INTERNATIONAL LABOUR OFFICE

MEMORANDUM OF TECHNICAL COMMENTS
ON
THE DRAFT LABOUR CODE
AND
THE DRAFT LAW ON SOCIAL DIALOGUE
OF ROMANIA

JANUARY 2011
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Introductory remarks

1. On 13 January 2011, the President of the following Romanian trade unions – NTUC “Cartel”, CNSLR, BNS, CSDR, CS “Meridian”– requested technical comments from the International Labour Office (hereafter “the Office”) on the draft Labour Code and on the draft law on social dialogue. Comments were requested by 17 January 2011.

2. The exceptionally short deadline of this request arises from the fact that the Government called on the Romanian social partners to agree on the suggested labour law reform by 21 January. The labour law reform is pursued in the context of a wider range of reforms supported by the EU and the IMF, which includes but is not restricted to the labour market.

3. The International Labour Office in Geneva, in collaboration with Labour Law and Labour Relations Specialist of the ILO Regional Office for Europe and Central Asia has examined the draft Labour Code and the draft law on Social Dialogue in light of both international labour standards and comparative labour law and practice. The Office did not see any document spelling out the motivation of this legal reform nor its intended impact.

4. The Office wishes to clarify that:

   4.1. The absence of comments on any particular provision should not be taken as indicating a particular view as to compliance with international labour standards.

   4.2. These comments are provided without prejudice to any comments that may be made by the bodies responsible for supervising compliance with international labour standards.

   4.3. Some of the comments provided herein, having been made on the basis of the English translation provided to the Office, may not be relevant in relation to the original Romanian version.

National tripartite consultative process

5. It is widely acknowledged that labour legislation is vital to the economy of any country and to the achievement of balanced development in terms of both economic efficiency and the well-being of the population as a whole. This is a delicate balance to achieve. In this context, labour legislation plays a critically important role in providing a framework for fair and efficient industrial and employment relations that eventually deliver productive and decent employment as well as social peace. Experience suggests that proposals of labour law reforms imposed from the top are less effective in taking into account the complex web of interests and needs involved than solutions that have been tested and honed through the process of social dialogue, and which therefore enjoy broad support within society. For all those reasons, the ILO
technical assistance always seeks to increase the involvement of its primary beneficiaries –
the social partners – throughout the process of labour law reform. This reflects the centrality of
the principles of social dialogue and tripartism for the ILO. It is also in keeping with the spirit
of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144),
ratified by Romania in 1992. The Office therefore urges the Government and the relevant
workers’ and employers’ organizations to engage in constructive dialogue on the package of
reforms required to mitigate the impact of the financial crisis, which includes but is not
restricted to the labour law reform. The ILO comments were prepared with a view to
supporting such social dialogue process.

6. The ILO Memorandum provides comments only on those provisions for which the Office
recommends: (i) to further assess the changes proposed in light of the objective pursued, or
(ii) to modify the change contemplated to ensure its full compliance with ratified international
labour Conventions.

7. The Office wishes to draw particular attention to problems of non-compliance of suggested
amendments with international labour standards discussed in paragraphs 27, 28, 41, 42, 44, 49,
50, 51, 53, 55, 56, 57, 59 and 62 of this Technical Memorandum.

**Applicable international labour standards**

8. Romania has ratified the eight (8) core international labour Conventions and a total of 55 ILO
Conventions (the full list is in Annex 1).

**Use of gender-neutral language**

9. The ILO encourages member States to follow contemporary legislative drafting techniques,
which emphasize the desirability of using gender-neutral terminology in statutory language. It
is important from a policy perspective to use gender-neutral language in legislation to set an
example and to encourage the rejection of discriminatory language and behaviour. It is also
important to use gender-neutral language to ensure equality in access to and application of the
law. The Office encourages the drafters to assess the Romanian version of the text from that
perspective.
Specific comments on the draft labour code

Title 2 – The individual employment contract

Chapter 1 – Conclusion of the individual employment contract

10. **Article 16 – Form of the employment contract**: At present, article 16 requires that a contract of employment be concluded in writing. There is also an administrative requirement that employment contracts be registered with the local labour inspectorate. When employers fail to provide the worker with a written contract, there is a rebuttable presumption that a contract without limit of time has been concluded between the parties. This provision is quite common in comparative labour law that pursues the principal aim of guaranteeing legal clarity and security to both parties in an employment relationship. The rebuttal presumption that oral employment contracts are concluded without limit of time acts also as a major incentive for employers to issue written contract, in particular when they are concluded for a specific period of time. Such incentive that contracts be concluded in writing also effectively supports the Romanian national policy and strategy to fight undeclared work, an ongoing concern as illustrated by recent labour inspection statistics.

<table>
<thead>
<tr>
<th>Table 1: Quantity indicators on undeclared work in Romania&lt;sup&gt;1&lt;/sup&gt;</th>
</tr>
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<tbody>
<tr>
<td></td>
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<tr>
<td><strong>Employers found using undeclared work</strong></td>
</tr>
<tr>
<td>2004</td>
</tr>
<tr>
<td>3,442</td>
</tr>
<tr>
<td>37.2%</td>
</tr>
<tr>
<td><strong>Individuals found providing undeclared work</strong></td>
</tr>
<tr>
<td>2004</td>
</tr>
<tr>
<td>10,446</td>
</tr>
</tbody>
</table>

*Note: * Percentage as a share of overall number.

<sup>1</sup> *Source: Based on data from Statistical Bulletin on Labour and Social Protection – 2009.*
This reform contemplates the suppression of the rebuttable presumption that in the absence of a written contract, the employment contract concluded between the parties is without any limit of time. While the pursued objective of deleting that rebuttable presumption is unknown, its potential effect on jeopardizing legal security and predictability for both parties to an oral contract of employment can easily be anticipated. Likewise, it may negatively impact on the Government’s ability to implement its policy to fight undeclared work.

If the intention behind the reform is to remove any unnecessary formal requirement imposed on employers, the Office would recommend privileging a simplification of the procedures for business and workers’ registration. Those types of measures are more likely to yield results in terms of reducing the cost of formal and declared employment.

