Back on track: are we seeing a renaissance of collective bargaining in Romania?

Stan De Spiegelaere ***March 2024***

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In December 2022, just months after the European Union declared the strengthening of collective bargaining to be one of its policy aims, Romania passed a new law that does just that: enables and facilitates not only collective bargaining but also trade union organising and social dialogue. This law has not appeared out of thin air but against a background of years of trade union innovation in social dialogue, critique from international organisations, and economic pressure from the EU. Romania shows how a positive overhaul of social dialogue is possible and, as such, sets an example for other EU countries.

A new law on social dialogue in Romania, which came into force in December 2022 as Law 367/2022, promises a new chapter in the country's industrial relations: unionisation has been facilitated, the right to strike extended, sector and cross-industry collective agreements enabled, and rights to information and consultation broadened. Collective bargaining is now obligatory in companies with more than 10 employees, following a valid initiative from one of the social partners (although it must be noted that coming to an agreement is not obligatory).

The new law also reduces the minimum threshold for union establishment from 15 members to 10. On the company level, a union can now bargain if it represents 35% of employees, instead of 50%+1 as previously. At the sectoral level, meanwhile, unions can gain recognition if they represent 5% of workers.

Multi-employer bargaining has been facilitated, and sectoral agreements (which are multi-employer agreements negotiated by representative social partners) can now be made generally binding for the entire sector. The law strengthens the obligations for local information and consultation of employees, and employers are now required to invite representative unions to meetings of the board of directors if the matters discussed concern professional and social interests. Finally, the new law makes cross-sector collective agreements possible again, and it provides for more flexible conditions for calling a strike.

Following the severe limitation of social dialogue in 2011, in part due to pressure from the European Union (EU), this new law goes some way to re-establishing the age-old tradition of strong social dialogue in Romania. It was passed, interestingly enough, just months after the

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EU agreed on a Directive for adequate minimum wages, with a clear objective: ‘promoting collective bargaining on wage-setting’.

EU Member States will soon be obliged to make national action plans to increase collective bargaining coverage, with a special focus on sectoral bargaining. The EU has once again been putting pressure on Romania, but this time to change its regressive Social Dialogue Act in favour of collective bargaining rights – first through recommendations and then by making it a condition for recovery funds. High time, therefore, to take a closer look at the Romanian story.

1. The backstory: European assault on social dialogue

Aurora Trif, professor at Dublin City University Business School, is clear in her opinion: ‘The new law corrects a lot of damage caused by the provisions of the Social Dialogue Act adopted in 2011 by the centreright government with the support of the Troika [eurozone crisis decision group].’

Before 2011, Romanian trade unions were powerful actors. Roughly one in three workers were members of unions and there was a strong tradition of collective bargaining at the national, sectoral and company levels. That all changed when, struggling with increasing public debt, the government had to call for international help.

The Troika provided relief funds, but with strict conditions. One of them was a complete overhaul of industrial relations, which had a seismic impact. Cross-industry collective bargaining was prohibited, sectoral agreements were no longer extended and barely enforceable, and high thresholds were put in place for trade unions to access collective bargaining rights. In the words of Trif, the 2011 ‘so-called’ law on social dialogue was nothing less than a ‘frontal assault’.

The consequences of these changes were as predictable as they were dire. As early as 2013, the International Labour Organization (ILO) concluded that the reform had led to over 1.2 million workers being ‘effectively excluded from collective bargaining with an immediate impact on wage levels and on working conditions in general’. Labour inspectorates observed an almost immediate increase in undeclared work. The conclusion of the ILO expert study says it all: ‘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.’

2. Sectoral bargaining in a hostile legal environment

However, collective bargaining did not completely languish during these wilderness years. In between the political developments that bookended the past decade, Romanian trade unions have made serious attempts, within a hostile legal framework, to re-establish sectoral bargaining from the ground up. The success of the banking sector unions in doing so is a case in point. ‘We trained over 130 trade union leaders and surveyed thousands of workers in the Romanian banking sector’.

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For Adrian Soare, president of Sindicatul UPA, the trade union active in the bank UniCredit Romania, 2018 was a very busy year. Together with the other finance trade unions and the Federation of Insurance and Banking Unions (FSAB), he managed to conclude an agreement covering six of the seven largest banks in Romania, effectively setting sectoral standards and reinventing collective bargaining. 'Luckily I didn't have a child yet in that period.'

In 2018, social partners in the banking sector were facing a number of challenges. Employers were dealing with a tight labor market, leading to worker poaching between banks, and banks with company agreements were being undercut by others without them. In addition, certain banks were trying to gain a competitive advantage by extending opening hours, which put pressure on other banks to match their hours and led to a deterioration of labour conditions. Added to the mix were several CEO bonus scandals that cast the sector in a dim light.

Despite the 'frontal assault' described by Professor Trif, Romania's history of strong collective bargaining meant that the idea of sectoral agreements remained fixed in the imagination of Romanian social partners and trade unionists. The banking sector social partners increasingly began to regard a general collective agreement covering all banks as the solution they needed. 'There have always been discussions on sectoral bargaining in the banking sector,' says Florentin Iancu, president of the SITT union of ICT workers, who was involved in the banking sector campaign at the time. 'There was good cooperation between the employers and the union federation and so the evolution towards real sectoral bargaining was natural.'

This didn't mean there were no obstacles to overcome however. First of all, there was a problem on the employer's side. The traditional employer organisation of banks, the Romanian Association of Banks, is not mandated to negotiate collective agreements. They only engage in a form of a social dialogue on skills development.

