



EMPLOYERS ORGANISATION
CONCORDIA
DIALOGUE FOR DEVELOPMENT

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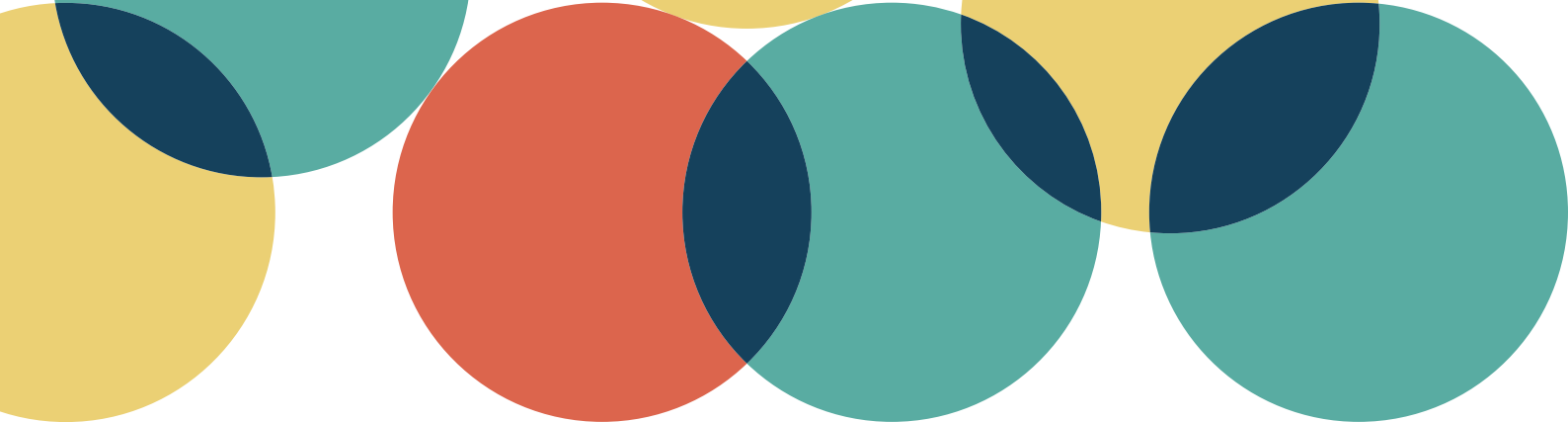
Social Dialogue in Romania

Present and future



Cuprins

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Concordia Employers' Confederation identified several aspects hindering or even preventing altogether the efficient and constructive development of social and civic dialogue in Romania, aspects which will be explained in the following sections of the present report. Moreover, we outline possible solutions which the business environment considers as being necessary to overcome the obstacles and lay the ground for a genuine collaboration between social partners, as well as between social partners and civil society.


The International Labour Organization (ILO) defines social dialogue as including all types of negotiation, consultation, or information exchange among government representatives, employers, and employees on problems of common interests related to economic and social policies. Social dialogue can have the following features:


- it can be a bipartite (trade unions – employers' organizations) or tripartite (the government is also part of the dialogue);
- it can be informal or institutionalized;
- it can be organized at national, regional or company level;
- it can be cross-sectoral, sectoral, or a combination of the two.


ILO identified **four key conditions** necessary for the proper development of social dialogue:


- strong and independent trade unions and employers' organizations, having the appropriate capacity and access to relevant information, both legitimate facilitators for participating in this process.
- willingness and political commitment.
- respect for fundamental rights (freedom of association and collective bargaining).
- adequate institutional support.

Four ILO conventions have a particular importance for social dialogue, the first two of them being part of the eight fundamental Conventions:

- Convention No. 87 on the Freedom of Association and Protection of the Right to Organise. 

- Convention No. 98 on the Right to Organise and Collective Bargaining. 

- Convention No. 144 on Tripartite Consultation (International Labour Standards). 

- Convention No. 154 on Collective Bargaining.¹ 

These instruments guarantee the right of employees and employers' organizations to voluntarily negotiate labour-related terms, without external interference, and to be consulted by national authorities on aspects that are the subject of ILO activity (tripartite consultations). Romania ratified all these conventions.

There is another important distinction between **social dialogue** and **civic dialogue**. Whereas *social dialogue* takes place among representatives of employers and those of *workers*, *civic dialogue* brings together employers' organizations and trade unions, as well as representatives of the civil society (NGOs), joined sometimes, in both cases, by government representatives or those of other public authorities. Consequently, only employers' organizations and trade unions can be defined as being "social partners", this clarification bearing a significant importance for all the implications deriving from the concept of social dialogue.

¹ – International Labour Organization, Social Dialogue and Tripartism, < <https://www.ilo.org/global/topics/dw4sd/themes/s-dialogue-tripartism/lang--en/index.htm> > ; International Labour Organization, Conventions and Recommendations, < <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> > .

