

Romania Accession Report

Based on a survey of trade unions in Romania undertaken by TUAC in Spring 2023, this note reports on the state of affairs regarding several core principles used by the ELSAC and the Investment Committee in the OECD's accession review of Romania. The focus is on fundamental labour rights, social dialogue and industrial relations systems in line with the 2018 OECD Jobs Strategy, and commitment and effective measures to promote responsible business conduct.

Labour Rights

- Freedom of association and right to organise

Respect for the freedom of workers to organise in trade unions needs to be improved in Romania. A key issue here is that the Social Dialogue Act hinders the establishment of trade unions, by requiring a minimum number of members before a union can be set up within a company. Until recently, this figure was set at 15 employees from the same company. While the reform of the law on social dialogue has reduced this threshold from 15 to 10, this is still unreasonably high considering that companies with fewer than 15 workers account for over 90% of all companies in Romania.

Another key issue is the fact that many employers tend to employ strategies to discourage workers from organising, despite the fact that this is illegal.

- Right to collective bargaining

This labour law reform of December 2022 also recovered several of the collective bargaining rights that had been in place before 2011 but were significantly weakened during the euro-crisis¹.

National cross-sectoral bargaining, which was abolished when Romania was subjected to the conditionalities from the Troika programme, has been made possible again. Previous reforms under the Troika regime had also limited the validity of sector agreements to only those companies which are members of the employer organisation. This incentivised individual businesses NOT to join the employer organisation and resulted in no new sector agreements being negotiated from 2011 onwards. However, the December 2022 reform allows for the extension of sectoral agreements and the binding of all companies from that sector. At the same time, bargaining at sector level is still constrained by high

¹ Sources; [HM27 Back on track are we seeing a renaissance of collective bargaining in Romania_2023.pdf \(etui.org\)](#), [Roumanie : de nouveaux droits pour les syndicats - mind RH](#), [Romania: collective bargaining institutions under attack - Aurora Trif, 2013 \(sagepub.com\)](#)

representativeness criteria; to engage in sector level bargaining, the businesses that are members of the employer organisation must employ at least 35% of all workers in the sector. This threshold is stricter than the 20% one required for national-level bargaining.

At the company level, a trade union can now bargain if it represents 35% of workers. The previous threshold, requiring 50% of workers plus 1, resulted in elected employee representatives almost entirely replacing trade unions in the role of signing new collective agreements (after its introduction in 2011, 95% of all agreements after 2011 were signed by elected employee representatives, whereas trade unions had signed 100% of collective agreements previously). Employee representatives, however, are vulnerable to employer influence and control. This shows up in the content of these specific agreements, as they contain only minimal provisions. Public sector base salaries, pay increases, allowances, bonuses and other staff entitlements, are fixed by law and excluded from the scope of collective bargaining, except when special laws set minimum and maximum limits, thus leaving some margin for collectively negotiating the exact level of entitlements.

Thresholds for undertaking a strike have also been reduced; now just a quarter of workers are required when deciding to strike, as opposed to the half plus one that were previously required. In the private sector, employers may initiate civil law procedures for the courts to declare a strike illegal, impose the payment of damages on trade unions and fire their leaders. In the public sector, minimum public service requirements in case of strike are unilaterally set by law; strikes in certain sectors are prohibited (eg in the police), while a third of activity must be ensured in what are deemed to be essential services. However, not all of these services are considered to be “essential” in the view of the ILO, such as public broadcasters, transport and refuse collection. Moreover, since wages in the public sector are set by law not by negotiation, as detailed above, no strike can be launched on the basis of pay claims. Finally, a legal provision exists which stipulates that claims for which a change of law is necessary cannot be the subject of negotiation or strike action.

- Right to a safe and healthy workplace

Health and safety committees are mandatory in workplaces, but their functioning could be much improved. One structural problem is that the Occupational Health and Safety Act stands in isolation from the Social Dialogue Act, with the effect that trade unions, in contradiction to article 5 of the relevant ILO convention, are not involved when worker representatives in this committee are appointed.

Moreover, committees are rarely summoned to convene, or fail to tackle relevant health and safety issues, while health and safety experts lack sufficient training.

- Effective labour inspection

A system of labour inspection is in place, but dysfunctional because of insufficient staffing, inadequate resources and inspectors lacking sufficient training and expertise. Lack of trust on the part of workers is also a key problem, as it discourages the reporting of problems and irregularities.

A related issue concerns a portion of wages being paid in cash, with the aim of avoiding social security contributions. From the perspective of the workers, factors driving this type of behaviour are (1) labour taxes being almost exclusively paid by workers; (2) access to public services being mostly precarious; (3) and public resources being used to finance privileges for a select elite.

- Other labour rights

Aggressive discrimination against union leaders and members is reported. Complaints and remedy are discouraged by default, as the legal system is unclear and legal procedures take a long time to process.

A significant increase in immigration from third countries in recent years has led to important challenges in terms of decent working conditions for migrant workers.

Social dialogue and industrial relations in line with the 2018 OECD Jobs Strategy

The OECD's 2018 Jobs Strategy calls for the promotion of quality industrial relations systems based on inclusive collective bargaining, i.e. collective bargaining that achieves high coverage of workers. The Jobs Strategy considers the existence of well-organised social partners based on broad membership as the best way to achieve such high coverage and, in the absence of the latter, even refers to the extension of sectoral agreements to reach high coverage for collective bargaining systems.

Recent changes in labour law aim to improve the right of workers to organise but are insufficient and there remains a lack of genuine social dialogue at sector and company level. With some exceptions, most employers have anti-union policies in place (including reprisals for workers joining a trade union and trying to organise within the company) and are reluctant to engage in good faith negotiations with trade unions.

