

Law no. 367/2022 on social dialogue

General considerations

Law no. 367/2022 on social dialogue (the „Law on social dialogue” or the „Law”) was published in the Official Gazette on December 22, 2022, **being in force from December 25, 2022.**

Through this new Law, the legislator has chosen to expressly repeal the Law on social dialogue no. 62/2011. Such measure was necessary considering the multiple amendments brought by the new Law. The new normative act regulates in detail the institution of the employee representative, makes amendments regarding the rights and representativeness of trade union organisations, brings back in the legislative framework the national collective labour agreement and establishes the obligation of collective bargaining for more employers.

Employee representatives

The Law stipulates that, in the case of employers with at least 10 employees and no trade union, their rights and interests may be defended and promoted by their representatives, elected by the vote of at least half plus one of the total number of workers in that company. At the employees' request, the employer will facilitate the procedure for electing representatives. It is forbidden for the public authorities, employers and their organisations to intervene in any way in the election of representatives or to obstruct the election procedure.

Also, at the level of employers where there is no union, an initiative group can be set up by employees to create the rules and procedures for the election of representatives. The rules and procedures are going to be communicated to the employer, who is responsible for informing all employees of their content within no more than 10 days of their receipt.

The status of employee representative may be held by any person who is employed by the employer based on an individual employment contract or service relationship and has reached the age of 18, and the duration of the mandate thus granted may not exceed 2 years. People who occupy managerial positions in the

company through which the administration of the company is represented in relation with the employees or who take part in decision-making activities in the management of the company cannot be elected as representatives.

The number of elected representatives of the employees/workers shall be agreed with the employer, depending on the total number of employees/workers. Whether an agreement is not reached, the number of elected representatives of the employees/workers may not exceed: **a)** 2 representatives, for the employers with less than 100 employees/workers; **b)** 3 representatives, for the employers that have between 101 and 500 employees/workers; **c)** 4 representatives, for the employers that have between 501 and 1,000 employees/workers; **d)** 5 representatives, for the employers that have between 1,001 and 2,000 employees/workers and **e)** 6 representatives, for the employers with over 2,000 employees/workers.

The main duties of employee representatives are to participate in the development of drafting of internal regulations and of the collective labour agreement and to report to the Territorial Labour Inspectorate on non-compliance with the legal provisions and with the collective labour agreement applicable to the company. Their attributions, the methods of carrying them out, the duration and limits of the mandate are noted in the minutes of the general assembly of employees drawn up by the initiative group and are validated by the vote of at least half plus one of the total number of employees. The representatives of employees/workers shall not carry out activities that are recognised by law exclusively to trade unions.

It is forbidden, throughout the entire term of office, to amend or terminate the employees representatives' individual employment contracts on grounds related to carrying out the mandate conferred by the employees.

Trade Union Organizations

The new Law modifies the minimum number of employees required to form a trade union. Currently, at least 10 employees from the same unit or at least 20 employees from different units in the same collective bargaining sector are required to form a union. Also, the Law stipulates the right of the unemployed individuals to be part of trade unions, however they will not be taken into account when determining the number of trade union members in relation to which the trade union representativity is determined, but also the right of independent workers - defined by the Law as persons who carry out an independent activity, trade or profession, insured under the public social insurance system and/or who do not have the status of employer.

In exercising the rights conferred by the Law, trade union organisations shall have the right to take any action, including filing legal action on behalf of their members, upon their written request. The previous form of the Law on social dialogue required the need to obtain a written power of attorney.

By reference to the provisions of Law no. 467/2006 on the establishment of the general framework for informing and consulting employees, the new Law regulates in more detail the procedure for informing and consulting employees on the recent and probable development of the activities and economic situation of the company. Thus, the employer has the duty to start the information and consultation process after reporting the financial statements of the company for the previous year. If the employer does not initiate the procedure, it will start following a written request from the employees/workers. In order to analyse the situation, employers must provide employees/workers with financial statements relevant to the preparation of collective bargaining, detailed information on the establishment's workforce, social situation and policy, as well as any other information requested by trade union organisations, employee representatives or experts assisting them.

Informing and consulting employees on decisions that may lead to essential changes in work organisation or employment relationships, such as transfers of undertakings, acquisitions, mergers, collective redundancies, closures of production units and others alike, must be done before the implementation of those decisions by initiating the procedure by the employer. If the employees consider that there is a danger related to their jobs, the information process will begin upon their written request, within no more than 10 calendar days after the request is communicated. In order to prepare for the consultation, the employers are obliged to provide the employees, following a written request, with all the information necessary to examine the issue.

In case of companies where no trade union organisations are constituted, the employer is obliged to, at least once a year, allow a public information session on the individual and collective rights of employees/workers to be held, at the request of the trade union federations in the collective bargaining sector of the establishment concerned, with the invitation of representatives of these federations.