11. **Article 22 – Non-competition clause**: Article 22 provides that contracts of employment may include a non-competition clause of no longer than two (2) years. The Office would like to suggest that consideration be given to how that provision was implemented in practice. A review of Court cases in 2009\(^2\) seemed to indicate that many non-competition clauses are not in compliance with the law. It would be useful to determine the causes of this problem of non-compliance and address them in the context of this reform. It is also suggested that the possibility of reducing the maximum duration of non-competition clauses to one year be discussed. This would be more in line with comparative practices and more conducive to labour mobility in a dynamic labour market.

12. **Article 31 – Probationary period**: The maximum probationary period is currently 90 calendar days. Its duration varies depending on the type of the worker’s contract of employment and ranges from five (5) working days for unskilled workers to 90 working days for employees with managerial responsibilities. A specific exception is made for the first employment contract of higher-education graduates for whom the probation period can last up to six (6) months. A specific provision of the Labour Code details the probationary period for employees under fixed-term contracts (from 5 to 45 workings days). The Labour Code also explicitly prohibits the successive employment of more than three (3) persons on probation for the same position.

\(^2\) Ghinararu, Pavelescu, Dimitru, Modiga. 2010. *Flexicurity and social dialogue in Romania – Perspective on the implementation of flexicurity principles in Romanian undertakings* (European Institute of Romania), pp. 49-50
<table>
<thead>
<tr>
<th>Worker category</th>
<th>Maximum probation period (in days)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indefinite term contract</td>
</tr>
<tr>
<td></td>
<td>Fixed term contract – current regulation</td>
</tr>
<tr>
<td></td>
<td>Current regulation</td>
</tr>
<tr>
<td>Unskilled worker</td>
<td>5</td>
</tr>
<tr>
<td>Employee</td>
<td>30</td>
</tr>
<tr>
<td>Employee in managerial position</td>
<td>90</td>
</tr>
<tr>
<td>First contract of higher-education graduates</td>
<td>120 (6 months)</td>
</tr>
</tbody>
</table>

13. The suggested amendments unify the probation period for unskilled workers and employees and increase its maximum duration to 45 days. It also proposes to increase the maximum probation period up to 120 days for employees with managerial responsibilities. While the proposed changes are in line with comparative labour law practices, the intent of the reform is unclear. If the objective is to give employers sufficient time to test workers’ ability to perform the job as well as their potential to grow on the job, the Office would like to suggest that complementary measures be considered alongside to promote continuous on-the-job training and upgrading of workers’ skills. With respect to the specific category of employees in managerial positions for whom the probation period is being extended from 90 to 120 days, the Office recommends that the rationale justifying such an extension of the duration be discussed to assess its potential benefits against the fact that workers on probation do not benefit from protection against unjustified dismissal. International labour standards guidance in that respect is found in the Termination of Employment Convention (No. 158), not ratified by Romania, which acknowledges that workers on probation can be excluded from the protection against unjustified dismissal provided that the probation period is of reasonable duration (article 2 paragraph 2). The intention of Convention 158 is to ensure that the duration of the period of exclusion from the benefits of the protection against unjustified dismissal is limited to what can reasonably be considered as necessary in the light of the purposes for which the probation period was established.

14. With respect to the suggested deletion of the prohibition to successively recruit more than three (3) persons on probation for the same position, the Office notes that such provision is quite unique in comparative labour law. The presumed intention of such provision was to provide a safeguard against abusive recourse to workers under probation whose contract of employment can be terminated without notice. The intention of its deletion is less clear. It may be
understood as indicating that such safeguard is no longer required because workers on probation are in most cases confirmed in their employment. It may also be a consequence of the fact that limiting to three the number of workers that can be tested successively for the same position is too restrictive, in light of the particular skilled labour shortage observed in the current labour market. The Office suggests that the objective of this deletion be assessed in light of the original intent of the provision and its implementation in practice.

**Chapter 4 – Suspension of the individual employment contract**

15. **Article 52 – Suspension of the contract of employment**: The Labour Code regulates in its articles 49 to 54 when contracts of employment can be suspended and this includes situations of temporary interruption of activity for economic, technological, structural or similar reasons. Article 52 provides for the integral suspension of the contract of employment in that context. It is now suggested to include two new paragraphs to foresee intermediate situations where work sharing schemes could be implemented and would result in partial execution of the contract of employment. These “work sharing schemes” or “short-time working” arrangements have been tested with some success by a number of countries (Austria, Belgium, Canada, France, Germany, the Netherlands, Switzerland and a number of individual states in the United States), including more recently middle income countries such as Croatia, Hungary, Poland, Slovakia and Turkey.\(^3\) Both the European Commission and the ILO promote these schemes as measures which can help to manage the impact of the global jobs crisis and maintain employment, especially if accompanied by financial support to mitigate workers’ income losses and training measures. It is unclear as to whether the Government’s intent to provide financial support to those workers who would be subject to a reduction in working time and wages, according to this new provision.

16. As well, in most countries these work sharing schemes are promoted but not mandated by law, as is now foreseen in Romania. The Office also considers that these work sharing schemes are more likely to yield the desired result when negotiated and implemented through social dialogue at national level and via collective bargaining at industry level and in specific companies. It is therefore recommended to stipulate that these arrangements will be subject to collective bargaining at the enterprise level.

**Chapter 5 – Cessation of the individual employment contract**

17. **Article 69 – Notification of intended collective redundancy**: This article calls for a consultation process when collective dismissals are contemplated by an employer and details all the information that should be provided by the employer in that context, including the criteria taken into account, according to the law and/or collective labour agreements, for

\(^3\) For more detailed information on these schemes, see ILO *TRAVAIL Policy Briefs*, No. 1 (2009) and No.2 (2010) on work sharing schemes.
establishing the list of dismissed workers. The government proposes to add a new paragraph (2) which would read:

“the criteria mentioned in paragraph 2, d) shall be applied only after having assessed the achievement of the objectives of performance.”

