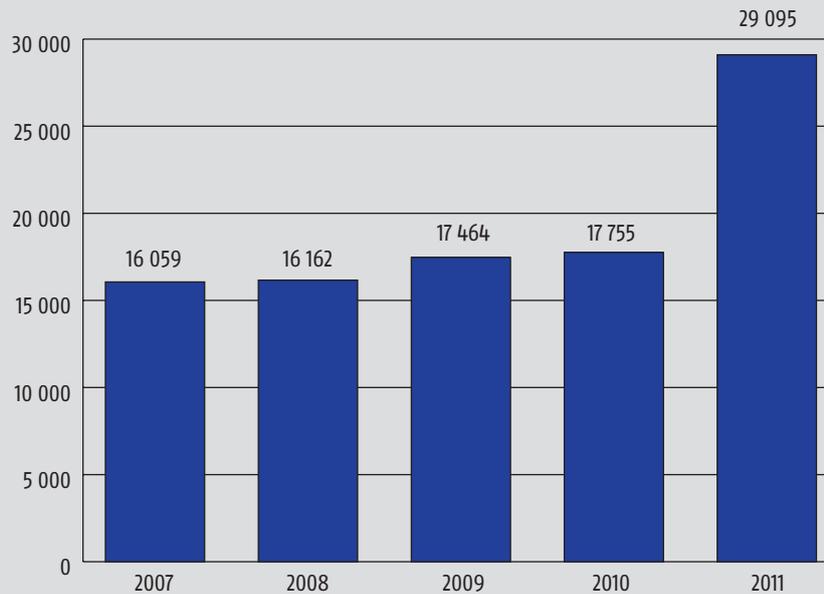
## 2. Undeclared work

Regarding the phenomenon of undeclared work, it should be mentioned that Labour Inspection identified and sanctioned more cases of undeclared work in 2011 than before the labour reform (from 16 059 cases in 2007 to 29 095 cases in 2011, according to the Labour Inspection Activity Report, published in June 2012) (Chart 5).

71 Own processed INS data regarding the monthly salary earnings in Lei and the monthly average exchange rate Lei/Euro, published by BNR.

72 See Annex 15.

CHART 5. PERSONS IDENTIFIED AS PROVIDING UNDECLARED WORK



Until the change of the Labour Code, the employment contract was consensual, which meant that although the contract had not been concluded in writing, the parties could prove its existence. Today, the employment contract has become a formal contract; it can only be concluded in writing, a form imposed *ad validitatem*. At present, an employment contract that is not in written form is absolutely null and void. Both the employer and the employee shall be fined<sup>73</sup> and their agreement cannot be retroactively considered as an employment contract. The applicable sanctions in such cases, when no written contract has been signed, have increased.

The trade unions argue that sanctioning the worker for not having a written employment contract is an unfair and an inappropriate legislative solution, since in most cases they have no other choice.

It is questionable if this will indeed lead to a reduction in undeclared work.

The modification of the Labour code, in the sense of the complete nullity of the verbal contract, has been pointed out as inadequate within the Memorandum of ILO Technical Comments on the Draft Labour Code and the Draft Law on Social Dialogue of Romania since January of 2011.<sup>74</sup>

Currently, in practice, this regulation is not really applicable, because while nullity only produces effects for the future, it is considered that an ulterior written conclusion of a contract will cover the nullity of the verbal contract which will thus be considered valid retroactively. Therefore, as shown in the juridical literature, the text modification failed to lead to a modification of the real relationship between the parties.<sup>75</sup>

One cannot state that imposing the additional formalities upon concluding the labour contract has had any effect in diminishing undeclared labour.

However, a positive effect can be registered with regard to consolidating the measures to apply sanctions. According to the new Labour Code provisions, hiring more than five people without legal forms is considered

<sup>73</sup> For the employer, hiring of more than five people without legal formalities may even constitute a crime, being prosecuted under criminal law.

<sup>74</sup> Pct. 10: 'While the pursued objective of deleting that rebuttable presumption is unknown, its potential effect on jeopardizing legal security and predictability for both parties to an oral contract of employment can easily be anticipated.'

<sup>75</sup> Ş. Beligrădeanu, *Principalele aspecte teoretice și practice rezultate din cuprinsul legii nr. 40/2011 pentru modificarea și completarea Legii nr. 53/2003 – Codul muncii*, II, [The main theoretical and practical aspects of the Law No. 40/2011 amending and completing the Law no 53/2003 – the Labour Code] „Dreptul nr. 7/2011, p. 32-33.

to be a crime and it is criminally sanctioned. And indeed, during last year, 304 such acts have been reported to the prosecution bodies.

The role and functions of the Labour Inspection Body were consolidated by the entry into force of Law No. 51/2012<sup>76</sup> according to which labour inspectors received new attributions:

- free access without prior notice to work places organized even by individual persons not just formal headquarters or work points of firms;
- the right to request persons performing activities or found at the work place under inspection to identify themselves and to make such persons fill out identification datasheets; and
- unconditional support of the public order and protection authorities while performing the inspection.<sup>77</sup>

### 3. Balance between flexibility and security

The flexibility of employment is one of the declared objectives of the reform made in the Romanian labour legislation in May 2011. The introduction of increased flexibility was largely perceived as a form of workers' de-protection both at individual and collective levels given that no attention was given to balancing these changes with a concomitant increase in workers' security.

Atypical labour contracts are very often more beneficial to the employer than to the employee. At times of limited job vacancies, there is a risk that the option of offering atypical work becomes the rule rather than the exception, and that the employee will have no option but to accept it.

Given the background of relations between employer and employee being more sensitive because of the economic crisis, the increased risk of precarious employment becomes evident.

3.1. An example could be the new regulation of the trial period. Upon conclusion of the employment contract, in order to evaluate the skills of the employee, the parties may establish a probationary period that cannot exceed 90 calendar days for executive positions and 120 calendar days for management positions [Article 31(1) of the Labour Code]. Under the former regulations, this period could not have exceeded 30 days for executive positions, and 90 days for management positions. Moreover, an employer is now entitled to resort to this method of evaluating the employee's job performance and work behavior *an indefinite number of times, and even on the same post*. Exemptions are no longer awarded for unqualified workers.

Such a change can provide the employer with time needed to identify appropriate staffing levels to meet demand. The problem is that liberalization of the probationary period – as a method to evaluate professional skills – is in fact an open door for precarious employment to be imposed on a group of employees.

During the probationary period, the employment contract can be terminated at any time, without prior notice or justification; thus, such employees become vulnerable. The Labour Code also provides for the possibility to make use of the probationary period several times, limited only to a maximum 12 months for the same post.

The citizens' legislative initiative for the draft law on the modification of the Labour Code<sup>78</sup> proposes the reduction of the trial period, and the reinstatement of the five-day period for unqualified workers.

The obligation of the employer to inform the employee of the probationary period remains in force; however, failure to comply with this obligation is no longer sanctioned with the prohibition to further use the probationary period, but with the obligation to pay damages, insofar as the employee can provide evidence that a prejudice has occurred.

3.2. One of the modifications of the Labour Code addresses the conditions for the conclusion of fixed-term employment contracts.

76 On the amendment and supplementation of Law No. 108/1999 for creating and organizing Labor Inspection. Law No. 51/2012, published in the *Official Journal*, Part I, No. 182, 21 March 2012.

77 In fact, consolidating the role of labor inspection is in line with the Labor Inspection Convention (No. 81), ratified by Romania.

78 Draft Law No. 843 of 22 October 2012 for the modification and amendment of the Law No. 53/2003 – Labour Code, published in the *Official Gazette of Romania*, No. 773, 16 November 2012.

The maximum term for which a fixed-term contract may be concluded is changed from 24 months to 36 months.<sup>79</sup>

In addition, the list of accepted justifications to conclude fixed-term contracts has extended. For instance, the employer is now able to conclude such contracts not only in the case of increased activity, but also in the case of decreased activity, or indeed, of any structural modification to the activity. The concept of 'structural change' is not defined in the legislation and it can actually cover any change to the organizational chart that the employer makes. This reason to conclude fixed-term agreements is included in a long list of reasons given in the Labour Code, including very narrow and specific reasons.<sup>80</sup> The practical consequence is that although we have a specific list in law, fixed-term labour agreements can be concluded for almost any reason.

3.3. One of the changes in the 2011 Labour Code covered temporary agency work, and aimed at transposing the Directive 2008/104/EC on temporary agency work into Romanian law. Although the legal literature considers that the Directive has generally been correctly implemented, one of the provisions is still causing polemical attitudes, namely the wages of the temporary agent during their assignment.

Indeed, the new regulation worsens the situation of temporary agents since their minimum wage is currently lower than the previous one.

The former version of the Labour Code stated that 'the wages received by the temporary worker for each assignment cannot be lower than the wages received by the employee of the user who performs the same work or a similar work.' After the reforms, the text provides that: 'the wages received by the temporary worker for each assignment shall be established through direct negotiation with the temporary worker and shall not be lower than the national minimum gross wage.'<sup>81</sup>

Regarding the possible contradiction of this rule with the principle of equal treatment contained in the Directive 2008/104/EC on temporary agency work, the Constitutional Court stated that 'the new provision permits in fact no discriminatory treatment between the temporary workers and the user's employees. The law only established the minimum wages that the temporary employee must enjoy and which are not different from the wages guaranteed for the employee of the user. It further allows the parties to negotiate the wages above the minimum.'<sup>82</sup>

However, in recent legal literature, certain authors consider that there is a contradiction between the principle of equal treatment, established by Article 5(2) of the Directive, and the provisions of Article 96(2) of the Romanian Labour Code.

Equal treatment is expressly stipulated in the Romanian Labour Code, in Article 92(1) – 'temporary employees shall have access to all services and facilities given by the user in the same conditions as the other employees' – and in Article 101 – 'with the exception of contrary special provisions, stipulated in this chapter, all legal provisions, internal regulations and provisions of collective labour agreements applicable to employees hired under employment contracts of indefinite duration shall equally apply to temporary agents during their assignments.'

However, as a result of the changes in Article 96(2) of the Labour Code, the minimum wages of temporary

79 We should stress that the citizens' initiative for the draft law on the modification of the Labour Code proposes another extension of this period, namely to five years.

80 Art. 83 in the Labour Code stipulates the possibility to conclude a fixed duration labour agreement under the following circumstances:  
 a) to replace an employee whose labour agreement is suspended, except for the case when the employee takes part in a strike;  
 b) in case of temporary increase and/or modification of the structure of the activity of the employer;  
 c) to perform season activities. Surprisingly, season employees make no exception from the stipulations regarding the maximal duration of the contract; the law stipulates in the case of season employees that the maximal duration of their labour agreements can be of 36 months;  
 d) in case it has been concluded under legal provisions issued in order to temporarily favour certain categories of unemployed people;  
 e) to hire a person who, within 5 years, will meet the requirements to retire;  
 f) to fill a position eligible in a union, an entrepreneurs' association or a non-governmental organization, during the person's mandate;  
 g) to hire retired people who, under the law, can cumulate their pension with wages; and  
 h) in other cases stipulated by special laws or in order to perform certain works, projects or programs.

81 Art. 96 para. (2) in the Labour Code, after re-numbering, as it was published in the *Romanian Official Gazette* No. 345, 18 May 2011.

82 Decision of the Constitutional Court no 383/2011, published in the *Romanian Official Gazette* No. 281, 21 April 2011

workers are no longer the wages received by the employees of the user, but the national minimum wage. This change has been a topic of controversy in Romanian legal literature. Some authors<sup>83</sup> even believe that the current form of Article 96 does not comply with the text of Article 5(1) of the Directive 2008/104/EC, which expressly and imperatively establishes the principle of non-discrimination of temporary workers, and identifies the basic working and employment conditions of temporary agency workers, for the duration of their assignment at a user undertaking (at least those conditions that would apply if they had been recruited directly by the user).

Other authors<sup>84</sup> see the current form of Article 96 as not being in line with the principle of equal pay for equal work, established by Article 4(3) of the European Social Charter (Revised), and of the Law No. 202/2002 on equal opportunities.<sup>85</sup>

Indeed, Article 96(2) of the Labour Code can lead to difficulties in terms of properly transposing Article 5(1) of the directive.

3.4. While resizing atypical work, we are witnessing the phenomenon of rendering standard work more 'precarious'. That is, de-protecting employees that work under atypical agreements, full time, for fixed duration. The trend has two components:

- collectively, by reducing participation in collective actions and diminishing significantly the power of the unions (by changing the criteria to acquire representativeness by social partners); and
- individually, by reducing the rights of standard employees.

