ALTOGETHER
Employers and employees developing effective consultation and participation system to address the COVID19 impact

NATIONAL REPORT FROM: ROMANIA

"COUNTRY- SPECIFIC ANALYSIS FOR WORKERS' INFORMATION

CONSULTATION AND PARTICIPATION RIGHTS AND THE COVID19 CRISIS (MANAGING OF THE CRISIS, IMPACT, RECOVER)"

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CONTENT

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1. INTRODUCTION

The present report addresses the role of workers' information, consultation and participation rights in managing the impact of the Covid 19 crisis and the recovery process in the Romanian context.

The findings of this report are based on the results of the online questionnaire and in depth face to face interviews conducted during March – April 2023, as well as desktop research.

The overview of the provisions of national legislation and European Directives and policies regulating workers' participation rights, including board-level representation rights outlines the limits of workers' participation in decision making at company level în Romania. By analyzing examples and specific situations regarding the exercise of workers' information, consultation and participation rights in the context of the COVID 19 crisis and its consequences we highlight the ways in which the extraordinary circumstances fostered new strategies from trade unions as well as corporative responses and improved mechanisms for information and consultation.

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2. MAPPING OF THE CURRENT STATE

Romania, unlike other member states, does not have mechanisms for representing workers in the employer's decision-making body. There are also no works councils in Romania, with the only exception of Community-scale undertakings, where their establishment has been imposed by the European standards.

Probably the most important cause for the absence of board-level employee representation mechanisms is to be found in the previous regulation of social dialogue, law no. 62/2011[1]. Under the provisions of this law, the possibility of employees to make their voices heard has constantly diminished[2]. Such mechanisms could in principle be regulated by collective agreements, only that the few collective agreements at company level do not include such provisions. Among the few exceptions is the collective agreement in the health budgetary sector which provides that a representative of the signatory unions is invited with observer status at the board meetings of the health units.

In addition, there are other legislative obstacles for employee participation in company management bodies. In the case of private companies, the Companies Law no. 31/1990 expressly provides[3] for the incompatibility between the status of member of the Board of Directors or the Supervisory Board and the status of employee of the company.

The workers' participation in strategic decision-making is thus very limited, as at present there is no form of employee participation in company boards in a deliberative capacity.

As regards the participation of employees' representatives in a consultative or observer capacity, until very recently, the law did not provide for an obligation on the part of the employer, but only the possibility, to invite the union representative at board meetings, left at the discretion of the employer. It meant that in reality there was no dialogue but at most, information on the decisions already taken[4].

[1] Recently, this has changed, as the Law on Social dialogue has been replaced by law no. 365/2022, which imposes an obligation on the employer to invite the representative union to participate in the meetings of the board of directors or other similar body, including the public administration, to discuss issues of professional, economic and social interest. Since this law came into force only in December 2022, it is still early to assess its impact, but it is expected it will lead to positive developments regarding the exercise of the workers' right to information, consultation and participation.
[2] For an impact assessment on this law, Ş. Guga, C. Constantin, Analiza impactului legislației dialogului social adoptate în 2011 [Analysis of the impact of social dialogue legislation adopted in 2011], https://www.cartel-alfa.ro/uploads/Analiza%20impactului%20legislatiei%20dialogului%20social.pdf (2017)
[3] Art. 1538 (1) and Art. 1371 (3) of Companies Law no. 31/1990
[4] http://www.cdep.ro/proiecte/2021/000/70/3/em962.pdf pg 4

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Although the right of employees to information and consultation is acknowledged according to Law no. 467/2006 on establishing the general framework for informing and consulting employees - the law transposing the European Directive no. 2002/14/EC - it is considered that it need not necessarily be exercised by participating in these meetings.

In fact, according to a survey conducted at the request of the Romanian Trade Union Bloc[5], 34.1% of the respondents said that the union is invited only to a part of management meetings and not to all meetings. 74.1% of the participants also referred to the lack of transparency (through non-communication) of the boards of directors regarding the decisions within the meetings to which no union representatives are invited. The actions taken by them in order to enforce the right to be invited or informed have materialized in formal letters, petitions, notifications, complaints to the labour inspectorates, but often without any result. According to the views of those investigated, information and consultation are not yet common practices in organizations, but only formal compliance with some legal requirements. Regarding the topics of formal or informal consultation of employees, according to the research, the management of the organization is the most willing to consult with employees/workers regarding working conditions and the least willing in relation to the financial situation.