With respect to selection or ranking criteria, international labour standards guidance is provided by Article 23 of the Termination of Employment Recommendation (No. 166) which stipulates that “The selection by the employer of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers”. In comparative practice, the criteria most often applied relate to occupational skills, length of service, family circumstances, with preference sometimes being given to a particular criterion such as the protection of a vulnerable category of workers or the difficulty of finding alternative employment. Countries that privileges workers based on their performance – high productivity – include Belarus, Ethiopia, the Russian Federation and Ukraine. The determination of the selection and/or ranking criteria should be guided by the specificities of each national labour market, including the existence of active labour market policies and institutions to support redundant workers. It is, however, of particular importance to ensure that, as a result of the preference given to some criteria, certain protected workers, such as workers’ representatives, are not dismissed in an arbitrary manner on the pretext of a collective termination of employment.4

18. **Article 72 – Priority of re-hiring of redundant workers**: In its present form, article 72 provides that, for a period of nine months following a collective redundancy, employers cannot recruit any new staff and have to offer any re-opened positions first to the redundant workers. The deletion of that provision is considered in the context of the present reform. With respect to such re-hiring priority, international labour standards guidance is found in Article 24 of the Termination of Employment Recommendation (No. 166) which stipulates that:

"(1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time. (...)"

As recalled by the ILO Committee of Experts on the Application of Conventions and Recommendations, the intention of this provision is to grant out of fairness a certain priority

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4 ILO CEACR General survey on protection against unjustified dismissal, 1994, para. 335.
to the workers whose employment was terminated during a specific previous period of time. According to the Recommendation, the re-hiring priority could be implemented by law or collective agreements, be limited in its duration and be applicable only if comparable qualifications are called for and if the worker has expressed an interest in being rehired. More specifically, such priority should be given to workers’ representatives in case of reduction of the workforce with a view to ensuring their effective protection (Article 6 (f) of the Workers’ Representatives Recommendation (No. 143). The legislation in many countries establishes such principle of priority of rehiring for a specific period of time. Below are some comparative examples:

- 6 months (China, Serbia, Turkey);
- 8 months (Cyprus);
- 9 months (Finland, Sweden);
- 1 year (France, Italy, Jordan, Luxembourg, Morocco, Pakistan, Slovenia, Ukraine);
- 2 years (Cambodia, Cameroon, Comoros, Niger, Senegal);
- 3 years (Korea);

If the implementation in practice of article 72 obligations indicates that they are too stringent, the Office suggests considering article 72 revision as an alternative option to its deletion. In that case, the interdiction to hire any new staff could be deleted but the principle of re-hiring priority maintained.

Chapter 6 – The individual employment contract of limited duration

19. Articles 80 to 86 regulate fixed-term contracts (FTCs) which can, at present, be concluded if based on objective and material reasons such as replacement of an employee, temporary increase in employer’s activity, seasonal work and promotion of employment of some categories of unemployed people. The duration of a fixed-term contract cannot exceed 24 months. Since 2005, FTCs can be renewed two consecutive times within the term of 24 months.

20. Proposed amendments to articles 80, 82, 84: The proposed amendments extend the maximum duration of an FTC to 36 months and remove the restrictions regarding the number of renewals within this period and the continuation of FTCs beyond it for the same position. The Office recommends that changes to the regulation of FTCs be examined in light of an examination of observed national practices, including with respect to Directive 1999/70/EC of

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5 ILO CEACR General survey on protection against unjustified dismissal, 1994, para. 340-343
6 Until 2005, the maximum duration was 18 months. The limit was increased to 24 months by Government Emergency Ordinance no. 65/2005.
7 Government Emergency Ordinance No. 55/2006.
28 June 1999 concerning the framework agreement on fixed-term work, as well as guidance from international labour standards and comparative labour legislation.

21. According to the 2009 Implementation Report for Romania – Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, the implementation of the labour code provisions regarding fixed-term work are considered to be good in general. The report noted, however, a couple of non-compliance issues that might be worth addressing in the context of this reform. First, fixed-term contracts are found to be concluded in situations other than those foreseen in the Labour Code, which were meant to cover only temporary employment needs and opportunities. It was also reported that FTC durations [often] exceeded the maximum duration of 24 months. The report further highlighted that abusive FTC practices cannot been stopped effectively by labour inspectors in the absence of administrative penalties sanctioning non-compliance with the provisions regulating FTCs. Furthermore, the right to be hired under a contract without limit of time is also rarely ascertained in practice by workers recruited to fill a permanent position with an FTC. As a matter of fact, non-compliance by employers with the Labour Code is very rarely challenged even by workers having a FTC that respects the provisions of the law. The most important non-compliance problem affecting FTC workers relates to employers’ obligations to facilitate access to appropriate training opportunities to enhance their skills, career development and occupational mobility and to give consideration to the provision of appropriate information to existing workers’ representative bodies about fixed-term work in the undertaking. Temporary work accounts for less than 2 per cent of employees in Romania.\(^8\)

22. International labour standards guidance with respect to FTCs is found in Article 2(a) and Article 3 of the Termination of Employment Convention (No. 158), not ratified by Romania, which acknowledges that workers on FTC can be excluded from the protection against unjustified dismissal provided that adequate safeguards are provided against recourse to FTC with the aim of circumventing the protection of the Convention. As further detailed by the Termination of Employment Recommendation (No. 166) in its Article 3 such safeguards can be provided by:

\begin{itemize}
  \item[(a)] limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;
  \item[(b)] deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;
  \item[(c)] deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.
\end{itemize}

23. Safeguards suggested by Article 3 of Recommendation No. 166 are reflective of comparative law and practices, samples of which are summarized in the table below. The table also allows a comparison with Romanian legislation as currently in force or as suggested to be amended.