Such repressive policy, together with the fact that workers benefit from collective agreements even when not part of a trade union, results in relatively low union density, with around one quarter of employees signed up to a trade union organisation.

The union density rate is 25%, while collective bargaining coverage is less than 20%. Though 35% of employers have registered a collective agreement, less than 5% of these have been signed by trade unions, while the rest are signed by employee representatives, as described above.

Romania has specific institutions dedicated to social dialogue such as the National Tripartite Council, where government, trade unions and employers meet, along with the Economic and Social Council (employers, trade unions, civil society). Social dialogue committees are also organised at the level of each ministry and at local prefectures. There are examples of good practice, but social dialogue is often purely formal. One recurring problem is that social partners are not given sufficient time to analyse and prepare their reaction to proposed policy changes.

Social partners are part of public structures governing the labour market (local and national employment agencies, public pension agency, public health agency, labour inspectorate, etc). However, the practical impact in terms of policy is limited. One particular issue is the Health Insurance House, where a 2006 law limited the number of representatives to be nominated: 1 for trade unions and 1 from the side of employer confederations. In response, trade unions refused to nominate a representative and considers the current representation an anomaly, especially considering that the largest part of the health insurance budget is derived from employee contributions.

Promoting responsible business conduct

The National Contact Point was established by Government Decision no. 420 of May 12, 2005.

Trade union responses indicate a “very poor” performing NCP, with its existence barely known to trade union members or businesses and no commitment to the Decision of Council mandate for NCP promotional activities, nor any contribution to resolution of issues. Both unions confirm that there are few actions to support any commitment to develop and maintain trade union relations.

The NCP effectiveness criteria established by the Decision and Procedures require NCPs to be *Visible, Accessible, Transparent, Impartial and Equitable, Accountable, Predictable and Compatible with the Guidelines*. The Romanian NCP annual report² confirms ineffectiveness for almost all of the criteria.

The trade union responses confirm that the NCP is not Visible or Accessible to trade unions. According to the Procedures on Institutional Arrangements, NCPs “will develop and maintain meaningful relations and engage with social partners, where applicable, as well as representatives of the business community, worker organisations, non-governmental organisations, and/or other interested parties that are able to contribute to the effectiveness of the Guidelines.” These institutional arrangements do not exist in Romania.

The NCP is not Impartial and Equitable. Two private sector business associations are members of the NCP. There are no trade union members. The NCP did not take part in or host events involving any stakeholders besides government, academics, and business.

The NCP is not structured in a way that makes it Accountable. There are twelve members, but the NCP secretariat lacks a dedicated, full-time staff to oversee activities. It operates with four part-time employees, equating to 1.15 full-time members of staff. The NCP reported that more than 100% of its part-time staff (5 out of 4) turned over in 2022. The NCP should have at least 1 person dedicated to managing the activities of the NCP and part-time employees.

The NCP is not Predictable and operated without a dedicated budget in 2022. Financial resources were not allocated for promotional activities or specific instances. Without financial and human resources, the NCP is ineffective.

² Romania NCP Annual Reporting Questionnaire 2022.

- **Multinational Enterprise Activity and Specific Instances**

The OECD reports multinational enterprises are mainly involved in the information, communications and technology sectors, providing 73% of sectoral revenue.

The Decision of Council provides a dual mandate to the Romanian NCP, to “a) promote awareness and uptake of the Guidelines, including by responding to enquiries; [and] b) Contribute to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances.”

Romania reports having no promotional plans and did not involve trade unions in any promotional activities in 2021 and 2022. Events were exclusively promoted to business and government audiences.³

The Romanian NCP has no record of involvement in any specific instance. As such, it has yet to contribute to remediation for Guidelines issues.

Without promotional activities, the NCP is unlikely to receive a specific instance request. Unless it addresses the need for institutional relations with stakeholders, the Romanian NCP is unlikely to be effective at addressing Guidelines issues.

Key demands for the accession process of Romania

Trade unions insist upon the ELSAC and IC focussing on particular reforms in the process of accession.

To achieve tangible progress in increasing collective bargaining coverage, the legislation on sector-level collective bargaining needs further improvement.

Obstacles to the exercise of collective action and the right to strike need to be removed. In the private sector, this implies taking away the possibility for employers to pursue civil cases for damages against trade unions. In the public sector meanwhile, minimum public service requirements need to be limited and aligned with ILO standards, while strike activity relating to public sector pay that is set by law should be allowed.

A close follow-up of the December 2022 labour law reform must be undertaken to check whether the reduced threshold for a trade union to bargain at company level (from 50% plus 1 to 35%) results in collective bargaining agreements being concluded by independent trade unions, rather than employer- dominated associations of workers.

The administrative capacity of the Labour Inspection must be strengthened, and its mandate extended to require the observance of wages and working conditions as set out in collective bargaining agreements.

Labour laws must be reformed to address excessive labour market flexibility and precarious forms of employment, such as platform and seasonal work, among others. Protections for trade unions, to safeguard them from dismissal and retaliation, must also be included.

³ Romania NCP Annual Reporting Questionnaires for years 2021 and 2022.

The financing of social security must be redrawn, with employer contributions increased. The current contribution paid by workers (more than 90% of all total social security contributions) is high and imbalanced.

The structural involvement of trade unions with the National Contact Point must be ensured, with the objective of promoting responsible business conduct and supporting practical action.

The NCP should be restructured to either include trade union members in the NCP itself, or advisory body established, which would include equitable participation by business and trade unions. This NCP would have full time staff dedicated to it, to ensure its correct function, with a proper budget to manage its activities.

Promotional plans must be made for the ICT segment, with trade unions included in all future promotional acts.