



To: Mr. Valdis Dombrovskis, Executive Vice President of the European Commission for An Economy that Works for People

Bucharest, 05 July 2021

RE: The problems of the Romanian RRP in terms of social dialogue

Dear Mr. Vice President,

We are four representative trade union centres (BNS, Cartel Alfa and CSDR are ETUC affiliates) and a representative employer's organization (UGIR) signing this letter, writing you once again in relation to the persistent actions of the Romanian government against the representative social partners and genuine, effective social dialogue.

The current governing coalition in Romania uses **the opportunity of reforms implemented through the NRRP to interfere in the legitimacy of social dialogue** in Romania by including in this process partners who are not organized and do not operate under the law 62/2011 on social dialogue.

The reform measures and investment proposals formulated by the Government in the NRRP to improve the social dialogue lead, in fact, to the weakening of the social dialogue. One of the most devastating effects of the 2011 social dialogue reform was the replacement of trade unions at grassroots level with "employee representatives". The latter don't have to go through a process of acquiring representation, as is the case with trade unions; moreover, they are operating without any rules established by a legal framework. This substitution has greatly diluted the social dialogue at the grassroots level, destroyed trade unions and rendered unsubstantiated many of the collective agreements concluded at the enterprise level.

The same formula is attempted currently for the national-level social dialogue. Please note that sectoral social dialogue has been non-functional for a very long time, therefore it is no longer a stake. The current aim is **to dilute the social dialogue by introducing in this process organizations that are not operating according to the law of social dialogue, thus weakening the power and role of organizations that are part of the social dialogue.**

Considering the way in which the NRRP was elaborated, **the Government shows not just a deficient understanding of the social dialogue, but also bad faith in approaching this field.** Although they mention social dialogue as one of the country recommendations, the Government representatives **introduced through the NRRP a series of reform measures and investment proposals that could irreparably damage social dialogue**, as it is understood according to the Treaty on the Functioning of the European Union, and according to the current legislation in Romania.

Despite the clarity of the country recommendations, European legislation, and the Romanian legislation, **the Government considers that improving the capacity of NGOs and involving unrepresentative structures of the business environment or civil society in the development and implementation of public policies are apt measures for the implementation of the country recommendation on social dialogue.**

In the current form of the NRRP the Government of Romania:

- **Introduces a dilution of social dialogue** by positioning NGOs and non-representative organizations of the business environment, as social dialogue partners.
- **It creates confusion in the recognition of social dialogue partners**, by introducing the notion of social dialogue and social partner with reference to non-governmental organizations and / or non-representative business organizations that have been established and operate under a legal framework other than the social dialogue.
- **It creates widespread confusion between civic dialogue and social dialogue** and at the same time between the social partners and civil society; moreover, it mixes social dialogue with public consultation.

In fact, the NRRP proposes the replacement - in the social dialogue - of traditional partners – the representative trade union and employers’ organizations - with NGOs, actors of the civic dialogue. On the other hand, no representativeness criteria are imposed on NGOs. The NRRP text is - intentionally or not - full of confusions and ambiguities regarding the way of structuring the social dialogue and the criteria for selection and participation of the actors who can participate in the social dialogue.

In view of the above, we call on the European Commission to reject the reform measures and investment proposals of the Romanian RRP regarding social dialogue, civic dialogue, public consultation, involvement of NGOs and non-representative business organizations in elaboration and implementation of public policies, and to ask the Romanian Government to discuss this package of measures with the representative social partners, as they are recognized at European level and in accordance with the Romanian legislation, and also to propose a set of reform measures and investment proposals able to improve the social dialogue agreed with the social partners. In fact, the ILO recommended to Romania to work on the reform measures in the field of social dialogue with a thorough involvement of the social partners. In our opinion, these recommendations should be the starting point for the implementation of the CSR.

We attach to this letter, for clarification, an extended presentation of how the reform measures proposed by the Romanian RRP affect the social dialogue.

We are looking forward to your reply and remain available for further follow-up and information.

Sincerely yours,

George Constantin **PĂUNESCU**
President
U.G.I.R.



Bogdan Iuliu **HOSSU**
President
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Dumitru **COSTIN**
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CC:

- Ms. Celine Gauer, Director General, Recovery and Resilience Task Force, European Commission*
- Mr. Joost Korte, Director General, Directorate-General for Employment, Social Affairs and Inclusion, European Commission*
- Mr. Maarten Verwey, Director General, Economic and Financial Affairs, European Commission*



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Respect for workers' rights, social dialogue and the strengthening of collective bargaining and democracy in labour relations should be the central elements for a fair recovery process.

However, the recovery process for Romania is not based on these premises. Not only are the above not seen as the foundations of recovery, but **tools such as the facility for recovery and resilience**, respectively the NRRP, are used to undermine social dialogue.