<table>
<thead>
<tr>
<th>Regulation of fixed-term contracts in selected European countries</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td><strong>ROMANIA</strong></td>
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<tr>
<td>Current regulation</td>
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<tr>
<td><strong>ROMANIA</strong></td>
</tr>
<tr>
<td>Proposed amendments</td>
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<tr>
<td><strong>Czech Republic</strong></td>
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<td><strong>France</strong></td>
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<td><strong>Germany</strong></td>
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<td><strong>Hungary</strong></td>
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<td><strong>Italy</strong></td>
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<td><strong>Netherlands</strong></td>
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<td><strong>Poland</strong></td>
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<td><strong>Spain</strong></td>
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<td><strong>Sweden</strong></td>
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<tr>
<td><strong>United Kingdom</strong></td>
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24. Reviewing the amendments suggested, it appears that the sole legal provision meant to control abusive recourse to an indefinite succession of FTCs in the same post will be the limitative list of “objective reasons” as defined under article 81, on the basis of which the conclusion of an
FTC is possible. This means that in practice labour inspectors will have to control the temporary nature of “the increase of activity”, “the programmes, projects and works” or of “the seasonal work” when registering the “x number” of FTC for the same task. In this regard, the Office wishes to highlight one observation contained in the abovementioned implementation report on Directive 1999/70/EC that “abusive FTC practices cannot be stopped effectively by labour inspectors in the absence of administrative penalties sanctioning non-compliance with the provisions regulating FTC”. All the more if, as a result of the labour law reform, the proper implementation of safeguards against abusive recourse to FTC will increasingly rely in future on an efficient control by the labour inspector, the Office would like to insist on the importance of having a well-functioning labour inspectorate, in line with the Labour Inspection Convention (No. 81), ratified by Romania. Attention needs to be paid in the context of the wider package of labour market reform to the continued strengthening of the labour inspectorate.

25. Several reforms have been approved in recent years in order to modernize the labour inspection system in Romania and the overall situation of the labour inspectorate has been improved, as highlighted by the ILO Committee of Experts on the Application of Conventions and Recommendations. However, there are still several challenges that should be addressed in order to enable the Romanian labour inspection system to properly tackle the current challenges in the Romanian labour market. Finally, while the amount of sanctions has been reviewed recently, the nature and the amount of the sanctions do not seem to be sufficiently effective, proportionate and dissuasive. The ILO Committee of Experts on the Application of Conventions and Recommendations also observed that the increase of the sanctions’ amount was more substantial for infringements of the legal provisions relating to industrial relations than for those in the area of occupational safety and health, whereas the overall number of corresponding penalties does not display any great difference.

Chapter 7 – Employment by temporary employment agencies

26. In line with the Private Employment Agencies Convention (No. 181), not ratified by Romania, the Office would like to suggest that the opportunity of this reform be seized to assess whether the current provisions guarantee adequate protection of temporary workers (article 11), and clear allocation of responsibilities between the user enterprise and the agency in relation to agency workers’ rights (article 12) to collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits, access to training, protection in the field of occupational safety and health, compensation in case of occupational accidents.

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9 In 2005, the Romanian Government announced to the ILO Committee of Application of Standards that an in-depth reform of the organization and functioning of the Labour Inspectorate was planned. This plan is still awaiting approval.

or diseases, compensation in case of insolvency and protection of workers claims as well as to maternity protection and benefits, and parental protection and benefits.

**Title 3 – Working time and rest period**

**Chapter 1 – Working time**

27. **Article 111 – maximum length of the working time:** This article regulates daily and weekly working time as well as overtime. In the context of the reform, this article is being revised to extend the average reference period from 3 months to 4 months. This revision however does not address the problem raised by the ILO Committee of Experts on the Application of Conventions and Recommendations in its 2008 direct request on the Hours of Work convention (no.1) with respect to the need “to limit with greater precision the number of overtime hours authorized by sections 111 and 112 of the Labour Code”. The other problems raised in this 2008 Direct Request have not been addressed either. Therefore, the Office recommends that the opportunity of this reform be seized to address the various questions raised in the 2008 Direct Request¹¹.

**Title XII – Labour jurisdiction**

**Chapter 1 – Special rule of court**

28. **Article 287 – Burden of proof:** Article 287 that stipulates that the burden of proof in labour disputes is on the employer. In the context of the reform, it is proposed to repeal this article and to apply Civil Code procedures to labour disputes. This amendment would dangerously jeopardize the effective protection of workers against acts of discrimination and in turn impede proper implementation of ratified core international labour conventions such as the Freedom of Association Convention (No. 87), the Equality in Employment and Occupation Convention (No. 111) and the Equal Pay Convention (No. 100).

29. In its review of international labour standards application, the Committee of Experts on the Application of Conventions and Recommendations has highlighted on several occasions that with respect to acts of direct or indirect discrimination, one of the main difficulties results from placing on workers the burden of proving that the act in question occurred as a result of discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin, union affiliation or activities.¹² The Committee considers that shifting the burden of the proof to the employer once the complainant has produced plausible or prima facie

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evidence of discrimination is a useful tool to correct a situation that could otherwise result in inequality.  

30. More explicitly, Paragraph 6(2)(e) of the Workers’ Representatives Recommendation, 1971 (No. 143), provides for “laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers’ representative, the burden of proving that such action was justified.” Also Article 9(2) of the Termination of Employment Convention (No. 158), not ratified by Romania provides that:

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

(a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;

(b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

31. Lastly, it seems that the principle of reversing the burden of the proof in labour disputes was supported by the Romanian Constitutional Court in its Decision No. 494/2004, Decision 82/2008 and Decision 1362/2010.

32. The Office therefore strongly recommends reconsidering the suggested deletion of this provision.

\[\text{ILO. CEACR General Survey on Equality in Employment and Occupation, 1996, para 230-231.}\]
Specific comments on the draft law on social dialogue

33. The Office welcomes the initiative to consolidate the following five acts into one law:

- Law 54/2003 on unions
- Law 356/2001 on employers
- Law 109/1997 on the organization and functioning of the Economic and Social Council
- Law 130/1996 regarding collective labour contracts
- Law 168/1999 regarding the settlement of labour conflicts.

No doubt such consolidation will facilitate the proper implementation of the provisions of these five pieces of legislation by all users.

34. Comments below are primarily – but not exclusively – aimed at ensuring that the opportunity of this reform is seized to address problems of non-compliance raised by the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association with respect to the ratified Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the ratified Right to Organize and Collective Bargaining Convention (No. 98). The Committee of Experts most recent Observations and Direct Requests on the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize and Collective Bargaining Convention (No. 98) are annexed for ease of reference.