Social dialogue at international level

The International Labour Organization (ILO) is the tripartite social dialogue forum at international level. Governments, employers, and workers' representatives from ILO member states are represented in the two bodies tasked with drafting ILO labour standards and policies, namely the Governing Body and the International Labour Conference.² The International Labour Conference, often called *the international parliament of labour*, has various competences such as the drafting and adoption of Conventions and Recommendations prescribing international labour standards.³ These instruments are the direct result of tripartite social dialogue developed at ILO level. Once adopted, the Conventions have the status of international treaties, open to ratification by member states, thus creating legal obligations of compliance with their provisions.⁴ The Recommendations are not legally binding, representing mere guidelines for actions undertaken by national governments.⁵

At ILO level, the main social dialogue partners are the International Organisation of Employers (IOE), on employers' side, and the International Trade Unions Confederation (ITUC), on workers' side. Concordia Employers' Confederation is the sole Romanian confederation member of IOE. Four Romanian trade unions are affiliated with ITUC (BNS, Cartel ALFA, CSDR, CNSLR-Frăția).

2— International Labour Organization, "How the ILO works", < <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm> >.

3— International Labour Organization, "About the ILC", < <https://www.ilo.org/ilc/AbouttheILC/lang--en/index.htm> >.

4— ILO Constitution, Art. 19(5); International Labour Organization, "About the ILC", < <https://www.ilo.org/ilc/AbouttheILC/lang--en/index.htm> >.

5— ILO Constitution, Art. 19(6); International Labour Organization, "About the ILC", < <https://www.ilo.org/ilc/AbouttheILC/lang--en/index.htm> >.

Social dialogue at European level

European social dialogue is recognized in Articles 154 and 155 of the Treaty on the Functioning of the European Union (TFEU).⁶ The European Commission has the obligation to consult the social partners prior to presenting proposals in social policy, as well as on the content of these proposals.⁷ The partners can decide, due to their recognized autonomy, to approach the subject in a bipartite format.

The consultation process at European level is structured in two phases⁸:

The first one is focused on the possible directions of the potential legislative proposal in social policy. The Commission notifies the social partners and submits a general document including the framework of the legislative proposal.

The second phase of the consultation is centred around the document drafted following the centralization of the contributions collected in the first phase.

The social partners have the possibility of directly influencing the drafting of new legislative initiatives. They can agree to initiate negotiations and approach a certain issue through bipartite social dialogue at any moment during the two phases of the consultation. Annex I of the present report briefly presents the phases of social dialogue at European level.

6— Treaty on the Functioning of the European Union, enhanced version, C 326/47, Art. 154, 155.

7— Treaty on the Functioning of the European Union, enhanced version, C 326/47, Art. 154

8— European Commission, DG Employment, Social Affairs and Inclusion, "Consulting European social partners: Understanding how it works", August 2011, < <http://erc-online.eu/wp-content/uploads/2014/04/2012-00292-E.pdf> >.

There are several structures involved in the European social dialogue⁹:

1 The Social Dialogue Committees

The main body for the cross-sectoral social dialogue at European level is the **Social Dialogue Committee (SDC)**. It comprises representatives of employers and workers from EU member states, European social partners, and European Commission representatives. It meets 3-4 times/year, adopts the texts negotiated by both sides and identifies potential future initiatives.

The European sectoral social dialogue committees – the forum for European social partners representatives at sectoral level to discuss specific issues. Currently, there are 43 such sectoral committees.¹⁰

2 **The Tripartite Social Summit** – organized twice a year (one during each rotating presidency's mandate) and bringing together the representatives of the troika rotating Presidency of the Council of the EU, of the European Commission, and of the social partners, at the highest level. The objective of this forum is to ensure the effective participation of social partners in the implementation of EU economic and social policies, in accordance with the troika's agenda.

3 **The Consultative Committees** – established to support certain EU policies, they have a tripartite structure (representatives of member states and of social partners). Thus, European social partners have the possibility to play an informal coordination role. The Committee for the European Social Fund (ESF) falls within this category.

4 **Tripartite European agencies** – social partners are also represented in the Management Boards of the following European agencies, thus directly contributing to these bodies' governance:

Eurofound;

EU-OSHA – European Agency for Safety and Health at Work;

CEDEFOP – European Centre for the Development of Vocational Training.

Social partners play an important role regarding the European Semester and the national reforms evaluated within this framework.

The European-level social partners are BusinessEurope, SMEUnited, SGI Europe and ETUC. Concordia is the sole employers' confederation affiliated with BusinessEurope, while CNIPMMR is with SMEUnited. On the trade unions side, four out of five representative organizations (BNS, Cartel Alfa, CNSLR Frăția, CSDR) are affiliated with ETUC.

9– European Commission, DG Employment, Social Affairs and Inclusion, "Consulting European social partners: Understanding how it works", August 2011, < <http://erc-online.eu/wp-content/uploads/2014/04/2012-00292-E.pdf> >.

10– < <https://ec.europa.eu/social/main.jsp?catId=480&langId=en> >.



Social dialogue at national level

In Romania, social dialogue is regulated by the Social Dialogue Law no. 62/2011 (LDS). Civic dialogue at national level must be in accordance with the Law no. 248/2013 concerning the organization and functioning of the Economic and Social Council (CES Law) and with the Rules of organization and functioning of the Economic and Social Council (ROF CES).



I

The social partners

LDS defines social partners as being *“trade unions or trade unions organizations, employers or employers’ organizations, as well as representatives of public administration authorities, who interact in the process of social dialogue.”* (ART. 1 (A))

The participation of trade unions and employers’ organizations to the institutionalized social dialogue at national and regional level is made conditional upon obtaining national representativity. This bestows upon the organization the statute of social partner authorized to represent its members.¹¹

11— Social Dialogue Law no. 62/2011, Art. 1(t).