This phenomenon currently leads to the idea that there are no longer two types of workers, some of them sufficiently protected by the labour legislation, others overlooked by the labour legislation; but there are workers who, irrespective of their activity, have a certain deficit of protection.

There have been attempts to prevent or limit such precariousness in employment. For example, Law No. 279/2005 regarding apprenticeships in the workplace<sup>86</sup> – which defined norms for apprentices that were so harsh that apprenticeships would become non-attractive for employers. Law No. 52/2011, regarding seasonal activities performed by day workers, was another clumsy attempt to minimize risks that the vulnerability of the day-worker position incurs.

## 4. Wages

According to the previous regulations, the content of collective bargaining must at least include: pay, working time and working conditions. The new law does not contain provisions regarding these mandatory subjects of annual collective bargaining.

With regard to the wage level, the most significant impact ensues from the dismissal of the collective agreement at national level and, jointly, from the pay grade scale corresponding to the level of education. At present, there is only one minimum wage.

Chart 6 shows the evolution of the minimum wage in Romania, in comparison with the other EU member states.

When expressed in the Romanian national currency (Lei), the monthly gross minimum wage was 510 Lei in 2008, 600 Lei in 2009 (equal to a nominal growth of 17.6%); stayed at 600 Lei in 2010, grew to 670 Lei in 2011 (by 11.7%), and to 700 Lei in 2012 (i.e. a nominal growth of only 4.4%) (Chart 6).

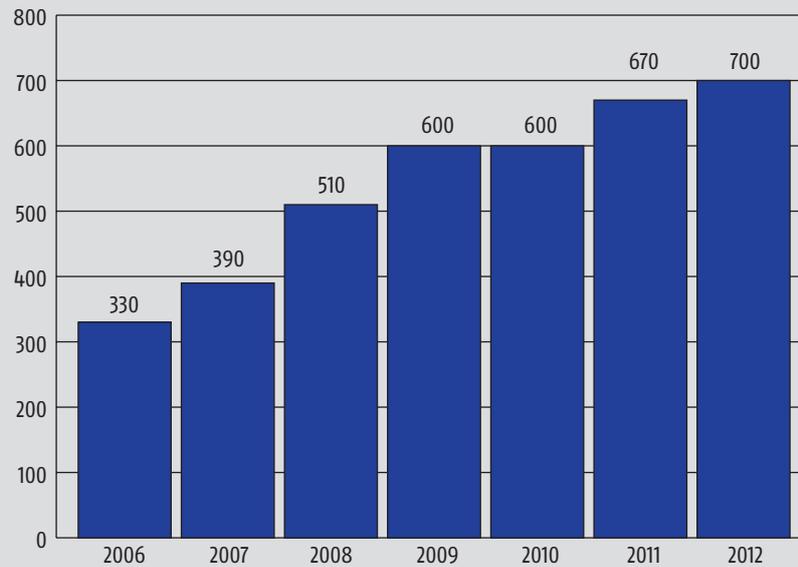
83 Al. Athanasiu, *Codul muncii, Comentariu pe articole*, CH Beck Publishing House, Bucharest, 2012, p. 90

84 R.G. Cristescu, C. Cristescu, *Codul muncii modificat și republicat 2011*, Bucharest, Hamangiu Publishing House, 2011, p. 255

85 Law No. 202/2002 regarding equal opportunities between women and men, republished in the *Romanian Official Gazette* No. 150, 1 March 2007 stipulates in Art. 7 (1) letter c) the non-discriminatory access to equal income for equal amounts of work

86 Republished in the *Official Gazette of Romania*, No. 522, 25 July 2011

CHART 6. EVOLUTION OF GROSS MINIMUM WAGE DURING THE PERIOD 2006–2012 (LEI/MONTH)



Source: [www.mmuncii.ro](http://www.mmuncii.ro).

In euro, and by comparison to other countries, the minimum wage in Romania followed the currency fluctuations in percentage points.<sup>87</sup>

The *Tripartite agreement on the evolution of the minimum wage and on the minimum wage/average salary ratio over the period 2008 – 2014* (signed on 25 July 2008 by the government of Romania with all the 12 employer confederations and 5 national trade union confederations that were representative at the time), stipulated a minimum wage of 860 Lei for 2011 (of which only 670 Lei was obtained), and 1,030 Lei for 2012 (compared to the current 700 Lei).

Under the Tripartite Agreement, the monthly gross minimum wage was planned to equal 40% of the national gross average salary in 2011 and 44% in 2012.

In actual fact, the minimum wage/average salary ratio was only 33% in 2011 and 33.3% in the first seven months of 2012<sup>88</sup>.

The national unique collective agreement also provided differentiated gross minimum wages for all levels of qualification and vocational/professional training, based on multiplication factors to the minimum wage corresponding to unqualified workers. For example, the minimum wage would be multiplied by 1.5 for a person with high-school education (which, in 2012 would result in a minimum wage of 1,050 Lei), and by 2.0 for the holder of a higher education diploma (the minimum wage being, in this case, 1,400 Lei in 2012).

The abolition of the national unique collective agreement may also have as a consequence much lower wages, particularly for young people, many of whom contemplate emigration for better earnings.

## 5. Working time

According to Article 52(3) of the Labour Code, 'in case of temporary reduction of the activity, for either economic, technological, structural or any similar reasons, for periods exceeding 30 working days, the employer shall

<sup>87</sup> Given in Annex 7.

<sup>88</sup> Own processed MMFSPV data.

have the possibility to reduce the working time from 5 to 4 days per week, and to reduce wages accordingly, until the cause that led to the reduction of the working time disappears, after prior consultations with the representative union at company level or with the representative of the employees, as the case may be.'

Many of the collective agreements concluded in Romania include provisions regarding this possibility for the employer to reduce the working week. Some practical difficulties have been triggered, however, since the law does not stipulate the maximum term during which the working time can be reduced. Besides, the causes that can underlie this option of the employer are not really limited by law.

Enforcement of these new regulations has generated several collective labour conflicts. On occasion, employees have gone on strike to protest against this measure (for example, in February 2012 at Oil Terminal – Constanța).

The reference period for calculating the maximum weekly working time – which cannot exceed 48 hours – has been extended. Until now, Romanian law stipulated a reference period of only three months, which was a more favorable legal norm than that stipulated in Directive 2003/88/EC. Accordingly, the new law extends the reference time period to four months.

The problem of cumulated jobs by the same worker is not solved. On the contrary, it is even possible to conclude (no more than) two employment contracts between the same employer and the same employee, which may lead to some situations of eluding the rules applicable on limiting overtime. This happens because working time is not defined as the sum of the periods of time worked under all contracts, but as time worked under each separate contract.<sup>89</sup> There is no condition that the total amount of hours worked under various labour contracts executed at the same time shall not exceed the stipulated maximum duration of working time.

The Labour Code provides that collective bargaining agreements can derogate by providing reference periods of time longer than 4 months, but not exceeding 6 months. With the requirement of complying with the regulations regarding health and safety protection of employees, for objective reasons, either technical or related to work organization, collective bargaining agreements can even derogate for longer reference periods than 4 months but not exceeding 12 months.

The employer is now able to compensate for overtime not within 30 days (as it was before March 2011) but within 60 days. Moreover, it has become possible to grant free days in advance, in order to compensate future overtime.<sup>90</sup>

A fine shall be imposed if there is no record of the hours worked by each employee and if this record is not submitted to the Labour inspection.

## 6. The impact of the reform on employment

Cumulated with the social dialogue blockage and the weakness of social partners, the promoted legislative changes have generated a decline in the quantity and quality of work and employment.

### The evolution of the number and structure of employment

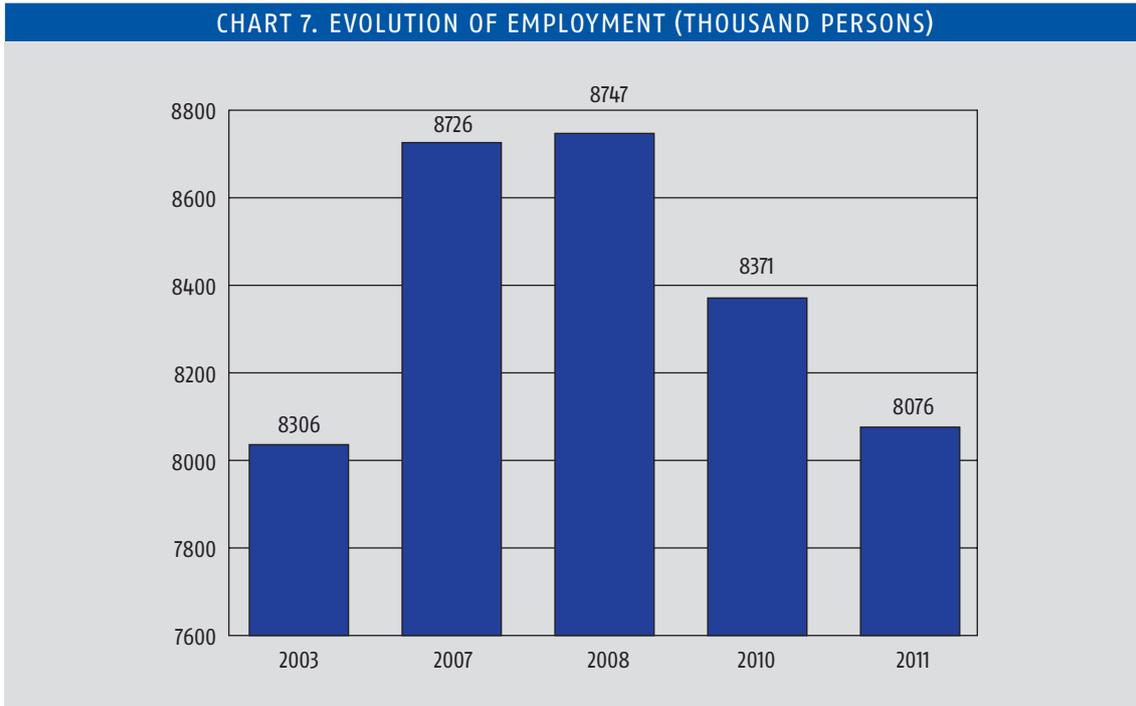
For the country's overall economy, the number of employed persons grew from 8.3 million in 2003 to 8.7 million in 2008, then receded to 8.4 million in 2010 and 8.0 million in 2011 (Chart 7).

In 2011, agriculture, on the one hand, and the industry and construction sectors on the other, had a relatively equal number of workers, and accounted for the same share of all employment.<sup>91</sup>

89 This interpretation has been stated in the Decision of the Constitutional Court no 1004/2009, published in the Official Gazette no, 575 dated 18 August 2009

90 The citizens' initiative for the modification of the Labour Code proposes the express definition of the activity fields in which there may be established reference periods of 4 to 6 months, and overtime payment both by granting paid time off in the next 30 calendar days, and by granting supplemental pay.

91 See Annex 16.



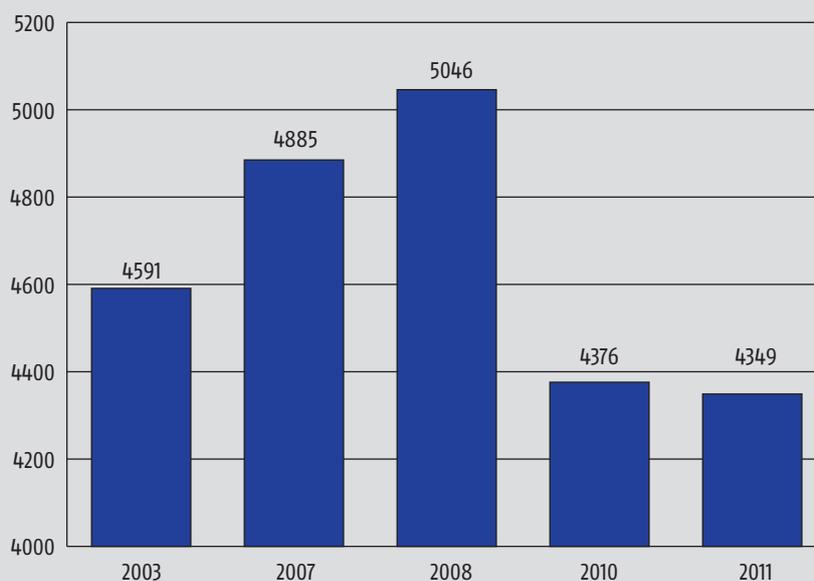
Source: INS data.

Agriculture witnessed the most dramatic loss of employment – declining by 448,000 between 2003 and 2010; loss of employment in industry was 94,000 over the same period, while the services sector gained 607,000 employees.