Title I

Chapter 1 – Definitions

35. The Office welcomes the inclusion of a chapter detailing the definition of the Social Dialogue Act key legal terms. A similar chapter could be included in the Labour Code.

36. Article 1 (8) – Definition of worker: As per the current definition, a worker is an individual who is a party to an individual labour contract or labour relation, performs work for and under the authority of a private employer and enjoys the rights stipulated by the law, as well as the provisions of the contracts or collective agreements in force. The Office anticipates that such a narrow definition will not capture the variety of emerging patterns of work organization.

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14 In addition to the Committee of Experts most recent Observations and Direct Requests on the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize and Collective Bargaining Convention (No. 98), see also the conclusions and recommendations of the Committee on Freedom of Association in cases no. 2611 and 2632.
through which services or goods are being produced in Romania. In some of these new work arrangements, it is going to be increasingly difficult to establish whether or not an employment relationship exists between the parties based on the sole criteria that the work is performed under the authority of the employer. This is particularly the case where workers perform their duties with great autonomy, where the respective rights and obligations of the parties concerned are not clear, or where there has been an attempt to disguise the employment relationship by not establishing a contract of employment. Such phenomena have grown considerably worldwide over the last decade. Against that background, the Employment Relationship Recommendation (No. 198) was adopted in 2006 to provide guidance to member States on the determination – via a listing of pertinent criteria – of the existence of such a relationship, relying on the facts pertaining to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any arrangement that may have been agreed between the parties.

37. The Office therefore recommends to include a clear reference to the principle that the determination of the employee’s status – in other words of the existence of an employment relationship – should be guided **primarily by the facts and a range of criteria** related to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any arrangement, contractual or otherwise. This could be done by inserting a new sentence after the current one that could read:

> In deciding for the purposes of article 1(8) whether a person is employed by another person under a labour contract, the Court or the Authority (as the case may be) must determine the real nature of the relationship between them based on the facts and a range of criteria related to the performance of work and the remuneration of the worker.

38. **Article 1 (3) and 1 (13) – Collective agreement**: It is proposed to merge paragraphs (3) and (13) as they deal with the same issue, namely the definition of a collective agreement.

39. **Article 1 (12) – Collective bargaining**: The Office suggests replacing the definition stated in this paragraph by the following, more comprehensive definition, drawn from the Collective Bargaining Convention (No. 154), ratified by Romania:

> “the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for:

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers’ organisation or workers' organisations.
Article 1 (22) – Parties entitled to collective bargaining: The Office suggests revising the paragraph to mention that individual employers also have the right to negotiate and conclude collective agreements with trade unions. This will bring consistency with other provisions such as article 128.1.

Title II – Workers’ organizations

Chapter 1 – General provisions

41. Article 3 (2): This provision sets a new membership requirement of 15 workers from the same enterprise in order to have the right to establish a trade union. While a minimum membership requirement is not in itself incompatible with Convention No. 87, the Committee on Freedom of Association has stated that the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed but should take into account the proportion of small enterprises in the country. The Office therefore recommends that the requirement of 15 workers to establish an enterprise level trade union be assessed against the prevalence of small businesses in the labour market with a view to ensuring that it will not hinder the establishment of unions in an important segment of enterprises.

42. Article 10: This article protects against discrimination in employment on the ground of union activity. To be fully in compliance with Convention No. 87, the ground should include union membership and the law should foresee sufficiently dissuasive sanctions.

43. Article 14 (2) a): the requirement that the minute establishing a trade union be signed by 15 founding members should be reviewed in line of the comments made above (point 41) in relation to the new paragraph 2 of article 3.

Title III – Employers’ organizations

44. Article 52: In light of the jurisprudence of the Committee on Freedom of Association, the membership requirement of “15 employers” fixed in this provision may impose an excessively high minimum number and violates the right of employers to establish organizations of their own choosing. While a minimum membership requirement is not in itself incompatible with Convention No. 87, the Committee on Freedom of Association has stated that the number should be fixed in a reasonable manner so that the establishment of organizations is not

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15 See Committee on Freedom of Association 336th Report, Case No. 2332, para. 703.
16 See Committee on Freedom of Association 327th Report, Case No. 2138, para. 539.
hindered. The Office therefore recommends that the requirement of 15 employers to establish an employers’ organization be reviewed in the consultation process so as to assess its impact on the possibility of employers to form organization of their own choosing.

Title V – Economic and Social Council

45. Article 86 (3): Article 3 Paragraph (3) stipulates the procedure of appointment of ESC members. The Office recommends adding a new provision to promote gender balance in the membership of the tripartite body. A revised paragraph could read as follows:

“In appointing their members in the Economic and Social Council, the government and the most representative employers and trade unions confederations referred to in paragraph (2) should take into consideration the objective of promoting gender balance”.

46. Article 98 (2): What the Parliament validates is the “nomination” of the President and not the President him/herself. It is therefore suggested to add the words “the nomination of” before the word “president”.

Title VI – Establishment and functioning of the social dialogue committees at the levels of central and local public administration

47. Article 114 (4): The Office suggests including in paragraph 4 that the Government’s decision will be taken “after consultation with the most representative organizations of workers and employers at the national level.”

48. Article 118 (3): The Office suggests that the “standards with a methodological character to regulate the social dialogue” – the meaning and objective of which is unclear – be developed “in consultation with the most representative organizations of workers and employers at the national level.”

Title – VII Collective bargaining

Chapter 1 – General provisions

Section 1 – Negotiation of collective agreements

49. Article 122 (1) (b) – As currently drafted, this article appears to mean that national level collective agreements in the public sector are not allowed. According to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, ratified by Romania, the determination of the bargaining level is a matter to be left to the discretion of the

See Committee on Freedom of Association 336th Report, Case No. 2332, para. 703.
parties. Consequently, the level of negotiation should not be imposed by law\textsuperscript{19} and the public service should be able to enter into a global level negotiation with the Government, e.g., on minimum wage, pension age or entitlements, working hours, etc. The Office strongly recommends revising the current provision accordingly.

