

New Social Dialogue Law – Significant changes refashion Romanian labour market

Law no. 367/2022 on social dialogue (the “**New Social Dialogue Law**”) was published in the Romanian Official Gazette on 22 December 2022, and entered into force on 25 December 2022.

The New Social Dialogue Law repealed the former law, Law no. 62/2011, which regulated social dialogue in Romania. The new law brings with it significant changes that Romanian private companies, as employers, will have to take into account and comply with.

In this respect, please find below a brief presentation of the main legislative novelties brought about by the New Social Dialogue Law, which, it must be stated from the very beginning, has definitely more favourable provisions for **employees and trade unions/trade union organizations** compared to the former law regulating social dialogue.

1. Level of collective bargaining

According to the New Social Dialogue Law, the level of the number of employees that an employer must have in order to have, mandatorily, collective bargaining applicable at its level, has been lowered to **10 employees**.

As a novelty, after more than 11 years, **collective bargaining agreements at the national level may re-appear** as a legal reality in Romania. However, collective bargaining at this level is not (yet) mandatory, and, in addition, the New Social Dialogue Law expressly stipulates that the setting of the **minimum gross basic salary in Romania will not constitute the object of collective bargaining agreements at the national level**; this important element will remain within the competence of the Romanian Government, which will adopt it through government decisions.

In addition, the term, before the expiry of the collective bargaining agreement, when collective bargaining must start, has been extended to **60 days**, while the maximum duration of negotiations has been reduced to **45 days** (which means that collective labour conflicts, including strikes, can be initiated in a more rapid manner).

The New Social Dialogue Law expressly stipulates that the initiative of collective bargaining may be taken by **either of the social partners** (thus, at the employer’s level, it is no longer the obligation of the employer to initiate it).

The duration of collective bargaining agreements has remained the same, but, newly, collective bargaining agreements for “**determined work**” have been introduced.

Also, as a novelty, the New Social Dialogue Law provides that any legally incorporated trade union organization may conclude with an employer/patron organization any types of “**agreements, conventions or accords**” in written form, which will constitute the “law of the parties”, and apply only to the members

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of such organizations. Thus being represented by trade unions/trade union organizations is no longer a pre-requisite for collective bargaining (even though the outcome of such negotiations is not a “collective bargaining agreement” as such).

2. Trade unions and representatives of employees

Under the New Social Dialogue Law, the conditions for the incorporation of a trade union have been lowered to at least **10 employees from the same unit** or at least **20 employees from different** units belonging to the same collective bargaining sector, as members.

Also, the substantive conditions for representativity of trade unions at the employer’s level have been lowered **to at least 35% of the total number of employees**.

In addition, the New Social Dialogue Law stipulates that, for employers with at least **10 employees** and at the level of which there is no trade union, the interests of the employees may be promoted and defended by the **representatives of the employees**.

The number of representatives of the employees is a **maximum of 2** (for employers with **under 100 employees**) and it cannot **be higher than 6** for employers with **over 2,000 employees**.

The procedure for the election of the representatives is expressly provided in the New Social Dialogue Law, as a novelty, while it is also expressly provided that **any interference by the employer in the election of the representatives** of the employees or the **hindering** of such election by the employer is **forbidden**.

3. Enhanced information and consultation of employees

The New Social Dialogue Law provides that the employer shall invite the **representative trade union** at its level to participate in the **meeting of the board of directors** of the company that is the employer (but only for discussions that envisage issues of a professional interest and with a social impact on the employees). However, the presence of the trade union is only consultative in nature. If there is no representative trade union at the level of the employer, the employees will appoint **an elected representative** for this purpose.

In addition, the employees represented (by the parties competent to conduct collective bargaining at the level of the employer) will be **informed and consulted** with respect to the recent and probable activities and of the economic situation of the company after the **reporting of the yearly financial statements**, with the obligation of initiating information and consultation on the employers. If the employer does not comply with this obligation, such information and consultation will commence upon a written request of the employees.

Moreover, as a significant novelty, which may have impact on corporate law as well, for operations including, without limitation, **transfer of an undertaking, mergers and acquisitions, collective dismissals, closing of production units**, etc., employers shall **initiate and finalize the process of information and consultation of the employees, before the implementation of such corporate decisions** (allowing, thus, the employees to formulate proposals for the protection of their rights).

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Furthermore, for employers that do not have trade unions, the employer is under the obligation, at least once year, to **allow the organization of a public information session** regarding the individual and collective rights of the employees, upon the request of trade union organizations from the collective bargaining sector to which the employer, as a unit, belongs.

4. Collective labour conflicts. Strikes

Newly, strikes may also be “**solidarity**” strikes, a newly introduced concept, which may be initiated in view of upholding the requests of employees from units belonging to the same group of units or of a collective bargaining sector, if certain conditions are met. Solidarity strikes cannot be longer than **1 day** and must be announced to the employer at least **48 hours** before work is stopped.

5. Various aspects

It is important to note that the New Social Dialogue Law expressly provides that collective bargaining agreements concluded before its entry into force will remain valid and binding and will expire upon their term of expiry.

Thus, further to the entry into force of the New Social Dialogue Law, there is **no obligation to conduct collective bargaining while there is a current collective bargaining agreement in place**.

The New Social Dialogue Law provides that “**instructions**” for its implementation “**may**” be issued, thus, **further legislative fine tuning in this respect may be expected**.

Further to the entry into force of the New Social Dialogue Law, we are expecting additional impetus of social dialogue in Romania. The changes that it will bring in practice must be awaited, as starting with the entry into force of the law, it is stipulated that also the **unemployed may remain members/adhere to a trade union**, and that also **independent workers** may be members of trade unions.

We have only briefly highlighted the most salient novelties of the New Social Dialogue Law, but, in corroboration with the significant changes to the Labour Code late this autumn, we can safely assert that both **individual and collective labour relations will be refashioned in Romania in the near future**.

The article has been prepared by Ioana Sebestin - Nazaru, Deputy Director, PETERKA & PARTNERS Romania.

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