The number of contracted employees rose from 4,591,000 in 2003 to 5,046,000 in 2008, then dropped to 4,376,000 in 2010 and to 4,349,000 in 2011 (Chart 8). The gain of 455,000 during the period 2003–2008 was outweighed by the loss of 697,000 between 2008 and 2011.<sup>92</sup>

92 See Annex 17.

CHART 8. EVOLUTION OF THE NUMBER OF EMPLOYEES (THOUSAND PERSONS)



Source: INS data.

The number of unemployed fluctuated as follows: from 2003 to 2007, the total number of unemployed on record diminished by 291 000 (from 658 900 to 367 800); it increased from 403 400 to 627 000 between 2008 and 2010; and decreased again in 2011 to 461 000<sup>93</sup>.

The jobless on record and off unemployment benefit stood at 54.8% of all the jobless recorded in 2003, 67% in 2007, and 47% in 2010.

It is a matter of evidence that the only segment of the labour force among which unemployment has been growing constantly from 2008 to 2011 is that of higher education graduates.<sup>94</sup>

The unemployment rate fluctuated from 7.4% in 2003, to 4.0% in 2007, to 7.8% in 2009, to 7% in 2010 and to 5.12% in December 2011.

Throughout the time span 2003–2010, the total number of pensioners was higher than that of employees.

### Employment status and working schedule

According with the INS data, in the socio-professional structure of the employed population, the share of employees grew from 62.5% in 2003 to 67.4% in 2008, decreased to 65.6% in 2010, and increased again in 2011 to 67.3%.<sup>95</sup>

Practically, in Romania, of the occupied population, only employees (some two-thirds) are interested and involved in collective bargaining and social dialogue.

Employed persons and employees, working full-time, represent an important and increasing proportion of the working population.<sup>96</sup>

93 MMFSPV data.

94 See Annex 18.

95 See Annex 19.

96 See Annex 20.

In 2011, only 10.5% of employed persons and 0.8% of employees were hired for part-time work.<sup>97</sup>

Employees hired by individual employment contract accounted for 98.7% of total employees in 2003, 99.4% in 2010, and 98.9% in 2011; employees performing work under other types of employment arrangements accounted for only 1.3% of all employees in 2003, 0.6% in 2010, and 1.1% in 2011.<sup>98</sup>

Information regarding the impact of the economic and financial crisis on working conditions are available also in the study Working conditions, satisfaction and performances evaluation at workplaces, the result of an inquiry based on a representative sample, published by BNS in 2012, during the project 'Office for the Monitoring of the Labour Market and Quality of Workplaces'.

The answers received during the inquiries performed in 2010 and 2011, point to a trend towards mobility among employees from one job to another: 52.9% of the respondents in 2011, as compared with 45.5% in 2010, stated that they had changed their jobs at least once in the last 5 years.<sup>99</sup>

The data collected during the AMIGO Household Labour Force Survey, made by the INS on the actual average length of a working week show a slightly rising trend, more visible among employees, from 40.7 hours in 2007 to 41.1 hours in 2011. (The legal length for a working week is 40 hours.)<sup>100</sup>

The tendency of a longer working week is visible among both full-time and part-time employees.

The number of those whose working week exceeded 41 hours diminished as a share of all employment from 20.0% in 2007 to 17.4% in 2011, and for all salaried employees it diminished from 19.3% to 15.7% over this period. This can be explained as an effect of the economic crisis.<sup>101</sup>

The BNS inquiry confirms these figures. According to their findings, 18.6% of employees in 2010, and 14.5% in 2011 said that overtime had become habitual at their workplaces.

## 7. The impact on working relations and environment

The available statistical information reveals that the number of labour disputes is in regress, from 121 in 2003 to 116 in 2008, 73 in 2010 and only 35 in 2011.<sup>102</sup>

It is a matter of evidence that the most numerous disputes arose in 2003 (121), and 2008 (116), and that the most numerous persons involved in such disputes were recorded in 2005 (184,000), and 2008 (205,000).

Only a very small share of the disputes ended up in strikes.<sup>103</sup>

The peak in respect of number of strikes was reached in 2004 (11) and 2007 (12), and the highest number of strikers was recorded in 2008 (16,700).

According to data from MMFSPV, the annual average loss in working hours per 1000 employees caused by disputes totalled 5.38 days during the period 2006–2009, compared to the EU 27 average of 31.78 days.

Among the demands that triggered labour disputes between 2003 and 2009, wage claims ranked first (accounting for 50% to 78% of all labour conflicts), giving way in 2010 to claims for social rights, caused by the restructuring measures taken that year.<sup>104</sup>

The sectors holding the top three positions in respect of the number of direct participants in labour conflicts were, in 2003, the metallurgical industry, the manufacture of road transport vehicles, and transport storage and communications, which jointly contributed 81 200 workers taking part in strikes (57.4% of all participants in labour conflicts).

97 AMIGO, INS, various editions.

98 See Annex 21.

99 See Annex 22.

100 See Annex 23.

101 See Annex 24.

102 See Annex 25.

103 See Annex 26.

104 See Annex 27.

In 2008, the first three positions were held by construction, the energy sector, and metallurgy, totalling 46 conflicts (40% of total number of labour conflicts) with 154,000 participant employees, representing 75.2% of the total number of participants in labour conflicts<sup>105</sup>.

In 2011, the first three positions were held by transport and storage, financial intermediation, and metallurgy, accounting for 20 conflicts (57.1% of total conflicts) with 50 200 participants, representing 90.3% of all conflict participants.

Information regarding the implications of the labour law reform on five relevant sectors is available in Annex 15.

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105 See Annex 28.

## 4. Conclusions

### A. The social impact of reforms to the Labour code

Among the effects of the modification of the Labour Code through Law No. 40/2011 on the social life in Romania we identify:

- Increasingly precarious labour conditions<sup>106</sup> as a result of:
  - simplifying the conditions of concluding contracts for determined periods;
  - increasing the duration of the trial period;
  - eliminating the necessity to motivate the conclusion of temporary labour contracts. Diminishing the degree of protection guaranteed to union leaders.<sup>107</sup>
- The modification of certain regulations regarding the time of work, for example with regard to the reference period, or the possibility to reduce the labour week from 5 to 4 days. The occurrence of difficulties of enforcement generated by the lack of correlation with the provisions of the Law on Social Dialogue.

In terms of economic growth, GDP had positive growth of 2.5% in 2011, and growth of only 0.7% in the first half of 2012 compared to the first half of 2011.

Knowing that the earlier GDP growth was mostly generated by an auspicious 2011 for agricultural production, and that the changes in the legislation governing industrial relations have little bearing on this sector (of a total employment of 2.2 million, only 100,000 are employees), one can conclude without fear of error that the new regulations in the labour market can hardly be associated with GDP evolution, and definitely not for such a short period as one year.

Another important piece of information is provided by the correlation between the evolution of GDP and the evolution of employee compensation and gross operating surplus.

According to INS data, if, in 2008, employee compensation represented approximately 45% of GDP and the gross operating surplus only 47.2% of GDP, then in 2009, 2010, and 2011 the proportion of employee compensation in GDP decreased to 40.6%, 39.9%, and 37.4%, respectively, while the proportion of gross operating surplus increased to 49.8%, 50.3%, and 50.8%, respectively.

Salaries and gross indemnities decreased their proportion of GDP from 35.3% in 2008, to 33.9% in 2009, 33.6% in 2010, and 31.9% in 2011.

In conclusion, during the crisis period, the proportion of salaries to GDP decreased and the proportion of gross operating surplus to GDP increased, the impact of the financial crisis being absorbed especially by employees and their revenues. In terms of employment, the main evolutions may be synthesized as follows:

- The decrease of the number of employed persons from 8,371 million in 2010 to 8,076 million in 2011.
- The declining trend of the number of total employees from 4,376 million in 2010 to 4,349 million in 2011.
- A small increase in employment relations flexibility: the proportion of part-time employees increasing from 0.6% of total employees in 2010 to 0.8% of total employees in 2011 and the proportion of temporary employment contracts increasing from 0.9% of total employees in 2010 to 1.1% of total employees in 2011.

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106 Some of the Interviewed union leaders consider the flexibilization of the employment contract as an alibi for deregulation. „This is undoubtedly a regress, which is confirmed by the lack of empirical evidence to ascertain the fact that the multiplication of flexibility forms for employment contracts leads to the reduction of unemployment rates’ (Bogdan Iuliu Hossu). See Annex 5.

107 One can observe the elimination of the interdiction to fire union leaders for a period of 2 years as of the end of their mandate.

## B. The impact of the Law on Social Dialogue on collective bargaining

Reforming the institutions of social dialogue in a period when the crisis produced its effects seems to have also determined a crisis of these institutions and of the players of social dialogue. This fact doubled the negative effects of handling the economic-financial problems by non-participation and the lack of support from social partners.

The impact on the collective labour contract in the period May 2011–November 2012 can be summed-up as follows:

- there is no unique collective labour contract at a national level;
- only one collective labour contract for one sector (education) and only 7 collective
- contracts for groups of companies were submitted to the Ministry of Labour, Family, Social Protection and Elderly;
- the number of collective bargaining agreements at the level of company has dropped to approximately half.

Among the causes of such phenomena, we observe:

- Replacing the branch negotiation level with that of sector which led to losing the representation obtained for this level by social partners. Moreover, these sectors were established by Government Decision only 7 months after the entry into force of Law No. 62/2012, an interval during which any negotiation could not have been possible.
- The application of highly restrictive criteria for obtaining representation by the unions, not in accordance with the real rate of union membership in Romania. These conditions (an increase in union membership from one-third of the number of employees to one-half plus one) seem to be excessive as related to the degree of union membership in Romania (on average 30% of the total number of employees).
- In certain situations, the lack of interest from the employers' organizations to obtain representation in their sector, which makes collective bargaining impossible.
- Amplification of the rights of representation of employees' representatives to the disfavour of union representation for such employees.<sup>108</sup> In reality, the institution of employees' representatives never worked efficiently, and so taking over certain attributes from the negotiation prerogatives until now specific only to unions<sup>109</sup> causes a part of the workers to lose representation. According to the law, it is possible to exclude the trade union from the collective negotiation if such union is non-representative and it is possible to only have an exclusive negotiation with the employees' representatives (Art. 135 (1) letter b).<sup>110</sup>

108 As stated in the Memorandum of ILO Technical Comments on the Draft Labour Code and the Draft Law on Social Dialogue of Romania (2011), p. 19: 'The Offices anticipates that the new threshold might be difficult to achieve and that as a result, for all intents and purposes, collective bargaining will take place primarily with workers' representatives, undermining unions established within the enterprise.' Besides, the Collective Bargaining Convention, 1981 (No. 154) provides that 'where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned'.

109 Prior to this regulation, the employees' representatives could only be elected in the units where there was no union. Currently, the employees' representatives can also be appointed in the units where there is a union and they can even participate in the collective negotiation, together with the union, to the extent to which the union is not representative (Art. 135, section 1 letter a). Moreover, if the union is not affiliated to a representative union federation, the employees' representatives are the only ones authorized to represent the workers for negotiations, the union having no right (Art. 135, section 1, letter b). It should be mentioned that at the 101st Session of the International Labor Conference, the Committee expressed its opinion in the sense that this provision could infringe upon the principle of the free and voluntary collective negotiation and therefore the autonomy of the bargaining partners) Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) General Report and observations concerning particular countries, p. 221

110 Referring to the employees' representatives, art. 3 of Convention No. 154 leaves it up to the ratifying state, in case the national law or national practice acknowledges the existence thereof, as such are defined by Convention No. 135/1971 to establish to what extent the employees' representatives can participate in the collective negotiation, on the condition (stated at section 2 of article 3) to take adequate measures to guarantee that their presence cannot serve to weaken the existing union organizations. As a conclusion, although one cannot sustain the opinion that the employees' representatives, other than the union members, are not protected by the international labor norms, it is obvious that these norms grant a predominant role to unions when created inside an enterprise.

### **In terms of quantity one can notice a decrease in the number of collective labour contracts**

At sector level, so far only one collective contract has been concluded and even that was concluded in the public sector.<sup>111</sup> One of the reasons why there are still not collective contracts at this level is the over-sizing of sectors which generates difficulties in observing the conditions required by the law for concluding a collective labour contract at this level. The situation is made even worse by the fact that there is no correspondence between the field covered by the unions and that by employers' association constituted at this level.<sup>112</sup>

Through the new regulations, in terms of sectors, in addition to the initial representation condition for the employers' organizations (minimum 10% of employees hired in the affiliated units), the registration of the negotiated contract can only be done 'in case the number of employees in the units that are members of the signing employers' associations is higher than the total number of employees in the sector of activity' (Law 62/2011, Art. 143, para. 3).