50. **Article 122 (2):** Article 122, paragraph 2 provides that collective agreements negotiated by public servants shall be concluded at the undertaking level. This paragraph appears therefore to restrict collective bargaining in ministries or public institutions to the individual ministry or undertaking level. Such restriction is not in compliance with the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, ratified by Romania, and the Office recommends its deletion. It is also unclear whether this means that public sector education bargaining can only be undertaken at the school workplace.

51. **Article 123 (1):** This article provides that collective bargaining at the undertaking level is compulsory except when it has less than 21 employees. Such obligation of compulsory bargaining at the workplace level would only be in compliance with Article 4 of Convention No. 98 if it were never applied or interpreted as meaning that a final position can be imposed on one party or that it limits the right of the social partners to choose the level at which bargaining should take place. Such application or interpretation of that provision would not be in compliance with the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, ratified by Romania.

52. **Article 123 (5):** It is unclear what will happen upon the expiration of the 60 days’ bargaining.

53. **Article 126:** To ensure full compliance of this article with the Collective Bargaining Convention (No. 154), it should be read against the Convention No. 154 definition of a collective agreement. Therefore, the Office reiterates its recommendation under point 39 to amend the current definition of a collective agreement in Article 1 (12) to reflect that of Convention No. 154.

**Chapter 2 – Effects of collective agreements**

54. **Article 127:** The implementation of this article is considerably modified by the change introduced in article 143 (3). See ILO comments under point 58.

**Chapter 3 – Parties and their representation in collective bargaining in the private sector**

55. **Article 128 (2), Article 132 (3) and Article 135 (3) (4) – Trade union representativeness at enterprise level:** These three articles introduce major changes to the current regulation with

\textsuperscript{19} See the 2006 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 988
respect to the representativeness criteria to be met to engage in enterprise-level collective bargaining, most of which are not in compliance with ratified Convention No. 98, No. 154 and No. 135. At present, a trade union needs to represent one-third of the workers to be granted collective bargaining rights. As currently drafted, article 132 increases the representativeness threshold to 50% + 1 for collective bargaining at the enterprise level. This would mean that enterprise-level unions will only be able to engage in collective bargaining if they represent 50% +1 of the workers. For the minority unions not meeting this threshold, they will only be able to engage in collective bargaining, according to article 128 (2) and article 135 (4), through the participation of the members of their federation provided their enterprise union represent 30 per cent of the workers and that their federation is granted the most representative status at the branch level. When unions, at both enterprise and branch levels, do not meet these cumulative criteria, collective bargaining will take place with elected workers’ representatives only, for whom no representativeness criterion is being set. The Offices anticipates that these new threshold might be difficult to achieve and that as a result, for all intents and purposes, collective bargaining will take place primarily with workers’ representatives, undermining unions established within the enterprise. This would not be conducive to the promotion of collective bargaining in the sense of Article 4 of Convention No. 98, nor would this situation be in compliance with the Workers’ Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), both ratified by Romania, that contain explicit provisions guaranteeing that “where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned”.

Chapter 4 – Parties and their representation in collective bargaining in the public sector

56. Article 138 (3): This article stipulates that wage negotiations in the public sector shall only take place within precise limits that are not subject to negotiations. This limitation on public sector collective bargaining would be in compliance with Conventions No. 98 and No. 154, both ratified by Romania, on the very condition that unions are involved in the determination of the upper and lower limits on budgetary packages available and that a significant role is left to collective bargaining.

57. Article 141(1): This article stipulates that collective agreement shall be concluded for a period between 12 and 24 months. The Office wishes to recall that the 24 month maximum, as set out in this article for the duration of a collective agreement has been considered to be too restrictive by the ILO supervisory bodies. It is therefore recommended to give greater flexibility to the negotiating partners by providing that collective agreement can be concluded for a period ranging between one to four years, for example.

58. Article 143(3): This article requires over half of the workers to be represented through signatory workers’ organizations at the branch level for the agreement to be considered a
branch level agreement, with the effect stipulated in article 127. This is a new condition introduced by this reform and the Office anticipates that such requirement is likely to be significantly difficult to achieve and may result in impeding effective bargaining at the branch level. Therefore, the Office strongly recommends that such an important change be thoroughly discussed based on an assessment of documented current practices as well as of the potential risks and benefits of the introduction of this new condition.

Title VIII – Regulation of the modalities to settle labour disputes

Chapter 2 – Collective labour disputes

59. Articles 159, 165 (a): These articles regulate who shall represent workers in collective labour disputes at the undertaking level and who shall notify the enterprise level collective labour dispute, using the representativeness criteria discussed above under point 55. The Office reiterates therefore that, in its view, the new representativeness threshold at enterprise level might be difficult to achieve and might result, for all intents and purposes, in undermining unions established within the enterprise. This situation would not be in compliance with the Workers’ Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), both ratified by Romania, that contain explicit provisions guaranteeing that “where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned”.

60. Articles 168.2 and 169.1: These two articles appear to assign to labour inspection a conciliation function. Therefore, the Office wishes to recall the stipulations of the Labour Inspection Recommendation, 1947 (No. 81) which states (Article 8) that “The functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes”.

Chapter 4 – Mediation and arbitration

61. Article 176 (1): It is suggested to add at the end of this paragraph the followings sentence: “after consultations with the most representative organizations of workers and employers at the national level.”

Chapter 5 – The strike

62. Article 186: With respect to solidarity strikes, the Office advices that there should be not limit on them provided the initial strike is legitimate.

63. Article 187: This article regulates who shall call a strike and represent workers during a strike action, using the representativeness criteria discussed above under point 55. The Office reiterates therefore that, in its view, the new representativeness threshold at enterprise level
might be difficult to achieve and might result, for all intents and purposes, in undermining unions established within the enterprise. This situation would not be in compliance with the Workers’ Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), both ratified by Romania, that contain explicit provisions guaranteeing that “where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned”.

64. Article 195 (1): This article provides that workers on strike are obliged to be present in the undertaking where they work during normal working time. The Office wishes to draw the attention on the potential difficulties in implementing such a provision, knowing that workers on strike might be called to participate in picketing action or demonstration, just to cite a few activities related to the strike action that take place outside the enterprise.