Currently, the following organizations are representative at national level:

Trade Unions:

"Cartel ALFA" National Trade Union Confederation	▶
The National Trade Unions Block (BNS)	▶
The National Confederation of Free Trade Unions in Romania-CNSLR-Frăția;	▶
National Trade Union Confederation Meridian	▶
Democratic Trade Union Confederation in Romania	

Employers' Confederations:

"CONCORDIA" Employers' Confederation	▶
National Council of Small and Medium-Sized Enterprises in Romania (CNIPMMR)	▶
The General Union of Romanian Industrialists (UGIR)	▶
Romanian National Employers' Organization (PNR)	
The Romanian Employers' Confederation of Industry, Agriculture, Constructions and Services – CONPIROM	▶

Cumulative conditions to obtain national level representativity

Trade Unions (ART. 51(1)A LDS)

Legal statute of **trade union confederation** (two or more trade unions federations from different sectors (ART. 41(3));

Organizational and patrimonial independence;

Member trade unions must cumulatively represent at least **5%** of the number of employees in the national economy;

The existence of territorial/regional branches in **50%+1** of Romania's counties, including Bucharest.

Employers' organizations (ART. 72(1)A LDS)

Legal statute of **employers' confederation** (two or more employers' federations (ART. 55(C));

Organizational and patrimonial independence;

Member employers' organizations must represent at least **7%** of the employees in the national economy, excepting those in the public sector;

The existence of territorial/regional branches in **50%+1** of Romania's counties, including Bucharest.

The fulfilment of all necessary conditions to obtain the representativity is ascertained through a **court decision** issued by:

- a) **For trade unions** - the court which also vested the organization with legal personality - the courthouse from the territorial area where the organization has its registered headquarters).
- b) **For employers' organizations** – Bucharest Courthouse.

The procedure to obtain the representativity is triggered on request from the trade union or employers' organization, after lodging the representativity file, which must include the documents from the table in [Annex II](#).

Historically, social dialogue specific activities debuted in Romania at the end of the 19th century, but were interrupted by the communist regime and, consequently, the transition to a centralized economy. In 1990, association activities were resumed, and the first law conceptualizing social dialogue was approved later on as Law no. 130/1996.¹² Nevertheless, the social dialogue in Romania had a slow development after the return to the market economy. Firstly, during the transition period, marked by privatization of state-owned companies, the state continued to have a double role: as an employer and as regulatory authority.¹³ Moreover, in 1990-2000, social dialogue was solely used to resolve conflicts in the industrial relations generated by economic restructuring.¹⁴ High fragmentation of social partners was another extreme phenomenon generated by the fall of the communist regime.¹⁵ However, since 1990, a certain consolidation was achieved to-day.

Despite attempts to reform social dialogue and related aspects through Law 62/2011, social dialogue remains underdeveloped, mainly formalistic, due to high fragmentation, low capacity of social partners and lack of trust among them in the absence of a long social dialogue experience. These aspects are also flagged by the EU, even several years after. In the [2019](#) and [2020](#) Country Reports, the European Commission underlined the limited engagement of social partners in policy development, as well as the limited role of CES and social dialogue committees.¹⁶

Problems identified by Concordia and possible solutions

1 High fragmentation

In Romania there is still a relatively large number of trade unions and employers' organizations, resulting in high fragmentation and low representation of interests. For the employers' organizations, this is proof of an insufficiently

12— ANFP, *Comparative Study on the social dialogue in the public administration sector of Romania and Norway*, December 2014, p. 18.

13— Ibid.

14— Ibid.

15— ANFP, *Comparative Study on the social dialogue in the public administration sector of Romania and Norway*, December 2014, p. 30.

16— European Commission, Country Report Romania 2019 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances, SWD(2019) 1022 final, 27.02.2019; European Commission, *Country Report Romania 2020*, SWD(2020) 522 final, 26.02.2020.

consolidated business environment. Coupled with a relatively low association degree, the 5 representative employers' confederations have a rather low coverage across the national economy.

Presently, social partners obtain their representativity based on court decisions previously mentioned. The current procedure is profoundly inefficient, and, in the absence of certain transparent control mechanisms, there are suspicions whether certain organizations are truly representative. The accuracy of the data included in the representativity file is not assessed by the courts, and the entire procedure entails excessive bureaucracy, with no possibility to ensure the traceability of the submitted information.

▼ Proposed solutions

a) Increased transparency and the digitalization of representativity files

Concordia proposes that the labour contracts registered in REVISAL should constitute the exclusive proof of representation of 7% (employers' organizations), of the employees in the private business environment, as requested by law. Consequently, employers' organizations aiming to obtain representativity status at national level could request a document certifying the number of employees of member federations based on REVISAL records. The document would be issued by the Labour Inspectorate and would be included subsequently in the representativity file submitted to the competent court, according to LDS. The Labour Inspectorate should also ensure there are no overlaps among members of different confederations to avoid duplication in representation.

Another solution to reduce bureaucracy and increase transparency in the process of obtaining representativity status at national level would be to allow companies to declare their membership to an employers' organization/federation/confederation directly in REVISAL.

Another option to ensure more transparency and accuracy over representativity file before an upgrade to REVISAL is possible is to have the Register with employers' organisations and trade unions with the Trade Registry, similarly to the NGOs Registry in Romania, instead of Court. The certification for the employees represented can be granted by the Labour Inspectorate.