From the point of view of the representativity of trade union organisations, the new Law introduces changes concerning the minimum number of members required. Thus, in order to be representative, trade union organisations at collective bargaining sector or unit group level must have a membership of at least 5% of the employees in the collective bargaining sector or unit group (at least 7% in the previous provision), and in the case of trade union organisations at unit level, the number of members of the trade union or trade unions making up the trade union federation must represent at least 35% of the total number of employees in a legal

employment or service relationship with the unit (at least half plus one in the previous provision).

Also, the new Law no longer provides the limitation that trade union organisations cannot carry out political activities.

The new provisions also make changes regarding the activity of union members and their employer. Thus, elected members of the trade union's governing bodies, who work directly in the company as employees/workers, are entitled to reduced monthly working hours for trade union activity, in proportion to the number of members, under the conditions negotiated in the collective labour contract or agreement at company level or, failing that, by direct negotiation with the management of the company. The Law no longer provides, as in its previous version, for a reduction in working hours by a number of days, but will continue to refer to days/hours negotiated for trade union activity, and no longer stipulates that there is no obligation on the employer to pay wage rights for such days.

In addition, the new Law states that the days/hours negotiated for trade union activity by the elected members of trade union governing bodies, not used for trade union activity in one month may be carried over to the next month, if agreed by negotiation. The previous provision of the law did not allow this.

In relation to the protection of members of a trade union organisation in front of their employer, the Law now expressly provides that the following are prohibited: (i) amendment and/or termination of individual contracts of employment or of the employment or service relationship of members of trade unions (the provision was previously limited to this first part), but also (ii) any exclusion from employment, transfer, demotion, deprivation of training opportunities, as well as any other actions or inactions that are detrimental to the members of trade union organisations for reasons relating to trade union membership and/or activity (part 2 inserted by the new Law).

Collective bargaining. Collective labour agreements

The Law makes collective bargaining compulsory at the level of units (companies) with at least 10 employees, as well as at the level of the collective bargaining sector, unlike the old regulation, which made collective bargaining compulsory only for units with at least 21 employees. The initiative to negotiate can belong to either of the social partners (previously it was specified that the initiative belongs to the employer or to the employers' organisation), and the initiator of the negotiation must do so at least 60 days before the expiry of the collective agreement (the previous deadline was 45 days). The duration of the negotiation can only exceed 45 days by agreement of the parties (previously was 60 days).

The new legal provisions extend the scope of the data to be contained in the information which the employer makes available to the trade union or to the employees' representatives, in the sense that it must include at least:

- the up-to-date economic and financial situation of the company;
- the evolution perspective for the company over the next contractual period;
- the employment situation, structure and expected evolution of employment, as well as possible measures envisaged for the next contractual period;
- the proposed measures concerning the organisation of work, working hours and working time for the next contractual period;
- the proposed measures for the protection of employees' rights in the event of transfer of the company or part of it;
- measures proposed by the employer to promote improvements in the occupational safety and health of employees during the next contractual period.

Another novelty introduced by Law 367/2022 is the possibility given to employers' organisations or units and their corresponding trade union organisations which are not signatories to collective agreements concluded at collective bargaining sector or at units group level to subsequently join these agreements on the basis of a written notification addressed to the signatory parties and sent to the depositary.

Furthermore, another novelty introduced by the Law is that the contractual clauses of collective labour agreements may refer, without affecting the principle of contractual freedom, to the establishment of minimum ranking coefficients by category of employees; measures adopted for the counselling and professional evaluation of employees; measures concerning the harmonisation of family life with professional objectives, working time and rest time; working conditions and those relating to health and safety at work of employees; the ways of informing and consulting the employees, which exceed the provisions of the Law.

Last but not least, it is very important that the national collective labour agreement is reinstated in the legislation. The old regulation did not contain any express provision on the possibility of negotiating such a contract. The new Law stipulates that the collective labour agreement concluded at national level may not include clauses relating to the level of the guaranteed gross minimum wage, which is set by government decision, but may include minimum salary coefficients by occupational standards.

In relation to disputes concerning the execution, modification or termination of the collective labour contract, the new Law expressly refers to the possibility of settling them by mediation or arbitration prior to the filing of the action in court,

Collective labour disputes. Strikes.

or during the course of the action, subject to the written agreement of all parties to the collective labour contract. Exceptions are, however, disputes related to the nullity of collective labour contracts in their entirety, of some of their clauses or related to the termination of collective labour contracts, situations whose resolution falls within the competence of the sections/committees specialised in the resolution of labour and social security disputes within the county/courts of Bucharest.

Collective labour disputes can take place at unit, group, collective bargaining sector or at national level.