The current governing coalition in Romania uses **the opportunity of reforms implemented through the NRRP to interfere in the legitimacy of social dialogue** in Romania by including in this process partners who are not organized and do not operate under the law 62/2011 on social dialogue.

The reform measures and investment proposals formulated by the Government in the NRRP to improve the social dialogue lead, in fact, to the weakening of the social dialogue. One of the most devastating effects of the 2011 social dialogue reform was the replacement of trade unions at grassroots level with "employee representatives". The latter don't have to go through a process of acquiring representation, as is the case with trade unions; moreover, they are operating without any rules established by a legal framework. This substitution has greatly diluted the social dialogue at the grassroots level, destroyed trade unions and rendered unsubstantiated many of the collective agreements concluded at the enterprise level.

The same formula is attempted currently for the national-level social dialogue. Please note that sectoral social dialogue has been non-functional for a very long time, therefore it is no longer a stake. The current aim is to **dilute the social dialogue by introducing in this process organizations that are not operating according to the law of social dialogue**, thus **weakening the power and role of organizations that are part of the social dialogue** (trade unions and employers' organizations).

Considering the way in which the NRRP was elaborated, **the Government shows not just a deficient understanding of the social dialogue, but also bad faith in approaching this field**. Although they mention social dialogue as one of the country recommendations, the Government representatives **introduced through the NRRP a series of reform measures and investment proposals that could irreparably damage social dialogue**, as it is understood

according to the Treaty on the Functioning of the European Union, and according to the current legislation in Romania.

The NRRP abounds in confusions and substitutions of terms, between social dialogue and civic dialogue, between social dialogue and public consultations, between social partners (representative trade union and employers' organizations) and various civic entities, between business environment organizations created according to the law of social dialogue (that are representative as social partners) and various other types of business entities created to informally influence policy decisions. There is so much confusion in the terms used that by going through certain paragraphs (and if read out of context) one could think that the NRRP proposes a set of measures aimed to improve the social dialogue - but the measures are not addressed to the social partners as they are recognized by the current legislation in Romania¹, and by the Treaty on the Functioning of the European Union².

In the last 3 years, the European Commission has asked Romania, in various formulations, to improve its social dialogue, respectively that form of dialogue carried out with the social partners, in the form recognized by the Treaty on the Functioning of the European Union and by the Romanian legislation.

Thus:

- In 2018 –CSR 2 – „...To improve the functioning of social dialogue...”;
- in 2019 – CSR 3 – „...To improve the functioning of social dialogue...”;
- In 2020 - CSR 4 – *“... To improve the efficiency and quality of public administration, as well as the predictability of the decision-making process, including through an adequate involvement of the social partners ... Social dialogue works only partially, especially at sectoral level, despite the fact that a significant and continuous involvement of the social partners is essential to ensure the success of any strategy to emerge from the current crisis and recover from it. Discussions on amending the Law on Social Dialogue and revising the list of economic*

¹ Law 62/2011 on social dialogue article 1, b) uses the term 'social dialogue' as "the voluntary process by which the social partners are informed, bear consultations and negotiations in order to establish agreements on issues of common interest." According to article 1, a) the 'social partners' are "trade unions or trade union organizations, employers or employers' organizations as well as representatives of public administration authorities, which interact in the process of social dialogue", According to article 1, t) the status of social partner is 'granted to trade union or employers' organizations that have acquired representation, which allows them to represent their members within the institutionalized social dialogue.'

² The term 'social dialogue' is clearly mentioned in the primary European legislation, Article 152 of the Treaty on the Functioning of the European Union - "The Union recognizes and promotes the role of the social partners at its level, taking into account the diversity of national systems. This will facilitate the dialogue with the social partners, respecting their autonomy ". The European Commission's Communication No 448/1996 on the development of social dialogue at Community level states the following: "The Commission has a formal obligation under the Treaty on the Functioning of the European Union to develop social dialogue between employers' and workers' representatives (social partners) at European level." The same document states that "The European Commission will continue to consult non-governmental organizations on social issues. However, the Communication focuses on social dialogue involving employers' and workers' representatives, industrial relations and working conditions, for which the Commission has an explicit responsibility mentioned in the Treaty and which is based on the traditional role of social dialogue at national level."

At the Summit held on 5 March 2015, the Commission launched the initiative on a new beginning for social dialogue. At that summit, the social partners and the Commission agreed that "the new beginning for the social dialogue should aim at a more substantial involvement of the social partners in the European Semester, a stronger focus on building the capacity of the national social partners, a greater involvement of the social partners in EU policy-making and legislative processes, as well as a clearer link between the social partners' agreements and the Better Regulation Agenda". The signatory social partners are the representatives of the employers' organizations and the workers' representatives, representative at European level.