The digitalization of the representativity file should also include a standardized open documents format, to facilitate the usage of software instruments for data aggregation, thus facilitating the access to files (open data).

b) Allowing employers' organizations to become direct members of employers' confederations

Fragmentation is also a sectoral-level feature. Following a Concordia analysis

of BusinessEurope member confederations' statutes, it has been concluded that confederations from countries such as the Czech Republic, Lithuania, Estonia, Ireland, Sweden, Norway can have either as full members, or as limited members, both employers' organizations and individual companies. Concordia's proposal is to eliminate the condition that only federations can become members of confederations, thus eliminating an intermediary level, and allowing employer organisations that cannot come together in sector federations to have their interests represented. This would ensure an increased representativity at national level and would provide a solution to the low degree of association. This measure is also necessary in the context of the new business models and companies that, at least in the beginning, might not find it easy to set up sectoral federations to join but do have strong employers organisations (even representative ones).

2 The absence of sectoral interests overlaps and the low number of economic sectors

In Romania, trade unions are mainly representing the public sector, whereas employers' organizations are exclusively constituted by the private business environment, thus hindering the possibility of reaching common goals and agreements among social partners.

HG no. 1260/2011¹⁷ sets the list of 29 economic sectors based on which trade unions and employers' organizations can be established.¹⁸ This classification is exhaustive and fails to reflect the current economic diversity. Consequently, in the absence of common interests among employers, triggered by similar characteristics of the activity domain and of the working environment, it is particularly difficult for employers from different domains to associate in sectoral federations. This is also one of the reasons why sectoral-level negotiations between trade unions and employers' organizations are not developed.

This issue is also mentioned in the Reports and the Country Recommendations issued as part of the European Semester, drafted by the European Commission. These documents state that the division of sectors fails to reflect the economic diversity and, thus, do not allow for a sufficient representation of workers or employers. Moreover, discussions on the revision of economic sectors are at a standstill.

▼ Proposed solution

To overcome this obstacle, Concordia proposes expanding the list of economic sectors. A basis for discussions on redefining sectors already exists, there is a draft legislative proposal of amending HG 1260/2011 from 2017. This proposal prescribes the definition of 66 sectors, with the possibility of further expanding the list, with the purpose of facilitating the convergence of social partners'

17— Decision no. 1260/2011 concerning the sectors of activity established according to Law no. 62/2011.

18— Social Dialogue Lawno. 62/2011, Art. 42 și Art. 55.

interests. Most European states have defined hundreds of sectors.

3 Low organizational capacity of social partners

High fragmentation also determines a low organizational capacity due to the lack of resources. Social partners benefit neither from financial resources, nor from sufficient well-trained human resources to undertake concrete, coherent and well-informed actions for bipartite and tripartite social dialogue. This affects the authorities' perception, which tend to treat social partners less seriously, as well as the functioning of the sectoral and national bipartite social dialogue. To have substantial and meaningful negotiations and consultations, one needs resources for research, analysis, and negotiation. As the economy and society become more complex (for instance, the transitions to the green and digital economy and the future of work in this context), the social partners need an even increasing amount resources.

Moreover, the low organizational capacity and autonomy also limits the possibility of social partners in Romania to participate in the framework agreements concluded by European social partners. So far, in Romania only one Agreement was implemented through law: the one concerning teleworking.

▼ Proposed solution

In recent years, Concordia supported the allocation of European funds from the 2021-2027 Multiannual Financial Framework to increase social partners' institutional capacity. This could finance, among other needs, development of new services that could attract new members and, consequently, new financial resources that would allow beneficiaries to increase their expertise and participation in a few years.

This solution was confirmed at European level by the ESF+ Regulation, which prescribes that Romania, Hungary, and Poland should allocate 0.25% of the funds to capacity-building measures for social partners. Concordia continues to support the allocation of these funds at national level for the stated purpose, maintaining a constant dialogue with the authorities in the allocation and operationalization process, with prior consultation of social partners to ensure that the specific objectives and eligibility of those projects is shaped to ensure efficacy for capacity building in a sustainable manner.

Moreover, employers' organizations consolidation, with the solutions, would also ensure capacity building by pooling more resources.

4 Lack of trust

Historically, there is a lack of trust among social partners, a fact that mostly hinders the efforts of reaching consensus and, as a result, finding a solution

for different problems of common interest. One of the reasons for this is the politization of relations among social partners. This translates into a circumstantial shortcut: social partners go directly to political decision-makers, rather than engage with other social partners, because in the first instance they often find faster responses or more support in certain circumstances.

▼ Proposed solution

A constant dialogue represents the solution for building trust among social partners. Moreover, we believe that the political factor should be removed from these discussions. To achieve this, the Government should encourage the bilateral formulas by acknowledging and taking into consideration agreements between the social partners, based on their autonomy, like the European model. This practice should replace excessive regulation of labour relations, which leaves no room for bipartite agreements.

II

The Economic and Social Council (CES)

Law no. 248/2013 concerning the organization and functioning of the Economic and Social Council defines this institution as an advisory/consultative body to the Romanian Parliament and Government, a public institution of national interest, tripartite and autonomous¹⁹, similarly to the European Economic and Social Committee (EESC). CES has competences in the following areas:

economic policies

financial and fiscal policies

labour relations, social protection, wage policies, equal opportunities and treatment

agriculture and rural development

environmental protection and sustainable development

consumer protection and fair competition

cooperation, liberal professions, independent activities

civil rights and freedoms

healthcare

education, youth, research, culture, and sports.²⁰

The objective of this body is to facilitate national-level dialogue between employers' organizations, trade unions and representatives of civil society (NGOs).²¹ Consequently, CES is a forum for civic dialogue.

19— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 1.

20— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 2(2).

21— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 1(2).

CES competences²²

What it does?	On what basis?	Observations
<p>Giving positive/negative opinions for legislative proposals in its areas of competence (ART.5(A))</p>	<p>Consulting CES in regard to legislation initiated by the Government or by members of the Parliament is mandatory (ART. 2(1))</p>	<p>Opinions are adopted through qualified majority (2/3 of CES members) (ART. 6(6))</p> <hr/> <p>The deadline for analysing and adopting opinions on legislation is maximum 10 working days from the date the request was received (ART. 7(1))</p>
<p>Issuing opinions and recommendations on certain situations, evolutions, or socio-economical events at national level, subsequently submitted to authorities, institutions, employers' organizations or trade unions, or NGOs having competences or interests in that area (ART. 2(4))</p>	<p>Own initiative or request coming from any public authority, national-level representative employers' organization or trade union, representatives of civil society (ART. 2(3))</p>	
<p>Drafting of analyses and studies on the economic and social developments (ART. 5(B))</p>	<p>Upon request coming from the Government, Parliament, or own initiative (ART. 5(B))</p>	
<p>Reports to the Government or Parliament on the emergence of certain economic and social phenomena that call for new legislation (ART. 5(C))</p>		
<p>Analyses and proposes measures to improve the transposition and implementation of international agreements and conventions to which Romania is a state party and of assistance programs initiated by international organs, in the areas of competence.²³</p>		

22— Law no. 248/2013 on the organization and functioning of the Economic and Social Council

23— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 9.

CES structure

1 The Plenum

45 members, including the president and the vice-presidents.

Appointed members:

- **15** appointed by **employers' organizations** representative at national level;
- **15** appointed by **trade unions** representative at national level;
- **15** appointed by associative structures of the **civil society**.

Each employers' and trade union confederation representative at national level has the right to **a seat in the CES Plenum**.

- The remaining seats until the total of 15 are allocated through a **protocol** agreed through **consensus**. In case of failure to reach consensus, the seats will be allocated through vote requiring a **¾ majority** of confederations representative at national level.²⁴ Members of the CES Plenum hold a mandate of **4 years** with the possibility of renewal.²⁵
-

The CES Plenum is legally formed once at least 24 members are validated and each of the three sides is represented by at least 8 members.²⁶

The most important competence of the Plenum is adopting opinions on legislation. The Plenum also decides on the organization and functioning of CES including deciding on the composition of the specialized committees, adopting the rules of procedure, approval of budgets, electing the president, validating the vice-presidents.²⁷

The Plenum meets on a weekly basis or whenever necessary, at the president's request, in public meetings, except for cases explicitly decided by the executive bureau.²⁸

2 The Executive Bureau

Composed of the president, three vice-presidents and one member of each party represented in CES.

Runs the CES activity between Plenum meetings and is in charge of all administrative aspects for the functioning of CES.²⁹

24— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 11(3); Rules of organization and functioning of the Economic and Social Council, 27.08.2019, Chapter VIII, Art. 25.

25— Rules of organization and functioning of the Economic and Social Council, 27.08.2019, Chapter V, Art. 15

26— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 16(1). Rules of organization and functioning of the Economic and Social Council, 27.08.2019, Chapter V, Art. 16.

27— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 20

28— Law no. 248/2013 on the organization and functioning of the Economic and Social Council, Art. 18(1), 19(2).

29— Rules of organization and functioning of the Economic and Social Council, 27.08.2019, Chapter V, Art. 34.

3 Committees

These can be permanent or temporary

At CES level, there are **9 permanent committees** for the following domains:

- economic development, competition, and business environment
- civil rights and freedoms, equality of opportunities and treatment
- labour relations, wage policy, social inclusion, social protection, and health
- agriculture, rural development, environmental protection, and sustainable development
- education, youth, sports, research, professional training, and culture
- consumer protection and fair competition
- cooperation, liberal professions, independent activities
- rights and freedoms of civil society organizations
- administration and public order.

Each side represented in CES (employers' organizations, trade unions, civil society) can nominate **27 members** which will participate in the special committees, each having **9 members**.³⁰

The allocation of seats in the committees is done through a protocol concluded within each party, through **consensus**. In case of failure to reach consensus, the allocation will be made through vote, with a **¾ majority** of the total number of the side represented in the CES Plenum.³¹

Identified problems and proposed solutions

Concordia Employers' Confederation sees as necessary the simultaneous amending of the Law no. 248/2013 and of the Rules of organization and functioning of CES to create the premises for a real and constructive civic dialogue.