According to the new regulation, collective labour disputes may be triggered in the following situations:

1. the employer refuses to start negotiating a contract if no such contract has been concluded or the previous one has ended;
2. the employer or employers' organisation does not accept the demands made by the employees;
3. the parties do not reach an agreement on the conclusion of a collective agreement by the mutually agreed date for the conclusion of negotiations;
4. although the negotiation of a collective agreement has begun, the employer does not comply with its obligation to provide the information necessary to analyse the economic and financial situation;
5. the employer refuses to start the negotiations if the parties have provided for clauses to be renegotiated from time to time and the period agreed by the parties for their renegotiation has expired or if the parties fail to agree on the renegotiation of the clauses to be renegotiated from time to time;
6. in the event of failure to complete the renegotiation of the clauses whose nullity has been established, after the exhaustion of the negotiation procedures provided for by the Law;
7. if the employer refuses to adhere to the collective agreement or collective bargaining agreement at collective bargaining sector level, despite having participated in the negotiations.

In principle, during the period of validity of the collective agreement or contract, employees cannot initiate a collective labour dispute at that level of bargaining. However, the present Law regulates an exception to this provision. Thus, in the case of a collective agreement or collective bargaining agreement registered at the level of the collective bargaining sector, the employees of establishments in which the representative trade union federations which are signatories to the agreement have representative trade unions as members may initiate a collective labour dispute at the level of the establishments if the employers refuse to adhere to the

sectoral collective agreement under the terms of the law. The signatory representative trade union organisation may request employers in writing to adhere to the sectoral agreement, the employer being obliged to comply with the trade union organisation's request within a maximum of 10 days from the date of notification. Within 10 days, conciliation takes place through the Labour Inspectorate, and failure to reach an agreement at the end of the period gives the trade union the right to strike at the level of the respective employer.

All claims and procedural acts under the Social Dialogue Law are exempted from stamp duty fee.

As far as strikes are concerned, a new feature of the new regulation is that strikes against the Government's social and economic policy can be declared by representative trade union federations and confederations. In summary, this type of strike is the voluntary and collective cessation of work by employees as a result of social or economic policies which have led to a reduction in rights provided for in the collective labour contracts or agreements applicable at the time of the adoption of those policies.

The new Law expressly states that the strike may be non-compliant or illegal. A strike is illegal when it has been initiated for reasons other than those expressly provided in the Law, and it is non-compliant when procedural aspects provided by the Law have been omitted, but can be remedied.

Tougher sanctioning regime

The Law on Social Dialogue extends the scope of the offences punishable by a fine and introduces a tougher sanctioning regime than the old regulation. Thus, the following acts constitute contraventions and are sanctioned as follows:

- hindering the exercise of the right of free trade union organisation or association, for the purposes and within the limits provided for by law, with a fine of Lei 30,000 to Lei 50,000;
- hindering the exercise of the right of free organisation or employers' association, for the purposes and within the limits provided for by law, with a fine from Lei 30,000 to Lei 50,000;
- violation of the provisions laid down in article 7 para. (2) of the Law (prohibition of interference in the exercise of rights by trade union organizations), with a fine of Lei 20,000 to Lei 25,000;
- failure by employers to fulfil the obligations laid down in article 30 para. (1), art. 31 para. (1) letter (b), art. 36 para. (2) and art. 97 para. (1) of the Law (obligations related to informing employees / their representatives about the

situation of the company, obligation to start collective bargaining), with a fine from Lei 15,000 to Lei 20,000;

- non-submission, for publication, of the collective labour agreement by the signatory parties and failure to comply with the procedure for signing collective agreements, with a fine of Lei 5,000, for which the parties are jointly and severally liable;
- hindering in any way the access of the labour inspector for the detection of possible contraventions by any of the parties in conflict, with a fine from Lei 10,000 to Lei 20,000;
- the unjustified refusal to register collective labour contracts, with a fine of Lei 5,000 to Lei 10,000;
- infringement of article 57 para. (2) (concerning the minimum quorum for the election of employee representatives), with a fine of Lei 30,000 to Lei 50,000.

Transitional provisions

The representativity of trade unions and employers' organisations, established prior to the entry into force of the Law, shall produce its effects until the expiry of the term for which it was established by court decision.

The collective labour contracts in force, concluded on the basis of the Social Dialogue Law no. 62/2011, republished, with subsequent amendments and additions, remain valid until the expiry of the term for which they were concluded.

Within 90 days from the entry into force of the Law, the Romanian Government will approve the decision on the establishment of collective bargaining sectors and their related codes.

Provisions contrary to the Law on Social Dialogue from Law no. 53/2003 - Labour Code, republished, as amended and supplemented, and related legislation will be harmonised within 60 days from the date of publication of the Law on Social Dialogue in the Official Gazette.

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