The immediate consequence is the spectacular increase of the number of employees who would have to be hired in the affiliated units in order to obtain representation, which determined some union confederations to criticize the regulation as 'absurd'.<sup>113</sup> Here are two examples regarding the effects of this modification:

In the Trade sector:

- Under the old regulation, it was sufficient in the companies affiliated to the representative employers' association for 88 469 workers to be employed (10% of the employees in the sector).
- Under the new regulation, the minimum number of workers in these companies in order to register the contract for a sector is 411 350.

In the Construction sector:

- Under the old regulation, it was sufficient in the units affiliated to the representative employers' association for 39 334 workers to be employed.
- Under the new regulation: the minimum number of employees in these units in order to register the contract for a sector is 147 500.<sup>114</sup>

We also state that if previously the collective labour contract per branch was applied 'for all the employees hired in all the units in the respective branch of activity for which the collective labour contract was concluded' (Law 130/1996), according to Law 62/2011 (Art. 133, paragraph 1, letter c), the clauses of the collective labour contract produce effects 'for all the employees hired in the units of the sector of activity for which the collective labour contract was concluded and who are part of the employers' associations signing the contract'.

In other words, for employees whose employers are not members of an employers' organization or their employers' organizations do not sign the collective labour contract at sector level, the provisions of such contracts are not applicable.

On the other hand, for the employers' associations, obtaining representation does not constitute an obligation written in the law, and some of them are not even interested in obtaining it.

At the national level, although the social partners have obtained their representation and the negotiation of a new collective labour contract is not explicitly forbidden by law, such negotiation cannot take place in the absence of norms regarding the registration and application of such a contract. In reality, we can say that this part of collective negotiation was eliminated from the Romanian scheme of collective negotiation.

A series of regulations that was included in the collective labour contract at the national level, concluded for the period 2007–2010, is no longer found in the applicable legal or contractual regulations. For example,

111 The Collective labor contract concluded at the sector of pre-university education, No. 59276/2012.

112 MMFSPV, *European Social Dialogue*, p. 16

113 See Annex 5.

114 For the complete description of these effects, see Annex 23 and Annex 24.

the collective contract included provisions referring to paid days off, to the conditions of granting non-paid leave and to the procedure of collective firing for professional inadequacy, which are no longer found in the generally applicable legislation. Moreover, as a result of suppression of the collective contract concluded at the national level, the minimum wage no longer depends on the level of studies, which has led to a reduction in the minimum wage applicable to employees who occupy positions requiring higher education.

#### **In terms of the degree of coverage of workers through collective labour contracts**

The principle of opposability (*erga omnes*) of the provisions of the collective labour contracts, applicable in Romania until 2011, was partially removed, and is currently only found with regard to the collective contract at the level of companies.

The causes of the phenomenon of diminishing numbers of workers covered by collective bargaining agreements include:

- the elimination of the obligation of annual collective negotiation;
- the elimination of the collective contract concluded at the national level;
- the fact that at higher levels the negotiation depends on the extent to which employers' associations have obtained representation (at sector level), or respectively, constituted the group of companies;
- difficulties in obtaining representation.

#### **In terms of quality, the new collective contract concluded may be regarded as ensuring inferior protection to employees as compared to the previous ones**

One of the reasons lies in the fact that collective contracts have only been concluded in groups of units and sectors – at the budget sector. But these are precisely the contracts that cannot include provisions regarding the most important negotiation topic, namely wage rates.

Perhaps it is precisely the limited possibility of negotiation that made it possible to see in the public sector the first collective contracts concluded in groups of units or in sectors under the governance of Law No. 62/2011.

The only collective contract at sector level concluded so far includes *inter alia* provisions regarding the assuming by the employer – in this case by the Ministry of Education – of the obligation to initiate and sustain a series of legislation modifications. Indeed, since through the collective labour contract no obligations can be assumed that are not included in the approved income and expenses budgets of budget managers, the only obligation the employer can assume is that of diligence, of doing everything within its power to modify the applicable legislation. However, we note that such obligation is not enforceable in court (rather being a soft law).

# Annex 1

## Labour legislation in force prior to the legislative reforms – additional information

The basic principle in the organization and functioning of trade unions and employer organizations consists in the freedom of association. This principle is expressed in Article 40(1) of the Constitution of Romania, which states that *citizens may freely associate into trade unions and employer organizations*, and also in Article 9 of the same Constitution, according to which *trade unions and employer organizations carry out their activity according to their statutes, as provided by law, thereby contributing “to the defence of the rights, and to the promotion of the occupational, economic and social interests of their members”*.

On an individual scale, trade union freedom of association is founded upon the right recognized to each person exercising a profession to freely join a trade union, to withdraw at any moment from the trade union, and to not join any trade union<sup>1</sup>.

The democratic trade union movement, established in Romania starting with the year 1990, has an industrial type structure, and *the enterprise (company) trade union* represents the constitutive unit. Within the field of budgetary activities sectors (education, healthcare, finance, etc.), trade unions have been established at the level of administrative entities (as a rule, county structures).

All collective labour contracts were *erga omnes* applicable at the level at which they were concluded, therefore all employees in the national economy, branch or enterprise where the collective contract has been concluded could benefit from the minimum negotiated rights.

Unions negotiated collective labour insofar as they were representative, *i.e.* fulfil the following criteria:

- at national level: they have the legal status of trade union confederation; they have their own territorial union structures in at least half of the total number of counties, including the Municipality of Bucharest; their component trade union organizations have concurrently a number of members of at least 5% of the number of employees within the national economy;
- at branch level: they have the legal status of trade union federation; their component trade union organizations must concurrently represent at least 7% of the employees within the respective branch;
- at the company level: they have the legal status of trade union organization; the number of trade union members must represent at least one third of the company's employees.

According to Article 18(3) of Law No. 130/1996, trade unions were representative if they fulfilled the requirements described above, but also if they were affiliated to a representative trade union organization. The High Court of Cassation and Justice has ruled that such requirements are alternatively demanded (Decision No. 7 of January 21st, 2008).

Regarding employer organizations, as in the case of trade unions, the criteria for representativeness were also established according to the level the collective labour contract is concluded at.

The law provided that conflicts of interest could occur only in the following cases:

- the company refuses to commence the negotiation of a new collective labour agreement if such agreement were not yet concluded or the existing one expired;
- the company does not accept the employees' claims;
- the company unjustifiably refuses to sign the collective labour agreement even though collective negotiations have been completed;

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<sup>1</sup> See Al. Țiclea, *Tratat de dreptul muncii* [Treatise on Labour Law], 6<sup>th</sup> edition, “Universul Juridic” Publishing House, Bucharest, 2012, p. 150

- the company does not comply with its legal obligations to commence compulsory annual negotiations concerning wages, working-time, work schedules and working conditions.

The following were considered conflicts of rights:

- conflicts related to the conclusion, execution, modification, suspension and termination of employment contracts;
- conflicts related to the execution of collective labour agreements;
- conflicts related to the payment of the compensation meant to cover the damage caused to the parties by failure to (properly) comply with contractual obligations;
- conflicts related to the nullity of employment contracts or collective agreements, or of their clauses;
- conflicts related to the termination of collective labour agreements.

Therefore, the main differences between conflicts of rights and conflicts of interests could be synthesized as follows:

- conflicts of rights were due to the failure of a party to comply with a right provided by the law, by the collective agreement, or by the employment contract. On the other hand, conflicts of interest occurred in the case of a disagreement between the parties, regarding a claim of employees not yet enforced by law, by the collective agreement, or by the employment contract;
- both could have a collective character, but only certain conflicts of rights could have an individual character;
- conflicts of rights could take place at any time, while conflicts of interests occurred only related to collective bargaining;
- the conflicts of rights were usually settled by a court of law, while the conflicts of interest were settled by specific, out-of-court methods (conciliation, mediation, arbitration, strike).

According to Law No. 356/2001 on Employer Associations, employer associations were autonomous organizations of employers, devoid of political character, set up as legal bodies of private law, without any economic purpose. Employer associations were established on the basis of economic activities and were organized at sector, branch and national level.

**The Economic and Social Council** played an advisory role in establishing economic and social strategies and policies, in the settlement of conflicts emerging between the social partners at branch or at national level, as well as in achieving, promoting and developing social dialogue and social solidarity. The Economic and Social Council had to be consulted by the originators of law projects, programmes and strategies within its competence. This structure was established as a public, tripartite, autonomous institution of national interest, founded with the aim of achieving, at national level, the social dialogue between employer associations, trade unions and the Government, and to ensure an environment of stability and social peace.

The Social and Economic Council comprised 45 members, nominated by the social partners, as follows: 15 members nominated by the confederations of employers, 15 members by the trade union confederations and 15 members by the Government.

**The commissions of social dialogue**, operating at the level of the central public administration and at territorial level, were set up in the most important branches of the national economy and were made up of representatives of the employer organizations, of the trade unions and of the ministries in question. Their activity was advisory and it mainly aimed at the reciprocal exchange of information between social partners and at consulting them with regard to the legislative initiatives.

# Annex 2

## Terminology of the Social Dialogue Law

- A *company*, in the legislator's conception, is *"the legal person who directly employs workforce"* [Article 1(k) of the Social Dialogue Law]. In other words, this is the employer, party in the employment relationship, *the undertaking*.
- *The group of companies* represents an upper structure, which is especially established with a view to collective bargaining at this level; it consists of two or more companies having the same main object of activity, in conformity with the codes enlisted in the Classification of National Economy Activities (CAEN, or NACE).
- National companies, self-governing managements, public institutions or authorities, which are units held by the State, may establish groups of companies provided they comprise, in subordination or in coordination, other legal persons that hire workforce [Article 1(m)].
- *The activity sector* is a national economy sector that groups certain fields of activity, and is defined in conformity with the CAEN Code [Article 1(s)]. According to this Code, the activity sectors are listed in sections, starting with Section A: *"Agriculture, Forestry, Fishing"*, continuing, for example, with Section C: *"Manufacturing"*, or Section F: *"Constructions"*, and finishing with Section U: *"Activities of Extraterritorial Organizations and Bodies"*. Each section is structured, as the case may be, in divisions, groups, and classes
- The *initiative of collective bargaining* belongs to the employer or to the employer organizations, as the case may be. If such initiative does not exist with at least 45 calendar days in advance of the expiration of the existing collective contract, the trade union organization or the representatives of the employees have the right to demand their social partner the start of the collective bargaining. His refusal constitutes an administrative offense, which is sanctioned with an administrative fine between 5000 and 10000 RON (approximately from 1200 to 2400 €).
- The legislative reforms eliminated the distinction between *"conflict of interests"* and *"conflict of rights"*. Nowadays, the labour conflicts can be either individual, or collective. In reality, the notion of *"collective conflict"* replaced that of *"conflict of interests"*, while the notion of *"individual conflict"* replaced that of *"conflict of rights"*. According to the legal doctrine, *"this option of the legislator is fundamentally erroneous, retrograde, and in flagrant contradiction with the text of the Social Dialogue Law"*.

# Annex 3

## The conditions for obtaining representativeness: the represent ativeness of trade unions

The acquired representativeness (by court ruling) is not permanent; it is valid for a period of 4 years, after which the same competent court of law examines if the conditions of representativeness provided by law continue to be accomplished. Any interested person may contest the representativeness of trade union organizations (and also of employer organizations) by filing a written demand with the respective court.

a) *At national level*, in the case of confederations, two main conditions must be met:

- the component trade union organizations, which are comprised in the structure of the confederation, must have a number of members of at least 5% of the employed workforce in the national (State) economy;
- the respective confederation must have territorial structures in at least a half plus one of the counties of Romania, including the Municipality of Bucharest.

b) *At activity sector or group of companies' level*, in the case of federations, the law states that the member organizations of the respective federation must have a number of members of at least 7% of the employed workforce in the respective activity sector or group of companies.

c) *At company (enterprise) level*, the essential condition that must be observed is that the number of members of the trade union must represent at least a half plus one of the number of employees in the company.

**The Representativeness of Employer Organizations.** *At company (enterprise) level*, the employer, represented by the management of the company, is representative in law, and no other conditions are required.

At activity sector or at national level, the representativeness of employer organizations is regulated by Article 72 of the Social Dialogue Law. Only the employer organizations that are representative can take part in social dialogue and in industrial actions.

*At national level*, an employer organization is representative if:

- it has the legal status of a *confederation of employers*;
- it has patrimonial and organizational independence;
- it is comprised of members (employers) whose companies comprise at least 7% of the employed workforce in the national (State) economy, with the exception of public employees;
- it has territorial structures in a least a half plus one of the counties of Romania, including the Municipality of Bucharest.