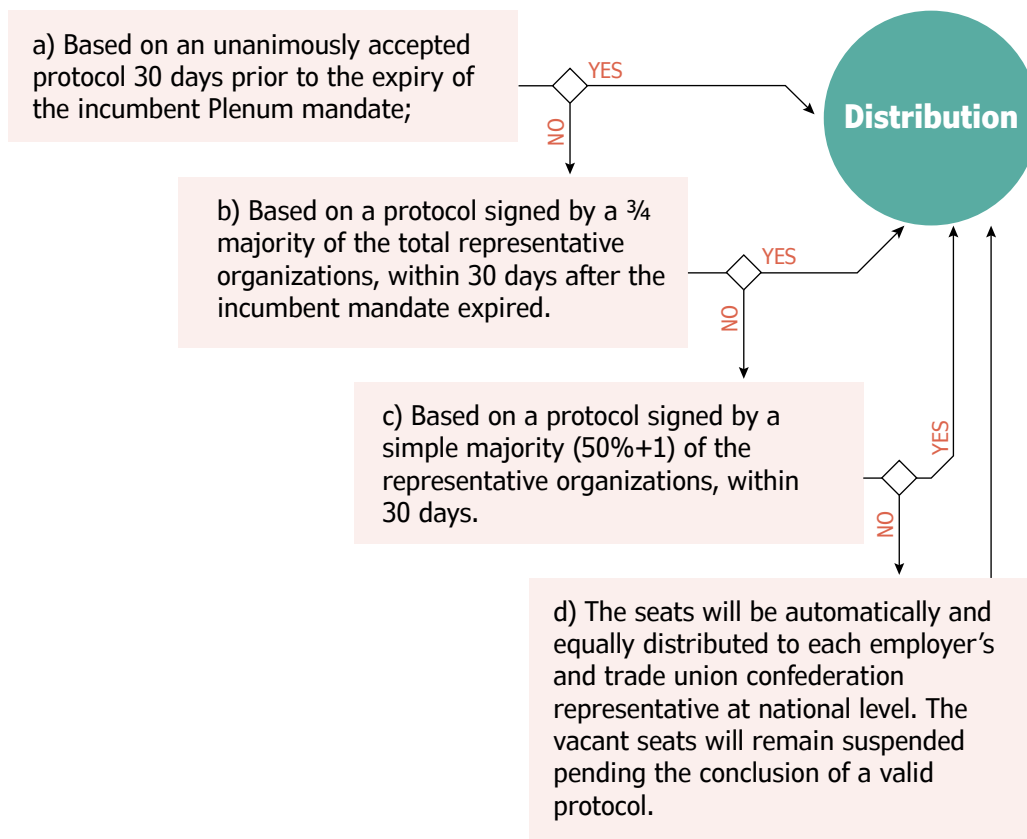
Firstly, the allocation procedure for the seats in the CES Plenum and those in the special committees must be modified to avoid blocking the CES activity if employers' organizations and/or trade unions fail to reach the necessary consensus to conclude the protocol. Moreover, the law should prescribe clear deadlines for the conclusion of the protocol and an alternative procedure through which seats could be allocated, without prior agreement of the parties.

30— Rules of organization and functioning of the Economic and Social Council, 27.08.2019, Chapter V, Art. 44(1), (3).

31— Rules of organization and functioning of the Economic and Social Council, 27.08.2019, Chapter V, Art. 44(4).

Consequently, Concordia proposes the following distribution procedure for the 15 seats allocated to each party in the **CES Plenum**:

- 1 seat for each employer's and trade union confederation representative at national level;
- The remaining seats until the total of 15 for each party will be distributed as follows:



Concordia proposes that the procedure prescribed by points a)-c) should also be applicable for the distribution of seats in the **specialized committees**. If none of the conditions necessary for the conclusion of a protocol can be fulfilled, the seats will be distributed by **drawing lots**, equally, to each employer's and trade union confederation representative at national level. The social partners and the civil society will appoint representatives in the preferred committees following the order of precedence established by drawing lots of procedure.

To ensure that CES has a real and substantial contribution in its areas of competence, it is necessary to increase the institutional capacity by including technical experts in each committee. Such experts would act as neutral facilitators, moderating debates between sides and supporting them in reaching joint positions. This is a first step to ensure the drafting of strong positions, well-motivated, concerning legislation submitted for opinion or in the process of issuing recommendations and opinions on certain socio-economic developments.

A second step is the **digitalization of CES**, which can provide a much more efficient and constructive process of drafting and issuing opinions. It is necessary to develop a platform that, first, can offer a clear image of the projects submitted to CES for opinion, and, secondly, will facilitate the drafting of a common position. A standardized, editable format for the documents uploaded, as well as the possibility to propose amendments directly into the platform would make the entire activity more transparent and would facilitate the submission and the alignment of the positions of all sides.

The CES Rules of procedure provide that the provisional agenda and the relevant materials should be submitted to the members of the Plenum at least 2 working days prior to the meeting date.³² This short period is rather restrictive to formulate consolidated and well-argued opinions at the level of each party represented in the Plenum. Concordia believes that this deadline should be extended, to offer a reasonable time to analyse the legislation submitted to CES for opinions and to formulate well-grounded positions. A reasonable time would include at least 30 days available for dialogue and discussions.

These amendments are necessary to ensure CES's position as a real vector for civic dialogue and consultation, as well as to increase the central authorities' level of trust in this body. One of the reasons why the Government does not maintain a constant and meaningful dialogue with the social partners is their lack of capacity in formulating strong and constructive opinions, including via CES.



National Tripartite Council for Social Dialogue

The National Tripartite Council for Social Dialogue (CNTDS) is a social partners' consultative body at national level, having the task of maintaining the tripartite social dialogue at the highest decision-making level.³³ CNTDS is chaired by the prime-minister or, in his/her absence, by the minister of labour³⁴, and is composed of:

- a) The presidents of the employers' and trade union confederations representative at national level.