Therefore, with a push from the trade unions, a number of branches of multinational banks decided to set up a new employer organisation in 2014: the CPBR (Romanian Banking Employer's Council). This organisation had a much more positive approach to collective bargaining, partly because most of its members already had company-level agreements in place. Establishing sectoral minimum standards would thus be beneficial for them.

A second challenge to be met was on the worker's side. The existing union federation FSAB had strong unions and company agreements in several banks but had to convince its members to engage in an experiment with sectoral bargaining. With the help of UNI Europa and UNI SCORE (Strategic Campaigns, Organizing, Research and Education), the union started an intensive campaign to strengthen membership and involvement in the union. 'You can negotiate without support, but then you are very weak,' explains Soare of Sindicatul UPA. 'Real bargaining happens when you have thousands of people behind you.'

Membership and union strength in the country was mapped, leaders were identified and trained, and a large-scale workers' survey was carried out to increase member involvement. All of this resulted in over 1,000 workers becoming members of the FSAB-affiliated union, and most of all, members becoming actively involved in the process and supporting the federation's efforts.

Last but not least, there was the law. The provisions of the 2011 Social Dialogue Act made it virtually impossible to extend sectoral collective agreements. For this reason, the social

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partners chose to negotiate a 'multi-employer' agreement which only bound those companies that were members of the employer organisation, not all banks in the sector. In effect, this has meant that the largest player in the banking sector, Banca Transilvania, is not covered by the agreement, and it remains very anti-union in general.

In 2018, the strengthened trade union and the new employer organisation began negotiating a multi-employer agreement that covered approximately half of the employees in the sector. The resulting compromise set minimum wages, and increased severance pay, holidays, and retirement bonuses.

Moreover, according to Iancu, the agreement envisaged 'a peaceful lunch [break], with the doors of the banks closed. And even Banca Transilvania which did not sign the agreement installed such a lunch break.

This shows the power of the sectoral agreement.' The agreement was not only significant for the banking sector, it had wider implications. It demonstrated that despite the challenges posed by the current legislation, social partners were still willing and able to come together to negotiate multi-employer agreements.

3. Pressure from above: the EU changes its ways

One agreement in one sector is obviously not enough to tilt the balance of power. Pressure from above equally contributed. As already mentioned, the ILO took a critical stance towards the 2011 law on social dialogue and continued to push the Romanian government to amend its legislation to be in line with international labour norms.

In a change of tune, the EU also weighed in on the matter in 2016. From that year on, the country-specific recommendations for Romania started highlighting the weaknesses of social dialogue in the country. Starting as a vague statement ('social dialogue remains weak'), the critiques and recommendations became increasingly detailed over the years and called for concrete action from the government.

What had changed at the European level was the ambition to be a more social union. Following the 2017 proclamation of the European Pillar of Social Rights, attitudes towards collective bargaining began to shift. From being perceived as a harmful rigidity, it became 'crucial' for fair wage-setting.

However, the real turning point came with the EU's financing of the national Resilience and Recovery Plans in response to the Covid-19 pandemic. These funds were partially tied to the implementation of country-specific recommendations, including the passing of a new law on social dialogue. As a result, Romania was motivated to take action in order to receive a portion of the EU funds, leading to the passage of new legislation that facilitated the restoration of social dialogue.

According to Trif, the history of industrial relations in Romania runs parallel to European pressure and initiatives: 'During the accession process, the EU pushed for strong social dialogue, which led to a legal framework that actively supported collective bargaining. The change in the EU then led to its destruction during the Troika years, and now, a decade or so later, EU pressure has again contributed to reinstating fundamental trade union rights.'

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After lengthy negotiations, the EU institutions agreed in the fall of 2022 on a Directive on adequate minimum wages which explicitly aims to strengthen collective bargaining. This directive requires countries with a bargaining coverage below 80% to enact national action plans to increase bargaining coverage overall.

Acknowledging the importance of the European level, the Romanian trade unions actively pushed for this legislation, partly through a six-day social justice caravan in which the national trade union confederation, Cartel ALFA, travelled from Bucharest to Brussels to increase political pressure.

4. Lessons for Europe

Will this law lead to a renaissance of collective bargaining in Romania?

According to Aurora Trif it might, but all will depend on the capacity of trade unions to really make the most of it. Florentin Iancu agrees and sees clear opportunities: 'Several of our unions are ready to capitalise on the new law and start real sectoral negotiations in the insurance, ICT, and commerce sectors.' While this law alone is unlikely to bring Romania to 80% collective bargaining coverage, it might very well push it in the right direction. It makes Romania the first EU Member State to have radically shifted gears on collective bargaining since the adoption of the new Directive. Others who are bound to follow can learn some lessons from the Romanian experience.

For one, a foundation of engaged trade union membership is pivotal. Without that, collective bargaining remains unconnected to the workers. Rules and legislation should thus facilitate trade union organising, guarantee sufficient access of unions to workers, and provide direct and indirect support. A European strategy aimed at increasing bargaining coverage that fails to address the issue of falling trade union membership figures risks being an empty gesture.

Second, institutions matter. Although the banking sector managed to establish a sectoral agreement in 2018, they did so largely in spite of the legislation in place, which disincentivised collective bargaining. European countries not only need to enable sectoral bargaining but also to facilitate and promote it. The change in Romanian legislation is radical, not cosmetic. Repairing the damage done in the aftermath of the financial crisis and creating resilient and robust social dialogue requires this kind of fundamental change. Romania has picked up the baton, and it is time for other EU countries to follow suit.

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