*At activity sector level*, an employer organization may acquire representativeness if:

- it has the legal statute of a *federation of employers*;
- it is comprised of members (employers) whose companies comprise at least 10% of the employed workforce in the respective activity sector, with the exception of public employees.

As in the case of trade unions, the accomplishment of the conditions of representativeness by employer organizations falls within the courts of law competence. In addition, the acquired representativeness (by court ruling) is not permanent; it is valid for a period of 4 years, after which the same competent court of law examines if the conditions of representativeness provided by law continue to be accomplished.

# Annex 4

## The representatives of the employees

The law recognizes the existence of the representatives of the employees insofar as the following conditions are met:

- they can be organised *only* at the level of companies having at least 21 employees;
- at the level of the respective companies, there are no representative trade unions. In other words, the representatives of the employees are *an alternative to representative trade unions*. Their coexistence is excluded<sup>2</sup>;
- they are employees of the respective companies, *elected and specially mandated* with the purposes of promoting and defending the interests of the employees.

In short, the representatives of the employees, as their name suggests it, represent the employees of a specific company before the employer, and exercise the rights provided for representative trade unions where these latter are not established.

According to the Labour Code, the representatives of the employees are elected with the *vote of at least a half plus one of the total number of employees in a company* [Article 221(2)]. Their number – but not also the persons in question – is established by common agreement between employees and the management of the company, depending on the total number of employees. In any case, the election of these representatives is *a right of employees, and not an obligation*.

The mandate of employees' representatives is for a maximum period of two years [Article 221(3) of the Labour Code]; this is only a threshold, and therefore the exact period is to be designated by the assembly of the employees, on the occasion of their election.

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2 Al. Țiclea, *Tratat de dreptul muncii*, ed. Unvers Juridic 2012, p. 188.

# Annex 5

## Interviews with representatives of the social partners

### I. Trade unions

The following representatives were interviewed:

- **Mr. Iacob BACIU**, President of the Democratic Trade Union Confederation of Romania (CSDR);
- **Mr. Bogdan Iuliu HOSSU**, President of the National Trade Union Confederation “Cartel ALFA” (CNS Cartel ALFA).

#### 1. From your experience, which are the activity sectors that were most affected by the labour legislation reform of 2011?

a) *Mr. Iacob Baci*. The great majority of the activity sectors, as regulated by the Government Decision No. 126/2011, have been affected by the provisions of the Law No. 40/2022 on the modification of the Labour Code, but above all by those of the Social Dialogue Law No. 62/2011.

We believe the following activity sectors are worth mentioning:

- Agriculture, Aquaculture and Fishing. Forestry and Hunting Economics
- Food, Beverage and Tobacco Industry
- Chemical, Petrochemical and Connected Activities Industry
- Metallurgical Industry
- Tourism, Hotels and Restaurants
- Culture and Mass Media
- Higher Education and Research.

b) *Mr. Bogdan Iuliu Hossu*. All sectors are affected. The effects are stronger in: commerce, metallurgy, chemistry-petrochemistry, agriculture, civil construction, and automobile construction.

#### 2. What is the stage of collective bargaining at activity sector level?

a) *Mr. Iacob Baci*. Article 143 (3, 5) of the Social Dialogue Law has practically blocked collective bargaining at the level of activity sectors. It is true that there are a few collective agreements concluded at the former level of activity branches existing in the National Economy, corresponding to the level of the actual activity sectors, but their scope of application reduced considerably due to the absurd criteria provided by Article 143 (3) of the Social Dialogue Law.

b) *Mr. Bogdan Iuliu Hossu*. The Social Dialogue Law tightened the conditions of acquiring representativeness up to the point that they cannot be met any further.

In addition, under the law, the course of collective bargaining at activity sector level is dependent upon the measure in which both social partners previously acquired representativeness at this level. Therefore, if the employer organizations do not demand and do not acquire representativeness, and if the number of employees represented by the federations of employers have at least a half plus one of the workforce in the sector, the trade union organizations – even representative – have no one to negotiate with.

On these grounds we can confirm that, at present, collective bargaining at activity sector level is paralysed. For that matter, there is no collective agreement registered at this level until now. It is also worth mentioning that neither at the level of group of companies have other collective agreements been concluded. Moreover, at company level, the number of collective agreements diminished by over 30%.

### 3. Describe the most significant three effects of the dismissal of the collective agreement at national level, from your perspective.

a) *Mr. Iacob Baci*. We consider that the dismissal of the collective agreement at national level represents a grave error in the field of employment and industrial relations in Romania.

*The first significant effect* resides in the fact that this collective agreement was a source of law for the contracts concluded at all subsequent levels (sectors, groups of companies, and company), and its clauses were considered minimal and mandatory standards.

*The second effect* is that the provisions of the collective agreement at national level were also mandatory with regard to employment contracts. And yet, collective bargaining at company level is compulsory only when the company in question has at least 21 employees. In these circumstances, the employees of small and medium-sized enterprises that have less than 21 employees, and where collective bargaining is not mandatory, are deprived of the protection provided by the collective agreement at national level; consequently, the compliance with its provisions in the employment contracts is henceforth excluded.

*The third effect* consists in the significant diminution of the role of social dialogue and partnership at national level between the parties that used to negotiate and subscribe the collective agreement at national level.

b) *Mr. Bogdan Iuliu Hossu*. Overlapped with the suppression of the national level – as a level of collective bargaining –, and with the impossibility or maximum difficulty of collective bargaining at sector level, the dismissal of the collective agreement at national level led to a loss of protection for the great majority of Romanian employees. Nowadays, most of the members of the confederation that I represent are not covered by any collective agreement. Our studies show that, after the adoption of the legislative reforms, the situation regressed from a complete coverage through collective agreements (due to the erga omnes applicability of the agreement at national level), to a coverage of less than a third of Romanian workers.

Many of the provisions of the collective agreement at national level were left ignored by the Labour Code, as modified by the Law No. 40/2011. We mention:

- the obligation to conduct a preliminary enquiry in the case of dismissal on the grounds of capability;
- the obligation to conduct a disciplinary enquiry when the formal implementation of disciplinary action entails a written warning;
- the right of employees to be absent from work for 4 hours a day, during the period of notice, with the purpose of finding another employment;
- certain forms of compensation for redundancy.

After the termination of the collective agreement at national level, the employees do not benefit any longer from these rights, unless they are to be included in the agreements concluded at the inferior levels.

### 4. What consequences did the adoption of the Social Dialogue Law have on the representativeness of the trade union organizations affiliated to the federation/confederation you are representing?

a) *Mr. Iacob Baci*. The Social Dialogue Law, with particular attention to trade union organizations established at company level, increased the numerical criterion – the number of trade union members with regard to the number of employees in the company – to 50% plus one.

This condition reduced the number of representative trade unions entitled to participate in collective bargaining at company level.

The consequence resides in the diminution of the number of collective agreements concluded at company level.

Another consequence is related to the reduction of the number of trade union members that existed at company level, given that the trade union cannot participate any longer, on its own, in the negotiation and subscription of collective agreements.

b) *Mr. Bogdan Iuliu Hossu*. Before we talk about representativeness, even the establishment of trade union organizations itself is seriously affected. The Social Dialogue Law provides that a trade union organization can acquire legal personality only if it comprises at least 15 employees of the same company. Such

a condition impedes from the very beginning the unionization of employees working in smaller companies.

A number of 458 of trade union organizations, representative under the former regulations, were unable to acquire representativeness in accordance with the excessive conditions posed through the legislative reforms.

### **5. How do trade union members perceive the tendency for employment contract flexibility, manifested by the recent modifications of the Labour Code?**

a) *Mr. Iacob Baci*. Among trade union members, this tendency is perceived as a favour granted to the employer, and to the detriment of the employee.

From our viewpoint, the recent modifications represent a deregulation of the individual and collective labour relations existing in Romania prior to the legislative reforms; they manifest a clear intention toward the subversion of trade unions, regarding the collective bargaining and the establishment of a legal framework of defending the legitimate interests not only of trade union members, but also of non-union employees.

We notice a clear tendency to establish working conditions only through individual negotiation, and not through collective bargaining and the conclusion of collective agreements.

In these circumstances, where is the social dialogue and partnership in Romania?

b) *Mr. Bogdan Iuliu Hossu*. The employees consider the flexibilization of the employment contract as an alibi for deregulation. This is undoubtedly a regress, which is confirmed by the lack of empirical evidence to ascertain the fact that the multiplication of flexibility forms for employment contracts leads to the reduction of unemployment rates.

## **II. Employers' organizations**

a) *Mr. Marius Opran*, President of the General Union of Romanian Industrialists 1903 (UGIR-1903)

### **1. What do you consider to have been the impact of the new Social Dialogue Law on collective bargaining in Romania?**

It has made the Economic and Social Council inoperative since May 2011, when the major union and employer confederations withdrew from its structure.

### **2. Has the employer organization that you represent negotiated, concluded and registered collective agreements under the new legislation?**

No, because of the new statutory provisions – we have extended the collective agreements subscribed before the year 2011, by tacit and common agreement with the unions. The suppression of the national collective agreement is an error.

The notion of corporate responsibility, applied by all major western companies at their own initiative on the basis of a self-regulating mechanism, has not been even taken into account.

### **3. Overall, do you consider that the modifications of the labour legislation in 2011 had a positive effect on the economic and competitive environment?**

Absolutely not – it destroyed the essence itself of social dialogue and peace, which are fundamental concepts of a sustainable economic development. Rather than having strike actions for one month a year, and workers having a negative attitude in the workplace, it is preferable to raise wages – losses are lower.

The Social Dialogue Law needs to be modified to this effect, and the citizens' Draft Law – which we support in general, we appreciate it as being well balanced, but still susceptible to improvements – is

currently analysed by the Government with a view to enactment. The interest of Romanian companies should have priority over that of foreign companies. The adoption of such a position having one of its main “pillars” the social dialogue and peace would be very beneficial for Romania, and this fact can be demonstrated on paper, in an organized framework, with the involvement of all role players.

b) *Mr. Mihail Ivaşcu*, Secretary-General of the Employers' Confederation in Industry, Agriculture, Constructions and Services of Romania (CONPIROM)

**1. Within the framework of the employers' confederation you represent, have there been any collective agreements concluded at the level of groups of companies or at the level of activity sectors? If the answer is negative, what are the reasons thereof?**

No employer or employer organization of this confederation has concluded collective agreements after the entry into force of the 2011 reforms, for the following reasons:

- the Social Dialogue Law made the conclusion of collective agreements difficult, by including statutory provisions that are not only unfavourable to trade unions, but also to the employers;
- not only the trade unions have difficulties in ensuring the required representativeness at sector level, but also the employer organizations, to the same extent;
- this employers' confederation has the same approach as the five union confederations that are representative at national level. Together, they addressed the Government a common position, claiming the improvement of the labour legislation so that the conclusion of collective agreements be possible;
- the absence of a collective agreement at national level that, before its suppression, oriented and governed the conclusion of collective agreements at the subsequent levels.

**2. Have the legislative amendments of 2011 generated any improvements in the economic activity of the member companies of the confederation you represent, or in their employment or industrial relations?**

The answer to this question derives from the previous answer.

The 2011 reforms have affected, in a negative manner, the employment and industrial relations, for the aforementioned reasons; respectively, they generated no improvement.

Furthermore, there was no improvement in the economic activity of the employers that are members of this confederation.

c) *Mr. Ştefan Varfalvi*, First-Vicepresident of the General Union of Romanian Industrialists (UGIR)<sup>3</sup>, and one of the five Romanian representatives in the European Economic and Social Committee (EESC)

**1. From your point of view, what was the impact of the new Social Dialogue Law and of the suppression of the collective labour contract at national level on collective bargaining in Romania ?**

At present, the social dialogue in Romania is at its lowest level in the last years, and this is caused by several reasons.

First, the suppression of the collective labour contract at national level has left a significant part of the employees in the country without legal protection, and has reduced the importance of national representative confederations.

Second, the representativeness criteria cause great difficulties to some employers' and union

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3 The President of UGIR, Mr. George Constantin P unescu, is also President of the Alliance of Romanian Employers' Confederations (ACPR).

confederations. At the same time, the post-reforms reactions of the actors of social dialogue have been an extremely important element for the dialogue's evolution.

In fact, ACPR ("The Alliance of Romanian Employers' Confederations"), which is the employers' association that represents Romania both at BusinessEurope and at the ILO, has no dialogue whatsoever with the union confederations that are representative at national level (this not being due to ACPR).

The unions' decision to make an alliance with PatroRom ("The Romanian Employers' Confederation"), following the manner in which the Social Dialogue Law was negotiated, is a big mistake, for it encourages the separation of the employers' movement, and deprives the unions from having a partner of real dialogue.