Although the unions or the employees' representatives do not have the possibility to participate in the managerial decision-making, in an institutionalized way, nor participate in the companies' board, there are certain particular decisions adopted by the government during the Covid 19 crisis that could only be taken by the employer with the consent of the unions or, in their absence, of the employees' representatives. Thus, the measure to reduce working time (kurzarbeit) could be taken by the employer only with the agreement of the representative trade union organization or, if it does not exist, with the employees' representatives. On the other hand, the measure to impose telework could be taken unilaterally by the employer, without any consultation.

3. ASSESS OTHER POSSIBLE EFFECTIVE MECHANISMS

During the pandemic, consultation with national social partners was often omitted on the grounds that time was limited due to the urgent response required. Where social partners were excluded from the planning and design of measures, the responsibility for the COVID-19 response fell wholly to the government. Similarly, at company level, the decisions focused predominantly on implementing the measured decided by the government and the management of the company.

[5] Good practice guide - information and consultation of employees/workers. Employee participation in decision making (2018), p. 3, available at https://www.bns.ro/images/documente/achizitii-etica/18122018_GHID_Draft2.pdf

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However, unions played a key role in conveying the information and facilitating the clarification and implementation of the government measures. The collaboration between union representatives, employers and authorities was more intense during this period and it contributed to the maintenance of workplaces and jobs and even the survival of some businesses (interview with a trade union leader in the textile sector).

One positive development during the Covid 19 crisis and the recovery process is the change in the legislation that regulates social dialogue and collective bargaining in Romania. After the introduction of the European Pillar of Social Rights in 2017, the EU adopted a position that supported the restoration of fundamental trade union rights in line with International Labour Organisation (ILO) conventions. The EU's support made a significant contribution to the repeal of the Social Dialogue Law 62/2011, which undermined trade union rights, and to the adoption of Law 367/2022, which partially revitalized them. This change had been requested by the trade unions since 2011, in a sustained campaign, yet the revised legislation was in deadlock due to the conflicting positions of the social partners (trade unions and employer organizations).

An opportunity to regain political support for amending the Social Dialogue Law arose in 2021 with the adoption of the new mechanism for EU funds: the Recovery and Resilience Facility. In order to access EU funds, the Romanian government had to write in the National Recovery and Resilience Plan how it implemented the 2019 and 2020 country-specific recommendations (e.g. LDS changes in line with ILO recommendations). As the deadline for strengthening social dialogue was set for 2022 (the payment of funds being conditional on its achievement), the government had only one year from the approval of the National Recovery and Resilience Plan to change the LDS.

This new piece of legislation, Law 367/2022, which replaced the LDS, revitalized trade union rights, by restoring the right to free association and collective bargaining at all levels restored fundamental. It also restored the right of information and consultation by making it mandatory for employers to invite a representative of the trade union to the board-level meetings, although it is still too early to assess the impact of this new regulation.

4. NEW IDENTIFIED DRIVERS FOR IMPROVED WORKER REPRESENTATION AND CONSULTATION

During the pandemic and the recovery period, but especially during the Covid 19 crisis, workers' representation and consultation at company level improved. Workers' organization hold valuable expertise regarding workplace organization that the management were more inclined to access in such periods of crisis and uncertainty. The unions also supported the collaboration between business and authorities, playing a key role in accessing and implementing support measures for workers and

companies. In the following table, the main identified drivers for improving worker representation and consultation:

Initiative	**Workers' individual influence, strength of their position in the labour market and labour process**		**Collectively influence through workers representatives**		**New other forms?**	
	Strength (positive aspects)	Weakness (negative aspects)	Strength (positive aspects)	Weakness (negative aspects)	Strength (positive aspects)	Weakness (negative aspects)
1. Change of Social Dialogue Law			Strengthen the right to association and collective bargaining. Improved information and consultation rights.	Takes time for positive development to be implemented		
2. Assistance for employers in applying employee protection measures adopted by the government during the Covid 19 crisis			Build trust and maintained effective communication channels with the employer	Using union resources of time, expertise to supplement the lack of knowledge		
3. Change of procedures by digitalization of the company processes,			More transparency and reduced bureaucracy			
including information and consultation						

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5. PARTICIPATORY WORKPLACE ARRANGEMENTS

As resulted from the research, the approach on information and consultation was mainly top-down, the main role of the workers' representatives being that of transmitting these measures to the employees, support and awareness-raising among employees. Due to the extensive knowledge of workplace issues and the production process, the unions were involved in the process of adjusting these measures to the realities of different workplaces. Especially in large companies, the management organized regular meetings. For example, at the National Lottery, a national committee of 17 members would convene regularly to discuss the new government regulations and the situation and take decisions. The union representative was invited on a permanent basis to these meetings, but without voting rights. The meetings were in audio format at first and later online. These types of committees and regular consultation meetings were common practice in large companies during the pandemic and the collaboration was generally assessed as very good by all interviewees.

However, these good practices have not always survived, once the health crisis subsided. When the consultation focused on implementing the measures adopted by the government, sometimes overnight, the unions provided useful information and expertise for employers on how to access support measures, which benefitted workers and the businesses alike.

> "Whenever we offered assistance and expertise to employers, the collaboration went very well, but when we asked things from employers, it did not work so well anymore." (union leader from the textile sectoral union).

The challenges of the pandemic period also brought about changes in the procedures at company level. The introduction of the videoconferences facilitated communication and consultation and increased frequency of operative meetings. Other electronic tools were introduced for managing documents. As pointed out by a leader in a metallurgic company, the electronic flux of documents has significantly reduced bureaucracy and increased transparency in the company. Documents as consumption reports, employment or advancement references no longer got stuck in different departments of the company. This types of positive change have been maintained after the crisis.

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For greater engagement with management structures and influencing procedures to tackle challenges, the respondents rank cultivating partnerships among workers' representatives and management as the most important skill, while the capacity to re-think the way of working, training existing skills and more responsibility allowed to frontline workers are also considered important skills that contribute to resolving recovery problems at company level.

6. SURVEY ANALYSIS

The survey has 50 respondents. The predominant age group is 45-55, the respondents coming from a wide range of sectors: commerce, industry, services, aviation, health and care, agriculture, security, public administration, security. Respondents are trade union members and the majority mention the existence of a trade union in their workplace.

From the answers to the survey, as one third of respondents declared having the right to elect or appoint a board level member in their company, one conclusion that arises is that the level of information of the respondents, trade union members, is low and there is confusion between the role of elected trade union representatives and board members of the company.

However, there is a mixed level of satisfaction with the effectiveness of the information and consultation processed during the pandemic and the recovery process, with an equal number of respondents (17) declaring high satisfaction (4 or 5) and low satisfaction (1 and 2). The general tendency is to view workers are passive recipients of information (23 respondents) about the effect of the COVID19 crisis and the recovery measures, rather than actively influencing the directions (15 respondents). The collective worker representation is seen as the main influence for the development of collective labour rights measures at company level (36 respondents).

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7. IN-DEPTH INTERVIEW ANALYSIS

This part of the research is a qualitative one, conducted on a group of 9 Romanian trade union officials from different sectors and companies, both public and private and one labour relations expert. The technique used is the in-depth interview based on the interview guide developed by

the project coordinator. The interviews were conducted individually, face to face during March and April 2023, and the answers were noted and analyzed. The main findings in the interviews are presented in the previous chapters and the case studies.

8. CASE STUDIES

During the Covid 19 crisis and the recovery period, the use of collective bargaining to bring about important agreements or labour-related interventions was limited. In Romania, where collective agreements were not numerous and weak, the pandemic further highlighted the limitations of these instruments. In the absence of the support of national regulations and institutions of social dialogue, some unions used complex tactics to mobilize members and determine the cooperation of the management.