- b) Representatives of the Government, at least at the level of state secretary, from each ministry, and representatives of other public institutions, as agreed by the social partners.

- c) A representative of the National Bank of Romania (BNR), the CES president and other members agreed by the social partners.³⁵

32— Rules of organization and functioning of the Economic and Social Council, 27.08.2019, Chapter V, Art. 20(3).

33— Social Dialogue Lawno. 62/2011, Art. 75.

34— Social Dialogue Law no. 62/2011, Art. 77.

35— Social Dialogue Law no. 62/2011, Art. 76

CNTDS has competence regarding the setting of minimum wages, the programs and strategies developed at governmental level, social dialogue, disputes of social and economic nature, collective labour contracts at sectoral level.³⁶

▼ Solution

The main problem identified in relation to CNTDS is the absence of regular meetings, despite the importance that should be placed upon it as a forum of social dialogue at the highest level. Moreover, there are legislative proposals of major importance that should not be discussed solely at CES level. Consequently, Concordia believes that CNTDS should meet at least once a month or once every two months, this recurrence being prescribed either in the LDS, or in the Rules of procedure. Additionally, meetings should unfold according to an agenda timely communicated, including current topics of interest for social partners, that fall within CNTDS competences.

We believe that this body must represent the direct bridge between employers' organizations, trade unions and the Government, thus contributing to the development of social dialogue in Romania. For this reason, Concordia's proposals focus on ensuring a constant interaction among social partners.

IV

The Law on Social Dialogue (LDS)

The Law on Social Dialogue has been in consultation, in different fora and formulas, for over a decade. While its form might prove to be perfectible as it is implemented, there is a series of crucial points on which we have not found common grounds with the trade unions:

The *erga omnes* applicability of collective agreements

We believe that a provision automatically extending the legal effects of sectoral collective agreements to all units in which the signatory trade unions have members or members by affiliation (*erga omnes* applicability) represents an unconstitutional breach of the principle of freedom of contract and of the voluntary nature of collective negotiation at sectoral level, a principle also stated in the ILO conventions.

Triggering the collective labour dispute

Concordia believes that a potential triggering of strike on the ground of not granting certain individual rights would completely change the paradigm in which the law regarded the collective labour dispute. Triggering the collective dispute is provided as the main lever the employees have in the process of negotiating a collective agreement. It is regarded neither as an instrument

³⁶— Social Dialogue Law no. 62/2011, Art. 78.

to safeguard individual rights, nor as an element to coerce the employer to observe a certain legal provision. There are other legal mechanisms in place that protect employees in cases of breaches of individual rights.

Representativity through affiliation

Concordia considers that establishing representativity through affiliation raises the following issues:

The ones participating in the negotiation do not have enough legitimacy and a powerful enough mandate to represent the majority;

Trade unions at superior level could interfere in negotiating collective agreements at company level, thus even creating a power imbalance;

A confederation could negotiate the collective agreement for companies with whose profile or activity they is not familiar to them.

The representativity threshold for trade unions

Reducing the representativity threshold, for both employers' organizations and trade unions, would amount to further weakening the social dialogue. An organization with fewer members is more financially unstable, has fewer resources and, thus, is a weaker social partner, with a reduced capacity and little influence on a certain sector of activity. A small number of represented employees could also lead to a limitation of coverage regarding the number of employers, a fact that diminishes the understanding of the reality and the issues of that sector.

Regarding reducing the threshold for obtaining the representativity at company level below 50%, we believe that, besides the aforementioned arguments, there are also legitimacy issues. At company-level, the legitimacy is given by the number of persons supporting that decision and the majority rule is customarily used to confer legitimacy to a decision.

The solution proposed by Concordia is to resume discussions on potential amendments to the Law of social dialogue, in accordance with the following principles:

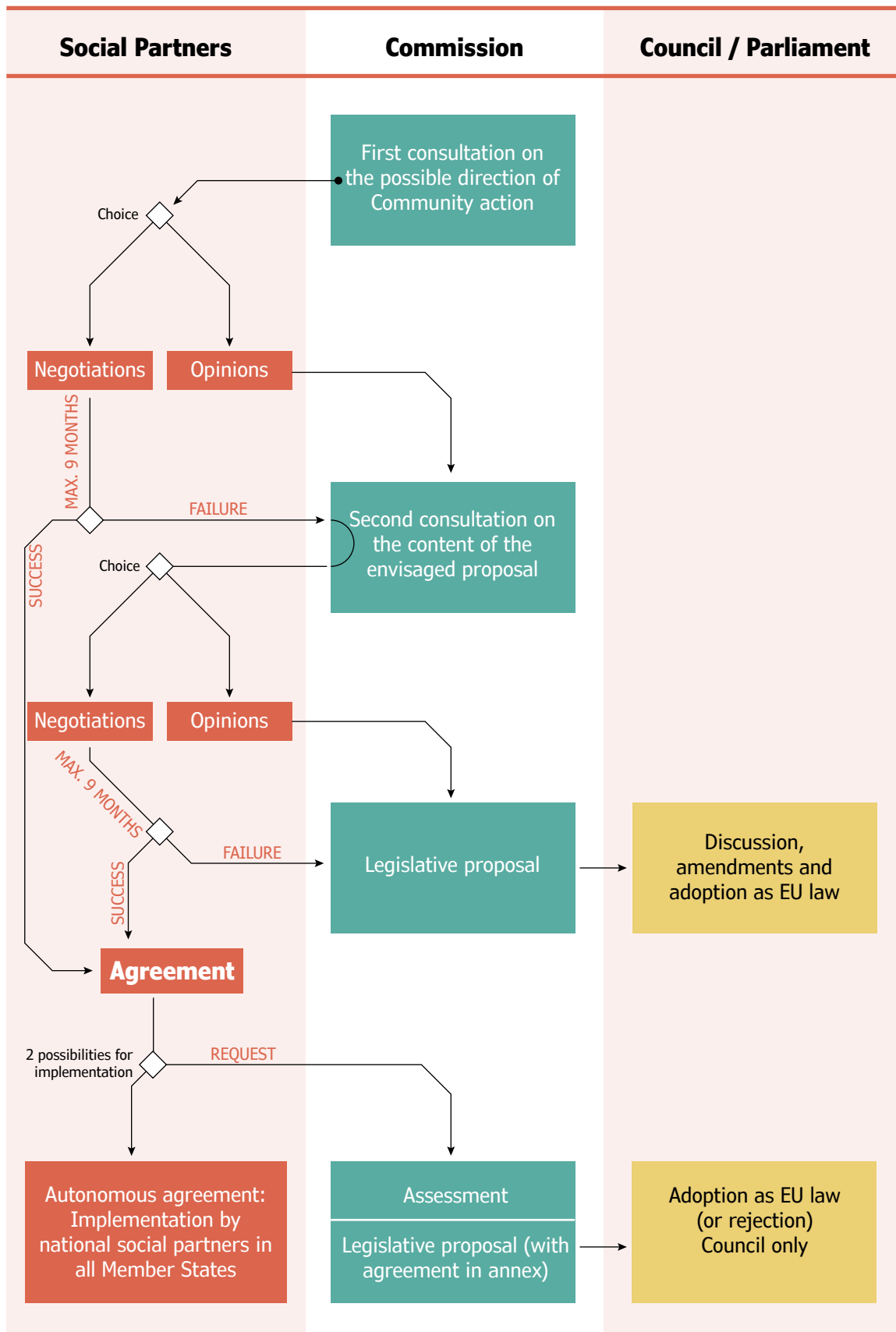
- Good faith and consideration for the parties' needs and interests.
- Compliance with the Constitutional Court decisions, ILO conventions and European legislation.
- Freedom of association that would allow a threshold of real representativity for social partners.
- The parties to a collective negotiation will always be employees and employers.

- The voluntary nature of negotiations and parties' freedom to set the level (unique) for the negotiation of collective agreements.
- Real representativity of social partners (trade unions and employers' organizations).
- Mutual recognition of representativity. When considering the employees' interest of benefiting from the protection offered by a collective agreement, the parties can mutually recognize their representativity, at company level, in the absence of a representative trade union or of employees' representatives.
- In principle, collective agreements, regardless of the level, are applicable solely to signatory companies.
- The sectors of activity are defined sufficiently narrow as to include only companies with similarities in terms of functioning (including labour organizing, object of activity, structure of personnel and management) and sufficiently broad as not to lead to fragmentation of the labour market.
- A reasonable timeframe will be ensured for the implementation of any modification of the organization/representativity of employers' organizations/trade unions.
- Safeguarding social peace.
- A substantial threshold to declare strike, taking into consideration the significant economic and social effects. It is obvious that there should be compliance with certain clear and predictable procedures, as well as the support of a significant number of employees.

These discussions should be carried with the support/through certain independent experts that would ensure compliance with the applicable international legal framework and the coherence with the legal norms and with the principles agreed by social partners.

Concordia also believes that any changes to the collective bargaining legal framework would not be consistent and substantive unless there are also changes in relation to the parties involved in negotiations (representativity, capacity, etc.) and to the institutionalized social dialogue, as per the solutions presented above.

Annex I



Annex II

Necessary documents for the representativity file

Trade Unions (ART. 52 A LDS)

A copy of the court decision establishing the legal personality;

A copy of the latest final court decision for the amended statute and/or composition of the management executive body;

An excerpt from the latest statistical bulletin concerning the total number of employees in the national economy;

Affidavits signed by the legal representatives of member federations specifying the total number of trade union members in each federation;

Cumulative report signed by the legal representative of the trade union confederation:

- the list of member federations;
- total number of members.

Proof of submitting a copy of the representativity file to the Ministry of Labour and Social Protection.

Employers' organizations (ART. 73 A LDS)

A copy of the court decision establishing legal personality;

A copy of the latest final court decision for the amended statute and/or composition of the management executive body;

Cumulative report signed by the legal representative of the employers' confederation:

- the list of member employers' federations;
- affiliated member units of federations;
- total number of employees of each unit, certified by the Labour Territorial Inspectorate (ITM).

Proof of submitting a copy of the representativity file to the Ministry of Labour and Social Protection.

Concordia Employers' Confederation represents 15 of the most important sectors in the national economy and is a social dialogue partner, representative at national level. Comprising a total of over 350.000 employees in more than 1.800 small and large enterprises, with both foreign and local capital, Concordia is the only Romanian organization member of BusinessEurope, International Organization of Employers (IOE) and Business at OECD (BIAC).

As a representative social dialogue partner, our interests span across a large area of subjects such as labour market and social dialogue, education, digitalization, consumers' protection, future of transport, EU funds, circular economy.