## **2. Overall, do you consider that the 2011 modifications of the labour legislation have had a positive or negative effect on the economic and competitive environment?**

The period in question is a period of a severe global economic crisis, which has had and continues to have extremely important consequences on the Romanian economic climate as well.

The modifications of the labour legislation have had both negative and also positive effects on the capacity of the commercial companies to face the problems generated by the economic crisis. However, in any case, we cannot consider that all the negative effects emerged in this period because of the new Social Dialogue Law.

I believe that the increase in flexibility of the labour relations has a positive effect, whilst the difficulties introduced in the field of social dialogue have a negative effect, especially through the suppression of the collective labour contract at national level, and through the establishment of exaggerated representativeness criteria.

I also wish to iterate that the role of employers' confederations is to fight for an economic and social climate that supports the functionality of its members, and that this can take place only by means of tripartite dialogue.

For this reason I believe that the social dialogue's actual state reduces greatly the credibility of the common actions that employers' and union confederations can engage in together.

# Annex 6

## New conditions of token strike

Several characteristics follow from Article 185 of the Social Dialogue Law:

- a token strike has two forms: one that implies the collective and voluntary stoppage of work, but only for a duration of 2 hours at most, respectively one that is carried out without the stoppage of work;
- in both cases, the regular strike can only be called after at least 2 calendar days following the commencement of the token strike. This is a minimum delay, and so the archetype-strike (the regular strike) can be lawfully called after 3, 4 days, etc.

The purpose of token strikes, which are also known as warning strikes, is to warn the employer: if he does not meet the workers' demands, the regular strike shall be called.

In the hypothesis where the token strike comprises the stoppage of work (even for 2 hours at most), the legal conditions established for the regular strike must be fulfilled, namely:

- a token strike can be called provided that all possibilities of settling the labour conflict through the procedures provided by law have been exhausted beforehand;
- the employer has been notified at least 2 business days in advance of its calling;
- workers have expressed their adherence to the strike in the proportion (quorum) provided by law.

Even when a token strike takes place without the collective and voluntary stoppage of work, the strike action must be notified to the employer.

# Annex 7

## The evolution of the minimum wage (EUR/month)

Country	S2 2008	S2 2009	S2 2010	S2 2011	S2 2012
Belgium	1,336	1,388	1,388	1,444	1,472
Bulgaria	112	123	123	123	148
Czech Rep.	335	309	311	329	312
Estonia	278	278	278	278	290
Ireland	1,462	1,462	1,462	1,462	1,462
Greece	794	863	863	863	684
Spain	700	728	739	748	748
France	1,321	1,338	1,344	1,365	1,426
Latvia	227	256	254	282	287
Lithuania	232	232	232	232	232
Luxembourg	1,61	1,683	1,725	1,758	1,801
Hungary	293	263	257	293	323
Malta	617	635	660	665	680
The Netherlands	1,357	1,399	1,416	1,435	1,456
Poland	336	287	318	347	353
Portugal	497	525	554	566	566
<b>Romania</b>	<b>137</b>	<b>143</b>	<b>137</b>	<b>158</b>	<b>157</b>
Slovenia	557	589	734	748	763
Slovakia	268	296	308	317	327
UK	1,15	1,113	1,169	1,084	1,244
Turkey	331	321	392	356	412
USA	643	803	1,024	869	998

Source: Eurostat

# Annex 8

## Monthly gross minimum wage (% against S2 of previous year)

Country	S2 2009	S2 2010	S2 2011	S2 2012
Belgium	3,9	0,0	4,0	2,0
Bulgaria	9,1	0,0	0,0	20,8
Czech Rep,	-7,7	0,7	5,5	-5,1
Estonia	0,0	0,0	0,0	4,3
Ireland	0,0	0,0	0,0	0,0
Greece	8,7	0,0	0,0	-20,7
Spain	4,0	1,5	1,3	0,0
France	1,3	0,5	1,6	4,4
Latvia	12,7	-0,8	11,1	1,8
Lithuania	0,0	0,0	0,0	0,0
Luxembourg	4,5	2,5	1,9	2,5
Hungary	-10,2	-2,4	14,1	10,3
Malta	2,9	3,9	0,8	2,2
The Netherlands	3,1	1,2	1,4	1,5
Poland	-14,7	10,8	9,4	1,6
Portugal	5,6	5,6	2,1	0,0
<b>Romania</b>	<b>3,9</b>	<b>-3,7</b>	<b>15,0</b>	<b>-0,4</b>
Slovenia	5,9	24,6	1,9	2,0
Slovakia	10,2	4,1	3,1	3,1
UK	-3,2	5,1	-7,3	14,8
Turkey	-2,9	22,2	-9,1	15,6
USA	24,9	27,5	-15,1	14,8

Source: Eurostat

# Annex 9

## Distribution of salaries by company size and ownership (%, as a national economy average = 100.0)

	2004	2005	2006	2007	2008	2009	2010	2011
Private companies with up to 50 employees	57.5	57.0	55.1	59.5	62.5	59.4	63.4	65.4
Public companies with up to 50 employees	77.5	77.8	82.5	89.8	85.3	90.0	76.1	70.8
Public companies with more than 250 employees	132.0	132.6	138.7	135.0	138.2	133.2	121.9	116.6
Private companies with more than 250 employees	111.7	117.7	116.9	115.8	115.0	122.7	125.1	127.2

Source: Own processed data using wage earnings published by INS.

# Annex 10

## Branches and representativeness criteria prior to the legislative amendments of 2010

No.	Branch	Number of employees in the sector (persons)	Trade union representativeness criteria (7% of the number of employees)	Employer representativeness and signatory criteria for collective agreement at branch level (10% of all employees in the affiliated entities/companies)
1	Agriculture, fish breeding, and fishing	59 100	4 137	5 910
2	Forestry, and the economics of hunting, waters, and environmental protection	25 400	1 778	2 540
3	Mining industry, geology	37 221	2 605	3 722
4	Electric and thermal energy, petroleum and gas	111 385	7 797	11 139
5	Manufacture of food, beverages and tobacco	186 397	13 048	18 640
6	Manufacture of textiles and textile ware	182 310	12 762	18 231
7	Manufacture of leather ware and footwear	57 577	4 030	5 758
8	Wood harvesting and processing	53 556	3 749	5 356
9	Pulp and paper	11 991	839	1 199
10	Publishing and printing	17 215	1 205	1 722
11	Chemical and petrochemical industries	89 705	6 279	8 971
12	Manufacture of cement and other building materials	33 243	2 327	3 324
13	Manufacture of glass and fine ceramics	22 523	1 577	2 252
14	Ferrous and nonferrous metallurgy, and manufacture of refractory materials	37 747	2 642	3 775
15	Machine building	228 899	16 023	22 890
16	Manufacture of electrical and electronic equipment; fine mechanics	139 123	9 739	13 912
17	Manufacture of furniture and other industrial activities n.e.c.	73 545	5 148	7 355
18	Recycling of reusable materials	43 053	3 014	4 305
19	Construction	393 339	27 534	39 334
20	Commerce	884 689	61 928	88 469
21	Tourism, hotels, and restaurants	135 507	9 485	13 551
22	Transport	269 106	18 837	26 911
23	Postal and telecommunication services	42 927	3 005	4 293
24	Financial, banking, brokering, and insurance activities	103 500	7 245	10 350
25	Research and development	16 745	1 172	1 675
26	Public administration	219 000	15 330	21 900
27	Education	387 500	27 125	38 750
28	Health and social care	374 000	26 180	37 400
29	Local utilities, housing and transport	35 918	2 514	3 592
30	Mass-media	37 014	2 591	3 701
31	Culture	47 050	3 294	4 705

Source: Authors' processed data based on INS reports on the 'Results and performances of active companies in the industry and construction' and 'Results and performances of active companies in commerce and market services', INS, Bucharest, 2012.

# Annex 11

## Sectors and representativeness criteria after enactment of new legislation

Economic sectors	2011	Trade union representativeness criterion (7% of the number of employees)	Employer representativeness criterion (10% of the number of employees in the affiliated entities/companies)	Signatory power criterion for collective agreement at sector level (50% of the employees in the sector should be working in the affiliated entities/companies)
Agriculture, aquaculture and fishing. Forestry and hunting economics	116 899	8 183	11 690	58 451
Mining	12 961	907	1 296	6 482
Energy, petroleum, gas, and mining of energy resources	123 302	8 631	12 330	61 652
Manufacture of food, beverages and tobacco	186 396	13 048	18 640	93 199
Manufacture of textiles, textile ware, and clothing. Leather and footwear	240 002	16 800	24 000	120 002
Wood harvesting and processing. Manufacture of paper and paper products	65 547	4 588	6 555	32 775
Chemical and petrochemical industries, and related activities	89 705	6 279	8 971	44 854
Manufacture of glass and fine ceramics. Manufacture of building materials. Manufacture of other products made of non-metallic materials	40 638	2 845	4 064	20 320
Metallurgy	37 747	2 642	3 775	18 875
Machine building and manufacture of metal structures	293 020	20 511	29 302	146 511
Manufacture of electrical and electronic equipment, and of fine mechanisms. Other industrial activities	69 581	4 871	6 958	34 792
Manufacture of furniture. Other industrial activities n.e.c	69 929	4 895	6 993	34 966
Public utilities and other community services. waste management, environment decontamination and protection activities	78 791	5 515	7 879	39 397
Construction	347 774	24 344	34 777	173 888
Commerce	820 716	57 450	82 072	410 359
Land transport and related services	148 218	10 375	14 822	74 110
Water transport and related services. Air transport and related services	17 564	1 229	1 756	8 783
Postal and courier services	42 927	3 005	4 293	21 465
Tourism, hotels and restaurants	144 324	10 103	14 432	72 163
Culture and mass media	65 870	4 611	6 587	32 936
Information and communication technology	72 608	5 083	7 261	36 305
Financial, banking and insurance activities	106 994	7 490	10 699	53 498

Economic sectors	2011	Trade union representativeness criterion (7% of the number of employees)	Employer representativeness criterion (10% of the number of employees in the affiliated entities/companies)	Signatory power criterion for collective agreement at sector level (50% of the employees in the sector should be working in the affiliated entities/companies)
Technical assistance, consultancy and other support services. Other types of services	389 951	27 297	38 995	194 977
Public administration. Activities of extra-territorial organisations	321 778	22 524	32 178	160 890
Pre-academic education	321 431	22 500	32 143	160 717
Academic education and research	71 665	5 017	7 167	35 834
Health. Sanitary and veterinary activities	222 723	15 591	22 272	111 363
Social care	71 646	5 015	7 165	35 824
Sporting activities, games of fortune, betting. Other group activities	99 066	6 935	9 907	49 534

Source: Data on the number of employees by sectors of activity, supplied by INS to trade unions in 2012, on submission on applications for representativeness. Authors' own calculations of the number of employees required for representation purposes

# Annex 12

## List of the trade union federations that demanded the reacquisition of representativeness (November 2012)

1. Federation of Trade Unions Water-Sewerage of Romania
2. Federation of Trade Unions in Community Services of Public Utilities;
3. National Federation of Trade Unions in Agriculture, Food Supply, Tobacco, Domains and Related Services – AGROSTAR;
4. Federation SANITAS of Romania;
5. National Union Federation of Employees in Social and Child Protection Services;
6. Federation of Trade Unions in Banks and Insurance;
7. Federation of Trade Unions in Central and Local Public Administration;
8. Union Federation TRANSLOC;
9. Romanian Federation of Journalists MEDIASIND;
10. National Union Federation “ SALROCA”;
11. National Federation of Trade Unions in Public Services – SIGOL;
12. National Federation of Trade Unions APIA;
13. Union Federation of the Romanian Automobile;
14. Federation of Free and Independent Trade Unions Federația “Energetica”;
15. Federation of Free Trade Unions of CEC Employees in Romania;
16. Federation of National Trade Unions of Police Personnel and Contractual Personnel of Romania;
17. National Federation of Trade Unions in Electricity – UNIVERS;
18. Federation Of Unions – “Gaz Romania”;
19. National Federation of Port Unions;
20. Union Federation METAROM;
21. Federation of Free Trade Unions in Chemistry and Petrochemistry;
22. National Federation MINE ENERGIE (Mines and Energy);
23. National Federation of Trade Unions in Chemistry and Petrochemistry “Lazăr Edeleanu”;
24. National Federation of Trade Unions in Airports;
25. The Alliance of Technical Railroad Federations;
26. National Federation “DRUM de FIER” (Railroad);
27. National Union Federation “PRO.ASIST”;
28. National Union PETROM – ENERGIE (Petrom-Energy);
29. Federation of Unions METAROM;
30. Federation of Unions in Non-Ferrous Metallurgy;
31. National Railroad Federation for Commercial Locomotion;
32. Democratic Union Federation of the Romanian Police Force “Al.I.Cuza”;
33. National Federation of Trade Unions In Water Supply, Sewerage, and Services;
34. Federation of Trade Unions in the National Administration of Penitentiaries;
35. National Railroad Union Alliance;
36. National Federation of Trade Unions in the Police Force – SED LEX;
37. Federations of Trade Unions in the Public Administration – PUBLISIND;
38. National Union Federation AMBULANȚA (Ambulance) of Romania;
39. National Federation of Trade Unions in Transport – ELCATEL;