As part of the protection measures during lockdown, the government issued an order to extend all collective agreements. Law No 55/2020 (the so-called State of Alert Law), published on the 15th of May 2020, specified that the validity of collective labour agreements is extended for the duration of the state of alert and for a period of 90 days after its end. Thus, validity of existing collective labour agreements extended for two years, until 6 June 2022.

This measure was intended to protect the workers' rights, by maintaining the rights provided by the collective agreements during a period of restrictions. However, in practice, the provisions of Law 55/2020 prohibited the initiation of collective labour disputes and also limited the number of participants in the case of protests, which prevented employees from exercising their full collective bargaining rights.

If the parties acted in good faith, the negotiations resulted in a collective labour agreement that could be concluded and registered. It was the case in the National Lottery company, where the union and the management negotiated additional clauses during the pandemic, such as the granting of food vouchers also for the periods of technical unemployment and holiday vouchers granted in full, regardless of the periods of lockdown when employees were not working. (interview with the union representative in the National Lottery). However, this was not always the case, as pointed out by other interviewees:

> Collective bargaining was started in several companies at the request of employers. When the union asked for an increase in pay, the employers broke off talks, saying they no longer wanted to negotiate and invoking the provision of Law 55 of 2020. (Interview, union representative in the port sector).

Another union from a multinational company in the commerce sector was faced with the same complex situation during negotiations to renew the collective agreement in early 2020. Company management offered quick ratification of a new collective agreement in exchange for accepting minor improvements. The trade union members rejected the company's offer, having anticipated a rather larger increase in wages. Management therefore withdrew it, making use of the favourable context determined by the state of emergency which, amongst others, suspended the right to strike. According to the union leader interviewed, many employees regretted their initial rejection of the company's offer as management used the state of emergency to press for changes in working hours without prior consultation and a reduction in bonus payments for overtime.

The solution of the union was to build a strategy aimed at getting members engaged and the management back into the negotiation room. Members received emails and letters from union leaders, stating the reasons for the block in bargaining. Additionally, leaders sent a letter to senior headquarters management providing information on employment problems in the Romanian subsidiary. None of these actions were successful in determining a favourable change in local management's bargaining position, so the trade union organized a protest in the summer of 2020, in front of one of the shops, when a Board executive was visiting shops in Romania. According to the interviewee, the chair of the board was shocked at the protest, yet he assessed favourably the decision of the trade union not to invite the media to the protest and their willingness to solve problems in a private and calm manner.

This strategy was decisive. The protest gathered almost 200 trade union members from the company and from another commerce union in solidarity action. As a result, the local management was instructed by senior managers to negotiate a collective agreement, which was concluded in October 2020. The agreement offered employees a wage increase in two steps, an end of the year one-off salary bonus, a holiday bonus and consultation concerning overtime work.

In conclusion, internal solidarity within the trade union, strategies to control communication with members, the support of peer trade unions and the complex tactics used by the union leadership determined a favourable response from headquarters.

This case study highlights the importance of capable and motivated leaders, and also internal solidarity, taking also into account the risk of breaking the law, especially during the pandemic induced state of emergency. Additionally, it requires an openness among senior management.
This case studies show that employing flexible strategies, although costly and risky, and securing membership support can determine positive outcomes in exercising

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9. CONCLUSION

The workers' participation in strategic decision-making is very limited in Romania, as at present there is no form of employee participation in company boards in a deliberative capacity, and only optionally in a consulting or observer capacity. However, the extraordinary circumstances brought about by the pandemic situation and the recovery process brought greater attention to dialogue and information and consultation processes at the level of the company. The expertise of the unions and their knowledge of the workplace have proven a valuable resource for the management used to minimize uncertainties and implement the decisions of the government and those taken at the level of the company.

At the same time, in response to the challenges of the pandemic, new communication channels were opened, mediated by technology and many procedures at company level have been digitized, thus reducing bureaucracy and increasing transparency. However, when information and consultation processes referred to the financial resources of the company and increasing workers' rights and wages, the corporate management tended to made use of the crisis context and the favourable provisions of the emergency regulations to block bargaining rights and information and consultation processes.

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