

The New Labor Code: the burden rests with the employer

After much prevarication the government has finalized the new labor code and intends to make its passing a matter of Parliamentary confidence. Under the mantle of European harmonization, the draft creates a nightmarish administrative maze for the employers. The only shine of light for them: the draft ducks the most controversial issues and postpones them for unspecified later legislation.

A code for a European market economy

The code was heralded as legislation that faces the new challenges of the Romanian economy: the market system, where state-owned and private companies co-exist, and the approximation of European legislation.

- Indeed, the draft allows for the introduction of exclusivity (i.e. commitment to a single employer) and non-competition (i.e. the employee is barred from working simultaneously in a direct competitor) clauses in labor contracts - two problems that affected Romanian employers.
- The draft also introduces the concept of consultation between the employer and employee representatives, thus potentially improving the erratic labor relationships of Romanian companies.
- The draft puts much emphasis on training and apprenticeship. The right of the employee to take part in training programs is protected, and employers are required to train their employees. Unfortunately, there are no incentives stipulated in the legislation to stimulate the employer complying with this requirement. The only incentive there might be is the possibility to commit the employee to stay with the employer for a certain period (up to three years). Conversely, this is not very rewarding for the employee. Therefore, this tying up the employer is creating rigidities in the labor market, reducing the efficiency of the economy. A better solution would have been to grant financial incentives to the employer (e.g. tax deductions) for training programs: since training creates gains for the economy that are not fully recouped by the employer, would make sense for the society to pay part of the price of training.
- Another initiative with intellectual merit is the decision to eliminate the difference between the lower taxed freelance contracts (*conventii civile*) and labor contracts, thus erasing another source of disincentives. The economic consequences of this measure are however in doubt. It is a very controversial decision, and it will be discussed more in depth later in the paper.
- Finally, the draft puts much emphasis on the non-discrimination principle, thus incorporating a key tenant of European legislation.

Pig-headed approximation of the acquis

Most of the changes introduced by the new code are justified by the need to introduce in domestic legislation the European provisions. Table 1 presents the pieces of acquis which are, at least partly, to be approximated in the labor code. The exact transposition of community provisions raises questions. For exemplification, EU legislation prohibits employers requiring employees to work overtime, above certain limits (i.e. 48 hours per week). The Romanian version is stricter: it prohibits employees from working more than 48 hours per week even if they want to. There are also annual ceilings for aggregated overtime. In addition the daily working time is limited, and under no circumstances can it exceed 12 hours, what would create disturbances in certain fields of activity – e.g. when on duty, medical doctors cumulate more than 12 hours in one working day.

The observance of European legislation on working time also errs on the lenient side when we deal with employees' rights: while the European directive requires a minimum of a 4 week annual paid leave, the Romanian legislation is more generous: it provides for 5 weeks. Whether the second poorest economy among accession countries can afford to exceed the European requirement is highly problematic.

Table 1. Approximation of EU social acquis through the new labor code

EC MEASURE to be transposed	NATIONAL MEASURE to be adopted	Planned date of adoption	Planned date of coming into force
- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services	- The new draft of the Labour Code	2002	2002
- Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies	- The new draft of the Labour Code	2002	2002
- Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer	- The new draft of the Labour Code - Legislative act on the establishment of the Guarantee Fund for the protection of employees in the event of the insolvency or bankruptcy of their employer	2002 2004	2002 2004
- Council Directive 1999/70/EEC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP	- The new draft of the Labour Code	2002	2002
- Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship	- The new draft of the Labour Code - Draft law on Insurance against Accidents at Work and Occupational Diseases - Establishment of the National Fund for Insurance against Accidents at Work and Occupational Diseases	2002 2001 2002	2002 2001 2002

EC MEASURE to be transposed	NATIONAL MEASURE to be adopted	Planned date of adoption	Planned date of coming into force
- Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and ETUC	- The new draft of the Labour Code	2002	2002
- Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship	- The new draft of the Labour Code	2002	2002
- Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time	- The new draft of the Labour Code	2002	2002
- Recommendation of the Council 74/457/EEC of 22 June 1975 on the principle of 40-hour week and the principle of four weeks' annual paid holiday	- The new draft of the Labour Code	2002	2002
- Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding	- The new draft Labour Code	2002	2002

Source: Position Paper of the Romanian Government for Chapter 13 of negotiations 'Social Policy and Employment'

Trade Unions reign supreme

The trade unions are the big winners of the new labor code. Their position is much strengthened. Trade unions exist practically only in the (current or former) state companies. The code supports their creation in smaller, private companies. The least, representatives of the employees (quasi-trade union leaders) are supposed to be elected in any company with more than 20 employees. The power of the trade unions represent a real danger for the Romanian employers, what will impede on the performance of the economy and deter new investment.

- The trade unions are to be consulted by the management and have a key role in the human resources policy:
 - Negotiate the collective work contract
 - Have to be consulted on any collective redundancies (defined as 10% of the workforce or above 30 employees)
 - May intervene in individual redundancies (either justified by disciplinary or economic reasons)

In addition, the duration of the work contract is presumed as unlimited, while the contracts with term limits are the exception. This provision, coupled with cumbersome procedure for redundancies puts serious pressure on the employer, and further increases the rigidity of the labor market.