40. National Federation of Drivers' Unions in Romania;
41. Federation of Locomotive Mechanics in Romania;
42. Solidarity National Union Federation "Metal"
43. Union Federation of Veterinarians in Romania;
44. Federation "Solidaritatea Sanitară" (Sanitary Solidarity) of Romania;
45. Federation of Free Unions in the Wood Industry;
46. Alliance of Transporters' Union in Romania;
47. Federations of Unions in Telecommunications;
48. National Union Federation ALMA MATER;
49. County Union Organization SANITAS of Maramureș;
50. National Federation of Port Unions of Constanța;
52. Union Organization of the Culture Branch;
53. General Federation of Unions "Familia" (Family)
54. National Federation of Unions in the Food Industry;
55. Union Federation LEX JUST;
56. National Environment Federation "Ecologistul" (The Ecologist)
57. Solidarity Union Federation of Steelworkers in Romania "Virgil Săhleanu"

# Annex 13

## List of the employers' federations that demanded the reacquisition of representativeness (November 2012)

1. Employers' Organization of Small and Medium-Sized Enterprises of Bucharest and Ilfov County;
2. Employers' Federation in Energetics;
3. Romanian Employer Organization of the Vending Industry – PRIV;
4. Employer Organization BADCOM;
5. Federation of the Associations of Companies for Energy Utilities;
6. The Employer Union Gas-Romania;
7. Romanian Association of Water Supply;
8. Confederation of Authorized Operators and Transporters in Romania;
9. The Association of Romanian Furniture Manufacturers – APMR;

# Annex 14

## Annex 14: Number and structure of active enterprises by sector and size range

	2003	2007	2008	2010
Total active enterprises (thou')	363.1	520.2	555.1	491.9
a) by number of employees per enterprise (%)				
- 0-9 employees	87.2	88.4	89.2	89.1
250 employees	0.6	0.4	0.3	0.3
b) by economic sector (%)				
agriculture	3.0	2.7	2.6	3.1
industry and construction	19.9	20.8	21.7	20.9
services	77.1	76.5	75.7	76.0

Source: Own processed data from 'Romanian Statistical Yearbook', National Institute of Statistics, INS, Bucharest, various editions.

# Annex 15

## The legislative changes impact at sectoral level

### Manufacture of food, beverages and tobacco

<b>1</b>	<b>Evolution of the number of employees</b>
	The INS Monthly Statistical Bulletin for May 2011 indicates a total number of employees in this sector of 168,200 persons (4.05% of all employees in the economy). Their number grew to 172,400 persons by June 2012 (4.0% of all). Prior to the economic crisis, in 2008, this sector had 188,600 employees on record.
<b>2</b>	<b>Sectoral contribution to gross added value</b>
	The sector contributes by more than one fifth of the gross added value for the entire industry, and some 5-6% of the entire gross added value of the economy and of the GDP.
<b>3</b>	<b>Net average salary earnings</b>
	In June 2012, the net average salary earnings in the food industry was some 224 euro (the national economy average of 348 euro), which is equal to 93.7% of the net average salary earning of the Month of May 2011, and equal to 239 euro (355 euro the national average).
<b>4</b>	<b>Productivity</b>
	Labour productivity reflected the month-to-month fluctuations on the sector's market: in June 2012 it had diminished by 8.7% from the May 2011 level.
<b>5</b>	<b>Social partners and collective bargaining</b>
	<p>Under Act 130/1996, the validity of the 2006 collective agreement for the food, beverages and tobacco industries was extended until 2015 through the articles of amendment executed in June 2010.</p> <p>The collective agreement was signed by ROMALIMENTA, the Romanian Employers Federation of Food Industries (Federația Patronală Română din Industria Alimentară – ROMALIMENTA), on behalf of the employers, which stated that the total number of employees in its affiliated members stood at 90,000 persons.</p> <p>According with the new regulations, to re-gain the representativity at sectoral level, the federations must have in the affiliated companies 17,200 employees and in order to sign and register a collective agreement at sectoral level the number of employees in affiliated companies must be at least 86,200 persons.</p> <p>On behalf of the trade unions, the collective agreement was signed by SINDALIMENTA, the National Federation of Food Beverages Tobacco and Related Industries (Federația Națională a Sindicatelor din Industria Alimentară, a Băuturilor, Tutunului și Ramuri Conexe – Federația SINDALIMENTA) and the CERES Federation (Centrala CERES).</p> <p>According their representatives SINDALIMENTA is a federation that boasts some 25,000 members and CERES Federation another 15,000 members.</p> <p>To re-gain representativeness, which, under the new rules, is mandatory, a union federation should be able to prove that it has at least 12,000 members working in the companies that are active in this sector.</p> <p>Collective bargaining is compulsory only for companies of more than de 20 employees. In this sector, in 2010, for example, there were 8,604 active companies, of which 6,923 (80.4%), accounting for some 18% of all employees in the sector, had less than 20 workers.</p>

## Manufacture of textiles, textile ware and clothing. Leather and footwear

<b>1</b>	<b>Evolution of the number of employees</b>
	In June 2012, the sector had some 221,000 employees (approximately 5% of all employees in the national economy), a number that had increased from the 219,500 persons in May 2011. Compared to 2008, the number of employees shrank by more than 30%.
<b>2</b>	<b>Sectoral contribution to gross added value</b>
	The sector contributes some 3% of the overall gross added value in the national economy.
<b>3</b>	<b>Net average salary earnings</b>
	The monthly net salary earning in the manufacture of textile, textile ware, leather and footwear, expressed in euro (by conversion from Lei at the monthly average exchange rate of the National Bank of Romania), dropped from 233 euro in May 2011 to 226 euro in June 2012. Compared to the national net average salary earning, the sector's average earning was some 65% in June 2012.
<b>4</b>	<b>Productivity</b>
	During the period May 2011 – June 2012, the real index of labour productivity followed a declining curve in all subsectors. The greatest loss of labour productivity occurred in leather and footwear (in June 2012, productivity had dropped to 84.8% of the level recorded in May 2011); in the manufacture of textile, productivity stood at 85.2%, and in the manufacture of clothing, productivity had diminished to 98.4%.
<b>5</b>	<b>Social partners and collective bargaining</b>
	<p>Prior to the new regulations (Act 62/2011), the old law provided bargaining and execution in the sector for two industrial branches: manufacture of textiles and textile ware, and leather and footwear.</p> <p>The last collective agreement for the sector of textiles and footwear, signed in 2007, was valid until 2010, and was then extended by a memorandum of amendment until 31 December 2011.</p> <p>The social partners who signed it were the following:</p> <ul style="list-style-type: none"> <li>– Light Industry Employer Federation (Federația Patronală din Industria Ușoară – FEPAIUS), on behalf of the employers, and</li> <li>– Textile and Clothing Union Federation (Federația Sindicatelor Textile Confecții CONFTEX;</li> <li>– Light Industry Union Federation (Federația Sindicatelor din Industria Ușoară UNICONF (with 645 members);</li> <li>– PELTRICONTEX – Frăția Federation;</li> <li>– CRAIMODEX Trade Union Federation (with 2,897 trade union members),</li> </ul> <p>on behalf of the employees.</p> <p>The data extracted from the papers submitted by the trade union federations seeking to obtain representativeness according to the Social Dialogue Act 62/2011, and published on the site of the MMFSPV, indicate that there are several other union federations in the sector: the National Federation of Textile Trade Unions (Federația Națională a Sindicatelor din Industria Textilă SINTEXTIL) (11,643 members); Light Industry Workers Federation (Federația Lucrătorilor din Industria Ușoară CONPELTEX) (1,300 members).</p> <p>The last collective agreement made for the Leather and Footwear industry under Act 130/1996 was valid for the period 2007–2011, and was signed by the Employers Organisation in Leather and Footwear, PINC (Organizația Patronală Pielărie – Încălțăminte PINC), the affiliates of which, at the time, totalled some 50,000 employees and by the Cordwainers Union Federation (Federația Sindicală Pielarul), which, at that time, had among its members some 8,000 employees in the branch.</p> <p>Under the new regulations (Act 62/2011), the representative employer federation should have as members at least 22,100 employees in the affiliated companies, and the trade union is deemed representative if it has at least 15,470 employees.</p> <p>Collective agreements at sector level are recognised as valid if the signatory employer federations have at least 110,500 employees in the affiliated companies.</p> <p>According to law, collective bargaining is compulsory only for companies working with more than 20 employees. In 2010, for example, in this sector, of the total 7,551 active companies, a number of 5,454 (72.2%), totalling some 9.4% of all employees in the sector, had below 20 workers.</p>

## Metallurgy

<b>1</b>	<b>Evolution of the number of employees</b>
	The number of workers in the metallurgical industry was, in June 2012 (33,400), roughly the same as the one in May 2011 (33,600 persons). But the decrease since 2008 was sharp: 15,000 persons.
<b>2</b>	<b>Sectoral contribution to gross added value</b>
	The metallurgical industry contributes approximately 0.8% to the generation of gross added value at national level, and provides jobs to some 0.8% of all employees in the national economy.
<b>3</b>	<b>Net average salary earnings</b>
	The salary earnings in this sector place the metallurgical industry above the national average.
<b>4</b>	<b>Productivity</b>
	Labour productivity grew by approximately 5% from May 2011 to June 2012, after an 18% backdrop in February 2012 from the May 2011 level.
<b>5</b>	<b>Social partners and collective bargaining</b>
	<p>The last collective agreement for the branch ferrous metallurgy, non-ferrous metallurgy, and refractory products was signed in July 2010, and was valid for the years 2010 and 2011.</p> <p>For the employer organisations, the collective agreement was bargained and signed by the Metalurgia Employer Federation (Federația Patronală Metalurgia), which, in 2009, totalled over 45,000 employees in the affiliated companies.</p> <p>For the employees, the collective agreement was signed by the following union federations:</p> <p>Steelworkers Union Federation METAROM (Federația Sindicală a Siderurgiștilor METAROM), which, on the site of the MMFPSPV, declares some 6,000 members;</p> <p>Federation of Ferrous, Nonferrous and Refractory Workers Free Trade Union (Federația Sindicatelor Libere din Metalurgia Feroasă și Neferoasă și Produse Refractare), with some 2,800 members;</p> <p>Solidarity Steelworkers Union Federation Virgil Sahleanu (Federația Sindicală Solidaritatea Virgil Săhleanu a Metalurgiștilor), totalling almost 3,500 members;</p> <p>National Trade Union Federation 'Solidaritatea Metal' (Federația Națională Sindicală Solidaritatea Metal).</p> <p>The new representativeness criteria allow social partners to take part in the bargaining of a collective agreement if they meet the following conditions:</p> <p>the employer organisation has at least 3,500 employees in the affiliated companies in order to become representative, and minimum 16,700 employees in order to sign and perfect the agreement at sector level;</p> <p>trade unions must have at least 2,300 members from the total employees in the sector.</p> <p>In point of size, the companies in the metallurgical industry are, in an overwhelming proportion (73.3%), small companies of less than 20 employees, which account for some 4% of total employees in the sector.</p>