The representation of the social partners is an instrument used by the European Commission to determine the legitimacy of the participants in the European social dialogue, a social dialogue carried out in accordance with Article 154/155 of the Treaty on the Functioning of the European Union.

sectors subject to social dialogue have stagnated. Actions aimed at respecting the recommendations of the International Labour Organization presented in April 2018 are still uncertain...".

Despite the clarity of the country recommendations, European legislation, and the Romanian legislation, the Government considers that improving the capacity of NGOs and involving unrepresentative structures of the business environment or civil society in the development and implementation of public policies are apt measures for the implementation of the country recommendation on social dialogue.

In fact, the ILO recommended to Romania to work on the reform measures in the field of social dialogue with a thorough involvement of the social partners. In our opinion, these recommendations should be the starting point for the implementation of the CSR.

In the current form of the NRRP the Government of Romania:

- Introduces a dilution of social dialogue by positioning NGOs and non-representative organizations of the business environment, namely the representative trade union organizations and employers' organizations, as social dialogue partners.

"... for social dialogue, at least 50 partnerships between Local Public Authorities (LPAs) and NGOs and at least 15 functional collaboration initiatives of the non-governmental sector are targeted"³.

"..The proposed reform to improve the stability, predictability and support of the partnership in the process of formulating public policies aims on the one hand to stimulate permanent working partnerships between public administration and civil society, and on the other hand to improve the participation and active involvement of citizens in the decision-making process while increasing the degree of digitalization of the NGO sector as premises for improving the quality and predictability of the decision-making process with a positive impact on the quality of public services offered to citizens and the business environment..."⁴. „The substantiation of the draft normative acts and the analysis related to the public policy documents promoted for government approval remain limited, affecting the quality of the decision-making process. The use of the methodological framework for the preliminary impact assessment by the initiating ministers, the reduction of the administrative burden in the public sphere and at the level of citizens and business environment, as well as the involvement of the social partners in the elaboration of public policies must be strengthened."⁵

- It creates confusion in the recognition of social dialogue partners (representative trade union and employers' organizations), by introducing the notion of social dialogue and social partner with reference to non-governmental organizations and / or non-representative business organizations that have been established and operate under a legal framework other than the social dialogue. The NRRP refers several times to the structured social dialogue with the Coalition for the Development of Romania, which is not a legal entity established under the Romanian law, it does not function as a social partner and has no representation obtained under the current legislation; this entity largely represents the interests of the foreign chambers of commerce operating in Romania, including the American Chamber of Commerce.

"... by synthesizing the proposals that will appear in the dialogue with the social partners present at the Government's working meetings with the business environment (e.g., the Coalition for the Development of Romania, inter-

³ NRRP Romania - Page 35, Romanian version

⁴ NRRP Romania - page 1022, Romanian version

⁵ NRRP Romania - Page 1033, Romanian version

ministerial committees) and by operationalizing the platform "simplification.gov.ro"⁶

*"The General Secretariat of the Government has already started the process of identifying normative acts that bring a significant administrative burden to citizens or the business environment, being the subject of several joint initiatives of the government and social partners (Coalition for the Development of Romania, interministerial committees like DEBIRO, E-GOV, etc) .."*⁷

*"A mechanism relevant to the quality of regulations regarding the business environment, used in recent years was the structured dialogue between the Prime Minister, ministers and the business environment represented by the Coalition for Development of Romania which brings together business associations representing about 70% of GDP created privately in Romania."*⁸

- **It creates widespread confusion between civic dialogue and social dialogue** and at the same time between the social partners and civil society; moreover, it mixes social dialogue with public consultation, such as:

*"..., we will proceed to consult all representative civil society entities (representative pensioners associations, trade unions, and employers' organizations) etc."*⁹

*"For projects related to the awareness of the importance of social dialogue partners in the formulation and implementation of public policies as well as for training activities, for this purpose, no state aid is considered for employers or trade unions / NGOs, as for these projects there are not implications related to an economic activity."*¹⁰

- **Replaces social dialogue with public consultation.** Although the country recommendation refers to the involvement of the social partners in the decision-making process, all actions targeted by the NRRP, both at reform and investment level, refer to the public consultation process and to the preparation and support of non-governmental organizations, and those representing the business environment (other than those recognized representative as social partner) to increase their capacity to engage in this process.

*"Strengthening the administrative capacity is a key aspect of the social consultation process, with reduced capacity at the level of social actors being negatively reflected in how bipartite and tripartite bodies manage to defend the interests of those they represent in partnership and consultation structures. Thus, a grant scheme is proposed to provide, on the one hand, support for improving partnerships and pacts in favour of reforms that secure a speedy recovery and resilience to post-pandemic threats, and, on the other hand, the possibility of improving competences of the social partners for an active participation in the process of formulation, implementation, and monitoring of governmental public policies."*¹¹

Grant schemes are granted in the NRRP only to NGOs for their digitization and training the staff of these entities.