- Apart from the rigidities introduced in the human resources management, the cost itself of trade unions is not negligible, especially in small and medium size companies: the employer cannot sack a trade union representative, and pays his / her wage.
- Trade unions are also involved in the committee for safety standards; in addition, some employers are required to provide occupational disease medical services. These are additional costs for the employer – either directly, or through increased administrative load.
- Finally, the provisions on strikes are also bended against the employers: they are prohibited from responding to a strike by a lockout, and in any litigation the burden of proof is on them.

All these provisions do not bode well for the performance of Romanian companies, especially for the small and medium size ones, where the costs of compliance could be high. Attracting foreign investment could also become more difficult. Romanian trade unions have already been responsible for the collapse of a few privatization deals, and they enjoy a fearsome international reputation – as illustrated by a recent piece in a major business journal.

It is questionable whether all this was really necessary. The influence of the trade unions in the drafting of the new labor code looks rather inflated, as there are only 4 million legally registered full time employees out of the estimated 8 million Romanians who actually work, and only half of these 4 million are trade union members. Romania has thus one of the lowest unionization rates in Europe.

Schweitzer legislation

The labor code, huge as it is (300 articles), is mostly frame legislation. It leaves out lots of details for further legislation. The text explicitly mentions new forthcoming legislation on:

- The guarantee fund for wage liabilities
- The organization of the safety at work committees
- The apprenticeship and training contracts
- Trade unions
- Employers associations
- Labor conflicts
- Classification in labor groups is also part of other pieces of legislation

The new labor code is thus vacated of much of its content. While controversies are thus avoided or minimized, the code fails to provide the necessary clarification and predictability of labor relations.

Major controversies

The wage guarantee fund

Alarm bells have initially rung over the newly created reserve fund aimed to guarantee the payment of wage liabilities. The creation of the fund is part of the EU *acquis* requirements in the social field. However, even the priority given to wage liabilities over other types of liabilities (e.g. taxes, bills) was criticized. More importantly, its size comparable to the GDP

was questioned. The government has backed down in front of media criticism and the pressure of employers, and withdrew the initial draft. The new reading of the code preserves the controversial fund, but ducks the question of its size, by postponing this decision for later legislation. What is also unresolved is the question of the management of the fund, with critics arguing there is no need to create a new institution for this task.

Freelance contracts

The decision to unify the tax treatment of freelance (*conventii civile*) and full-time labor contracts by levying full social contributions on both has aroused fears that it will result either in increased unemployment or in pushing jobs into the black market. Freelance contracts are to become part-time labor contracts. Initially, even if the part-time employees were to pay the full pension contribution, this time was not counted at all towards the minimum working period that gives the entitlement to the old age pension. This provision has been corrected in the new draft.

The part-time contracts play an important role in the plans of the government. Over the past twelve years, Romania has seen a marked decline in the number of full – time employees (i.e. contributors to social insurance). Table 2 presents the evolution of the dependency rate (i.e. contribution payers per pensioner). The situation is even worse if we add up the retired farmers – in 2001 there were 6,365,000 pensioners in total, as opposed to 4,505,000 full-time employees. While this trend is correlated with a marked increase in the number of pensioners, it is also true that some of the missing employees have resorted to the less taxed freelance contracts. The Ministry of Labor relies on the taxes now to be levied on the part-time employees to help balance the pension fund budget, a major reason of concern. The problem is that the Pension Fund estimates at 1,200,000 the number of freelance contracts (of which only 100,000 currently pay the voluntary pension contribution). However, the more reliable statistic is the one coming from the Health Fund: the health contribution is mandatory for all types of labor contracts, still the Health Fund receives contributions from only 650,000 freelance employees. The gap between expectations and reality will become even larger, as the high social contribution will force a number of freelance contracts to be cancelled.

Table 2. Dependency rate

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Dependency rate (contributors / pensioners)	3,43	2,69	2,17	2,10	1,91	1,75	1,63	1,48	1,32	1,16	1,05	0,98

Insurance for labor accidents

A new special insurance fund is to be created for labor accidents, in accordance with the acquis requirements. The exact shape of this fund is also an unresolved matter. Similarly with the wage guarantee fund, it is questionable if it is worth creating a new bureaucracy to handle it. Where would the money come from is a big question. The government has confirmed it intends to reduce the social contribution by 5%. With the pension fund in chronic deficit, there will be pressure to deduct the money for work related accidents from the health contribution. The Ministry of Labor has already eyed the health insurance budget for a number of social benefits (most of them non-contributory). After the ill-judged proposal of merging the social insurance and the health insurance budgets, any new attempt to dig in the health trunk will spark a new political row.

Conclusions

The new labor code was portrayed as ushering in the Romanian economy the rules of the market, in accordance with the European legislation. Unfortunately, it fails in its task:

- The draft shows no concern for the efficient functioning of the economy – it increases the rigidity of the labor market and burdens the economic agents with direct and indirect costs;
- It favors heavy handed administrative provisions over market based incentives;
- It leaves open a high number of crucial issues, therefore promoting legislative instability and uncertainty
- The ways it picked and chose among acquis provisions, favoring those most beneficial to the trade unions, suggests a hidden agenda of promoting ties with the unions and raise more revenue for the government.