## Construction

<b>1</b>	<b>Evolution of the number of employees</b>
	<p>The number of employees in construction dropped from 416,400 in 2008 to 315,100 in May 2011. After May 2011, with month-to-month fluctuations, the employees in the sector had reached, in June 2012, the number of 353,200 persons.</p> <p>The share of employees hired under open-ended employment contracts tended to drop between Q1 2011 and Q1 2012, from 95.6% to 95.3% of all employees, and the share of temporary employed workers rose from 2.1% to 2.5%. In Q1 2012, a number of 10,947 workers (2.2% of all employees in the sector) were hired under different types of work agreements.</p>
<b>2</b>	<b>Sectoral contribution to gross added value</b>
	The construction sector contributed in 2010 a share of 11% of the gross added value, down from the 12.2% contribution in 2008.
<b>3</b>	<b>Net average salary earnings</b>
	In May 2011, the net monthly salary earnings in the construction sector was 294 euro (82.8% of the national average earning), and in June 2012, the same had diminished by 6.5%, to 279 euro (80.2% of the national average earning).
<b>4</b>	<b>Productivity</b>
	Labour productivity as a ratio between the volume of construction works and the number of employees, was, in June 2012, by 9.6% lower than in May 2011.
<b>5</b>	<b>Social partners and collective bargaining</b>
	<p>The collective agreement for the construction sector signed in December 2007, and valid for 2008 and 2009, was extended by way of articles of amendment for the years 2010 and 2011.</p> <p>The collective agreement was signed, for the employers, by the Romanian Association of Construction Entrepreneurs ARACO (Asociația Română a Antreprenorilor din Construcții ARACO), and for the employees, by the General Trade Union Federation Familia (Federația Generală Sindicală Familia), the National Union Federation of Construction and Erection Workers Anghel Saligny (Federația Națională a Sindicatelor din Construcții Montaj Anghel Saligny), and the Union Federation of Rail and Other Communication Workers (Federația Sindicală a Constructorilor Feroviari și Căi de Comunicații).</p> <p>In 2009, the two federations, Familia and Anghel Saligny, merged into the General Trade Union Federation Familia Anghel Saligny (Federația Generală Sindicală Familia Anghel Saligny).</p> <p>According to available data, in 2010, the companies affiliated to ARACO totalled 350,000 employees, and the information posted on the site of the MMFSPV indicates that it can count on 4,000 members.</p> <p>For representativeness purposes with effect from 2012, the employer side does not seem to encounter any problems considering that its members are well above the minimum number of 33,500 in the affiliated companies. The same goes for the execution and perfection part, where the minimum required by law is a total of 167,000 workers in the affiliated members.</p> <p>The trade unions should have some 23,500 members.</p> <p>Of a total number of 49,348 active companies in the sector in 2010, 45,939 of them (approximately 93.1%), which employ 35.6% of all employment in the sector, had less than 20 employees.</p>

## Commerce

<b>1</b>	<b>Evolution of the number of employees</b>
	<p>The number of employees in the commerce sector rose from 682,200 in May 2011 (16.4% of all employees in the national economy) to 706,100 persons in June 2012 (compared to 764,000 employees in 2008, and 820,700 in 2010). It is to be suspected that the same amendments to the Labour Code are responsible for the reduction of the share of employees hired under a regular employment contract from 99.3% of all employees, in Q1 2011, to 99.0% in Q1 2012. During the same time frame, the share of employees under a permanent contract diminished slightly from 98.8% to 98.4%, while the number of workers hired under a temporary employment contract grew by 2%. In Q1 2012, a number of 10,400 workers were hired under different types of employment arrangements. This category of workers accounted in Q1 2012 for 1% of all employees in the sector.</p>
<b>2</b>	<b>Sectoral contribution to gross added value</b>
	In 2010, the commerce sector generated over 21.6% of the gross added value in the national economy.
<b>3</b>	<b>Net average salary earnings</b>
	The monthly net salary earning in commerce was in June 2012 equal to 310 euro (89% of the national average earning), compared to 307 euro (86% of the national average) in May 2011. Therefore the growth of the average salary earning between May 2011 and June 2012 was 0.9%.
<b>4</b>	<b>Productivity</b>
	Although, in real terms, the turnover grew between May 2011 and June 2012 by 9.9%, labour productivity calculated as the ratio between the curve of the turnover and the number of employees, rose, during the same reference period, by only 6.2%.
<b>5</b>	<b>Social partners and collective bargaining</b>
	<p>The last collective agreement for the commerce was made in February 2010, for a period of one year. The collective agreement was signed, on the employer side, by the Commerce Employers Federation (Federația Patronatelor din Comerț), which declared about 11,000 workers in the affiliated companies. On the side of the employees, the agreement was signed by the Commerce Trade Unions Federation (Federația Sindicatelor din Comerț), which appears on the site of the MMFPSPV with 12,293 members. Also active in this sector is the Association of Major Retail Networks in Romania (Asociația Marilor Rețele Comerciale din România), which is affiliated to its European employer counterpart organisation, and states it has some 30,000 to 35,000 employees in the member companies.</p> <p>According to the new regulations and the number of employees at June 2012 (706,100 persons), the organisations of the social partners in the commerce sector are recognised as representative if they meet the following criteria: it has a minimum number of 49,400 members, if a union; it has a minimum number of 70,610 members in the affiliated companies, if an employer. For the purpose of executing a collective agreement at sector level, the number of employees in the affiliated entities must be 410,359 persons. To conclude, in 2010, as many as 176,186 active companies in this sector (96.9% of the total number of 181,903 companies in the sector), accounting for 53% of all employees in the sector, operated with less than 20 workers, which is why collective bargaining is not an obligation for them.</p>

# Annex 16

## Number and structure of employment by sectors

	UM	2003	2007	2008	2010	2011
Total employment	Thou' persons	8,306	8,726	8,747	8,371	8,076
	%	100.0	100.0	100.0	100,0	100.0
Agriculture, forestry, hunting and fishing	%	34.8	28.2	27.5	29.1	30.0
Industry and construction	%	29.6	29.2	30.6	28.2	28,2
Services	%	35.7	42.5	41.9	42.6	41.8

Source: Own processed data from 'Romanian Statistical Yearbook', National Institute of Statistics, INS, Bucharest, various editions.

# Annex 17

## Number and distribution of employees by sectors

	UM	2003	2007	2008	2010	2011
Total employment	Thou persons	4,591	4,885	5,046	4,376	4,349
	%	100.0	100.0	100.0	100,0	100.0
Agriculture, forestry, hunting and fishing	%	3.4	2.6	2.3	2.2	2.2
Industry and constructions	%	47.3	41.4	40.0	36.0	36.6
Services	%	49.3	56.0	57.6	61.8	61.2

Source: Own processed data from 'Romanian Statistical Yearbook', National Institute of Statistics, INS, Bucharest, various editions.

# Annex 18

## Number of unemployed persons by gender and educational background (thou' persons)

	2008	2009	2010	2011
Total unemployed persons, of whom:	403.4	709.4	627.0	461.0
Females	187.2	302.1	264.4	203.7
Graduates of primary, and lower secondary and vocational education	311.9	503.0	441.6	321.3
Graduates of higher secondary and post-secondary education	70.8	156.4	135.6	101.0
Graduates of academic education	13,2	28,6	29,4	38.7

Source: MMFSPV Statistic Bulletin on Labour and Social Protection, Bucharest, various editions.

# Annex 19

## Structure of employed population by employment status

	2003	2008	2010	2011
Total employment, of whom:	100.0	100.0	100.0	100.0
- employees	62.5	67.4	65.6	67.3
- employers	1.3	1.3	1.3	1,2
- self-employed workers	21.2	19.4	20.3	18,8
- non-paid family workers	15.0	11.9	7.4	12,7

Source: Own processed data from 'Household Labour Force Survey', INS, Bucharest, various editions.

# Annex 20

## Employment by status and types of working schedule (%)

Working schedule	2003	2008	2010	2011
<b>Total employment, of whom:</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
- full time	88.6	90.1	89.0	89.5
- part time	11.4	9.9	11.0	10,5
<b>Total employees, of whom:</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
- full time	99.2	99.4	99.4	99.2
- part time	0.8	0.6	0.6	0.8

Source: Own processed data from 'Household Labour Force Survey', INS, Bucharest, various editions.

# Annex 21

## Structure of employees by employment contract (%, total employees = 100.0)

	2003	2008	2010	2011
<b>I. Under an employment contract</b>	<b>98.7</b>	<b>99.3</b>	<b>99.4</b>	<b>98.9</b>
- open-ended	97.4	98.3	98.5	97.8
- temporary	1.3	1.0	0.9	1,1
<b>II. Under other labour arrangements</b>	<b>1.3</b>	<b>0.7</b>	<b>0.6</b>	<b>1,1</b>
- open-ended	0.6	0.5	0.4	0.7
- temporary	0.7	0.2	0.2	0.4

Source: Own processed data from 'Household Labour Force Survey', INS, Bucharest, various editions.

# Annex 22

## Job-to-job mobility within the past 5 years (% of all answers)

How many jobs have you changed within the past 5 years ?	2010	2011
I have not changed my job within the past 5 years	54.5	47.1
I changed my job once	30,3	31.4
I changed my job twice	12,0	15,9
I changed my job three times	2,6	4,3
I changed my job four or more times	0,6	1,3

Source: 'Working conditions, satisfaction and performances at workplaces', BNS, Bucharest, 2012.

# Annex 23

## Structure of employees by employment contract (%, total employees = 100.0)

	Employment (total)		Employees (total)		Of which:			
					Full time		Part time	
	2007	2011	2007	2011	2007	2011	2007	2011
Total	39.1	39.2	40.7	41.1	40.8	41.3	23,5	24,1
Male	40.4	40.0	41.6	41.5	41.7	41.6	25,9	24,2
Female	37.6	38.2	39.6	40.8	39.7	41.0	22,3	24,0
Urban	40.7	40.9	40.7	41.0	40.8	41.1	23,2	23,7
Rural	37.2	37.1	40.7	41.6	40.9	41.8	23,9	24,7
Agriculture	35.0	34.6	42.5	42.9	42.7	43.4	31,8	23,9
Industry and construction	41.9	41.2	41.9	41.4	42.0	41.4	26,3	25,8
Services	41.0	40.9	41.4	40.9	41.7	41.1	24,9	23,8

Source: AMIGO, INS, 2008 and 2012.

# Annex 24

## Distribution of employment and employees by working hours per week (%)

	Employment (total)		Employees (total)	
	2007	2011	2007	2011
Under 11 hours	1,7	1,6	2,4	2,1
11-30 hours	13,8	14,0	1,4	1,7
31-39 hours	5,1	4,6	0,5	0,6
40 hours	59,4	62,4	76,4	79,9
41-50 hours	16,0	14,9	16,2	13,9
51-61 hours and over	4,0	2,5	3,1	1,8

Source: AMIGO, INS, 2008 and 2012.

# Annex 25

## Number of labour conflicts and number of participants

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number of labour disputes	121	79	98	95	86	116	92	73	35
Number of employees in the companies where such disputes broke out (thousand pers.)	259.7	221.4	323.6	110.0	103.6	268.7	161.5	114.4	120.5
Number of participants in the conflicts (thousand pers.)	141.5	177.6	184.1	79.7	72.8	204.8	104.7	61.7	55.6

Source: 'Romanian Statistical Yearbook', INS, Bucharest, various editions.

## Annex 26

### The number of strikes and the number of employees involved in them

		2003	2004	2005	2006	2007	2008	2009	2010
Total strikes	Number	9	11	8	2	12	8	1	0
	Participants (thou')	11,8	12,4	2,9	1,3	8,1	16,7	0,4	0
Warning strikes	Number	4	3	4	1	4	3	1	0
	Participants (thou')	4,6	6,8	1,3	1	3,3	1,4	0,4	0
Warning strikes followed by actual strikes	Number	5	4	4	1	2	3	0	0
	Participants (thou')	7,2	3	1,6	1	2,1	9	0	0
Actual strikes	Number	0	4	0	1	8	2	0	0
	Participants (thou')	0	2,6	0	0,3	4,7	6,4	0	0

Source: Quarterly statistical bulletin on labour and social protection', MMFPSPV, Bucharest, various editions.

# Annex 27

## Claims that triggered labour disputes

	2003	2004	2005	2006	2007	2008	2009	2010
Total, of which:	100	100	100	100	100	100	100	100
Wage claims	50,9	54,5	60	57,7	68,6	78,4	73,9	40,3
Labour management and working conditions	13,8	10,5	15,8	6,3	2,3	0,9	0	0
Working time	4,2	5	5	6,3	0	0	0	0
Union activities	3	7	0	1,8	0	0	0	0
Restructuring, collective bargaining, social rights	28,1	23	19,2	27,9	29,1	20,7	26,1	59,7

Source: 'Romanian Statistical Yearbook', INS, Bucharest, various editions.

# Annex 28

## Top three sectors in number of participants in labour conflicts

2008			2010			2011		
Sector	Number of conflicts	Number of participants (thou')	Sector	Number of conflicts	Number of participants (thou')	Sector	Number of conflicts	Number of participants (thou')
Total	116	204,8	Total	73	61,7	Total	35	55,6
Construction	11	99,2	Manufacture of road transport vehicles	8	15,2	Transport and storage	14	35,6
Production and supply of energy	19	35,9	Education	2	10,6	Financial intermediations	2	9,6
Metallurgy	16	18,9	Production and supply of energy	4	6,4	Metallurgy	4	5

Source: Quarterly statistical bulletin on labour and social protection', MMFPSPV, Bucharest, various editions.