In fact, the NRRP proposes the replacement - in the social dialogue - of traditional partners – the representative trade union and employers' organizations - with NGOs, actors of the civic dialogue. On the other hand, no representativeness criteria are imposed on NGOs. The NRRP text is - intentionally or not - full of confusions and ambiguities regarding the

⁶ NRRP Romania - Page 1037, Romanian version

⁷ NRRP Romania - Page 1033, Romanian version

⁸ NRRP Romania - Page 1039, Romanian version

⁹ NRRP Romania - Page 601, Romanian version

¹⁰ NRRP Romania - Page 1049, Romanian version

¹¹ NRRP Romania - Page 1038, Romanian version

way of structuring the social dialogue and the criteria for selection and participation of the actors who can participate in the social dialogue.

One of the very few reform measures mentioned in the NRRP that really aims at social dialogue is, in fact, **not about strengthening the capacity of the real social partners (representative trade union and employers' organizations), but rather about introducing intervention mechanisms in the autonomy of the social partners.** Through the NRRP, the current Government questions the representativeness of the social partners at national level, (representativeness obtained based on a court decision! Thus, it is specified that: *"... a digital solution is more than necessary considering digital solutions that offer the possibility to make available to those who are interested, in open format, the lists of members for each federation or confederation, so that any possible overlap or error can be easily identified. This approach would eliminate any suspicion and strengthen the employers' confidence, allowing unions to determine their counterparts at sectoral and national level. This certainty comes to solve two problems: the elimination of unnecessary disputes between employers and the clarification of their legitimacy in relation to the economic sectors they represent and, respectively, to the other social partners."*¹²

If in the case of NGOs but also of business organizations the Government is not interested in their representativeness, but when it comes to the representative social partners, the current Government has doubts about those whom they represent. Consequently, it aims to digitize the files of representation submitted by the social partners to a legal court, **more specifically, the lists of union members for each organization - "to make available to those who are interested, in open format, the lists of members for each federation or confederation"**. The measure proposed by the NRRP is, in fact, a forced digitalization by making the recognition of trade union rights conditional on the registration of trade union members in the digital platform. The direct and immediate effect would be that the proposed solution will directly affect the right of workers to free association, and the right of trade unions organizations to autonomy in terms of organising and operation.

This is a violation of the principle of autonomy of the social partners and the principle of freedom of association¹³. At the same time, it creates essential discrimination between categories of workers on the basis of access or lack of it to digitization.

By conditioning the recognition of trade union membership and of the effects of membership in the union, based on the registration of a worker in a digital platform -given that less than 30% of workers in Romania have at least basic digital skills - is equivalent to denying the right to free trade union association for over 70% of the employed population of Romania. It should also be mentioned that, despite the requests sent to the Romanian Government, taking into account the commitments assumed through the European Skills Agenda 2020, the NRRP does not include investments that would contribute to the significant increase of the number of people with at least basic digital skills.

At the same time, we appreciate that the above conditionalities, as imposed by the NRRP, **seriously interfere with the autonomy of the organization of the trade union structures**, under the pretext of removing possible overlaps in documents and providing solutions for simplification.

¹² NRRP Romania - Page 1038, Romanian version

¹³ Article 152 of the Treaty on the Functioning of the European Union enshrines and recognizes on the one hand the role of the social partners in consulting them in the social dialogue, and on the other hand the observance of the autonomy of organization and action of the social partners.

Article 156 of the Treaty on the Functioning of the European Union guarantees to the workers the right to free association and to collective bargaining unconditionally.

Article 5 of the revised European Social Charter, ratified by Romania, also guarantees to the workers the freedom to set up organizations to represent them in collective bargaining and social dialogue.

Article 40 of the Romanian Constitution guarantees to all citizens the right to free association, including trade union association.

It should also be noted that the NRRP includes investments in the digitization of the activity only in the case of NGOs, the social partners not having access to this type of grants. Although we support the digitalisation process and are constantly campaigning for the increase of digitalisation among organizations and trade union members, such a process cannot be - by itself - a condition to restrict free trade union affiliation, provided that a significant share of trade union members do not yet have access to digitalisation and, in the same way, it cannot restrict the freedom of association with regard to the full autonomy of the organization which is guaranteed to trade unions.

Increasing the level of digitization remains an option and can be promoted and encouraged as a principle to be achieved in the next period, but the solution proposed by NRRP is completely disproportionate, especially by reference to the degree of digitization existing today in Romania.

In addition, another effect of the proposed measure would be that the personal data of trade union members will be affected as the intention is to make these data available to any interested person, thus in breach of the General Regulation on the protection of personal data.