65. Article 202: For the sake of legal security and predictability, the Office suggests that the “other categories of personnel who are prohibited to exercise this [strike] right by fundamental laws” be explicitly listed in this provision.

66. Article 205: With respect to the minimum service regulated by this provision, the Office recommends that the social partners be allowed to negotiate it, provided machinery for doing so is foreseen.

Title IX – Sanctions

67. With reference to the comments made earlier under point 25, the Office recommends that the amount of sanctions be reviewed to ensure that they are sufficiently effective, proportionate and dissuasive. While recognizing that legislative drafting style is particular to each national legal system, the Office wishes to share comparative legislative practice concerning the listing of pecuniary amounts of fines in a legal text. Setting monetary amounts in a law has drawbacks in periods of inflation, as the fines may quickly become ineffectual and no longer be of dissuasive effect. In modern legal drafting techniques, it is preferred to list fines in the form of “units” (for instance, in terms of a number of minimum salaries), which are defined in monetary terms in regulations under the Act, which can be adjusted more rapidly as needed.

Geneva, 17 January 2011

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### List of ratifications of international labour Conventions

#### Romania

**Member from 1919 to 1942 and since 1956**  
55 Conventions ratified (49 in force)

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**Denunciation**

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**Denunciation (as a result of the ratification of Convention No. 138)**

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Romania (ratification: 1958)

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee notes from the International Trade Union Confederation’s (ITUC) comments of 24 August 2010, that in recent years, certain employers have made employment conditional upon the worker agreeing not to create or join a union. In this regard, the Committee notes that the Government indicates in its reply dated 19 October 2010 that it does not have any information concerning this issue. The Committee requests the Government to discuss this situation with the most representative organizations of workers and employers and to keep it informed of any developments in this regard.

The Committee also notes that according to ITUC although anti-union activities are prohibited, the sanctions for restricting trade union activities are rarely applied in practice, the procedure for lodging a complaint appears to be too complicated and the authorities do not prioritize the trade unions’ complaints. ITUC states that the labour inspectorates do not always respect the confidentiality of the complaints and that certain employers prefer facing penalties rather than complying with the labour laws in place. The Committee finally notes that according to the ITUC, while the law provides for sanctions for obstructing union activities, those sanctions cannot be applied in practice due to loopholes in the Penal Code. The Committee also notes the comments made by Blocul National Sindical (BNS) in a communication dated 1 September 2010. The Committee requests the Government to provide its observations thereon.

Moreover, in its previous observation, the Committee had requested the Government to provide statistical information regarding the protection against acts of anti-union discrimination. The Committee takes note from the Government’s report that the Ministry of Labour, Family and Social Protection does not have statistical data concerning discrimination against trade unions. The Committee once again requests the Government to indicate in its next report, statistical information, or at least the maximum information available, on the number of cases of anti-union discrimination brought to the competent authorities, the average duration of proceedings and their outcome, as well as information concerning the nature and the outcome of the registered labour disputes that are currently being conciliated before the services of mediation and council of the Ministry of Labour, Family and Social Protection.

Articles 2 and 3. Protection against acts of interference. In its previous comments, the Committee requested information on the penalties against acts of interference which are prohibited under sections 221(2) and 235(3) of Act No. 53/2003 and Act No. 54/2003. The Committee had noted from the Government’s report that under Act No. 54/2003, the restriction of the exercise of the activities of trade union officials or the obstruction of the exercise of the right of freedom of association are punished with imprisonment from six months to two years or a fine between 2,000 Romanian new lei (RON) and RON5,000 (approximately US$600–1,600). The Committee considers that these fines might, in some cases, not be sufficiently dissuasive. The Committee requests the
Government to take the necessary measures to increase the amount of the existing sanctions so that they constitute a sufficient deterrent against all acts of anti-union discrimination.

Articles 4 and 6. Collective bargaining with public servants not engaged in the administration of the State. In its previous comments, the Committee had noted from the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2611 and 2632 that in the public budget sector which covers all public employees, including those who are not engaged in the administration of the State (e.g. teachers), the following subjects are excluded from the scope of collective bargaining: base salaries, pay increases, allowances, bonuses and other staff entitlements which are fixed by law. The Committee notes from the Government's report that the salary rights in the budget sector were settled by Law No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds which stipulates that the fixation of salaries is exclusively by law and that it cannot be negotiated.

The Committee recalls that all public servants who are not engaged in the administration of the State should enjoy guarantees provided for in Article 4 of the Convention with regard to the promotion of collective bargaining. The Committee further recalls that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. Therefore, the Committee requests the Government to indicate in its next report if Law No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds is considered as an exceptional measure within the context of an economic stabilization policy, if adequate safeguards were established in order to protect workers' living standards and if it provides for a limited length of application.

Draft labour legislations. In its previous comments, the Committee had noted that pursuant to the ILO mission, the social partners that are representative at the national level, as well as representatives of the Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue and in this regard, the Committee notes that the Government indicates that: (i) the elaboration of Act No. 168/1999 on the settlement of labour conflicts is part of the 2010 legislative schedule; (ii) Act No. 130/1996 on collective agreements and Act 54/2003 on trade unions will be debated within the Social Dialogue Commissions from the Ministry of Labour, Family and Social Protection at the latest in December 2010; and (iii) the modification of Act No. 188/1999 on the status of civil servants (with its amendments in Law No. 864/2006) was modified by Act No. 140/2010 adopted by the Parliament on 8 July 2010, but is currently under review.

The Committee has not yet received any update concerning the possible amendments of these legislative texts. It trusts that the Government will be in a position to report progress soon on the issues raised above in the framework of
the law reform currently underway and transmit a copy of the relevant legislation once adopted. The Committee encourages the Government to continue to avail itself of the technical assistance of the Office if it so wishes.
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2010/81

Romania (ratification: 1957)

The Committee notes the Government’s reply to the comments made by the International Trade Union Confederation’s (ITUC) in a communication dated 24 August 2010 and to the comments made by the General Confederation of Romanian Industrialists (UGIR 1903) in a communication dated 19 August 2010. The Committee further notes the comments made by the National Confederation of Trade Unions “Cartel Alfa” in a communication dated 6 April 2010, indicating that Law No. 144/2007 (article 41, paragraph (1), point 35) provides that presidents, vice-presidents, secretaries and treasurers of trade union federations and confederations are obliged to publicly declare their wealth and grant the power to state bodies to verify such statements. The Committee finally notes the comments made by Blocaul National Sindical (BNS) in a communication dated 1 September 2010. The Committee requests the Government to provide its observations on all these comments.

Draft labour legislation. In its previous comments, the Committee had noted that pursuant to an ILO mission, the social partners that are representative at the national level in Romania, as well as representatives of the Romanian Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue. In this regard, the Committee notes that the Government indicates that: (i) the elaboration of Act No. 168/1999 on the settlement of labour conflicts is part of the 2010 legislative schedule; (ii) Act No. 130/1996 on collective agreements and Act No. 54/2003 on trade unions will be debated within the social dialogue commissions from the Ministry of Labour, Family and Social Protection at the latest in December 2010; and (iii) the modification of Act No. 188/199 on the status of civil servants (with its amendments in Law No. 864/2006) was modified by Act No. 140/210 adopted by Parliament on 8 July 2010 but is currently under review.

In this regard, the Committee hopes that in the context of the revision of the abovementioned legislation, due account will be taken of the issues raised in its previous comments which read as follows:

- the need to amend section 62 of Act No. 168/1999 on the settlement of labour disputes (according to which the management of a production unit may submit a dispute to an arbitration commission in the event that a strike has lasted for 20 days without any agreement being reached between the parties and its continuation would affect humanitarian interests) so that compulsory arbitration may only be imposed in essential services in the strict sense of the term and for public servants exercising authority in the name of the State;

- the need for detailed information on the application of sections 55–56 of Act No. 168/1999 on the settlement of labour disputes (according to which the management of a production unit may demand the suspension of a strike, for a maximum period of 30 days, if it endangers the life or health of individuals, and an irrevocable decision may be taken in this respect by the Court of Appeal) and sections 58–60 of the same law (under which the management
can request the court to pronounce itself on the illegality of a strike and its ending by issuing an urgent ruling within three days), and to provide copies of decisions handed down under these provisions;

- the need to amend section 66(1) of Act No. 168/1999 on the Settlement of Labour Disputes — which requires that in case of strike in units of public transport one third of the unit's normal activity must be ensured — so as to allow for the minimum services in this sector to be negotiated by the social partners concerned rather than set by the legislation; in the absence of agreement between the parties, minimum services should be determined by an independent body.

The Committee trusts that the Government will be in a position to report progress in the near future on all the issues raised above in the framework of the law reform currently under way, and encourages the Government to continue to avail itself of the technical assistance of the Office if it so wishes.

The Committee is also raising other matters in a request addressed directly to the Government.
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Direct request 2010/81

**Romania** (ratification: 1957)

In its previous comments, the Committee had noted that pursuant to an ILO mission, the social partners that are representative at the national level in Romania, as well as representatives of the Romanian Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue. In this regard, the Committee notes that the Government indicates that: (i) the elaboration of Act No. 168/1999 on the settlement of labour conflicts is part of the 2010 legislative schedule; (ii) Act No. 130/1996 on collective agreements and Act No. 54/2003 on trade unions will be debated within the social dialogue commissions from the Ministry of Labour, Family and Social Protection at the latest in December 2010; and (iii) the modification of Act No. 188/1999 on the status of civil servants (with its amendments in Law No. 864/2006) was modified by Act No. 140/210 adopted by Parliament on 8 July 2010 but is currently under review.

In this respect, the Committee hopes that in the context of the revision of the abovementioned legislation, due account will be taken of its previous comments which read as follow:

- the need to amend section 13(2) of the Labour Code so that minors have the right to join unions without parental authorization as soon as they are authorized to work, i.e. in certain cases from the age of 15;

- the need to bring section 4 of Act No. 54/2003 on trade unions into line with section of Act No. 188/1999 respecting the conditions of service of public officials (which guarantees the right of association of public officials) so as to ensure that all public servants, with the possible exceptions found in Article 9 of the Convention, have the right to organize; also the need to indicate progress made in the framework of the reform of Act No. 54/2003, with regard to the recognition of the right of high-level officials to organize;

- the need to amend section 2(4) of Act No. 54/2003 on trade unions so that workers exercising more than one occupational activity have the right to establish and join more than one organization of their own choosing;

- the need to review the process of registration of trade unions and amendment to trade union by-laws so as to shorten the procedure substantially and remove the rule imposing the requirement of prior approval for amendments to internal rules; such modifications should be effective once they have been approved by the competent bodies of the trade union and upon their submission to the competent authority, as is the case for any modification to the composition of the executive bodies of a trade union (sections 14, 17(2), 19, 42–48 of Act No. 54/2003);

- the need to review section 23 of Act No. 54/2003 on the circumstances and conditions under which the assets of a union may be subject to liquidation (currently, they may not be subject to such liquidation except in the proportion necessary for the payment of debts to the state budget) so as to
ensure its conformity with the right of trade unions to organize their administration in full freedom;

- the need to limit the powers afforded to state administrative bodies under section 26(2) of Act No. 54/2003 (control over the economic and financial activity and payment of debts to the state budget) to the circumstances and conditions which would be in line with the Convention, i.e. supervision is limited to the obligation of submitting periodic financial reports or in case of serious grounds for believing that the actions of an organization are contrary to its rules or the law (e.g. in order to investigate a complaint, or if there have been allegations of embezzlement);

- the need to amend section 27 of Law No. 188/1999 as amended by Act No. 864/2006 so as to ensure that high-level civil servants are not automatically suspended when they choose to carry on their activities in the management of a trade union and that the matter will be subject to consultations with the union concerned;

- the need to amend section 28 of Act No. 188/1999 (as amended by Act No. 864/2006) so as to ensure that the payment of wages to public servants on strike is not excluded from the scope of negotiations between the parties concerned.

The Committee trusts that the Government will be in a position to report progress soon on all the issues raised above and encourages the Government to avail itself of the technical assistance of the Office if it so wishes.