

Turning crisis into opportunity: innovation within the Romanian trade union movement

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Introduction

This chapter¹ examines change and continuity in the activities of Romanian trade unions following the 2008 economic crisis. It argues that the shift in unions' strategies from focusing predominantly on their external legitimacy to actions geared towards increasing their internal legitimacy was the most important change after 2008. The findings show that the downgrading of employment rights has amplified the internal and external challenges that unions faced, pushing them to search for innovative solutions to justify their own existence and to defend employees' terms and conditions of work. In the best case scenarios, the frontal attack on fundamental union rights was utilised as an opportunity for union innovation.

The findings are based on primary data² on unions' initiatives adopted after 2008 by a confederation (Blocul Național Sindical, BNS), a federation (Federația Sindicatelor din Comerț, FSC) and a local organisation (Sindicatul IT Timișoara, SITT). These unions were selected as best case scenarios with regard to their responses to the challenges faced after 2008. In all three cases, unions' actions were innovative in respect to organisation (for example, leadership change), strategy (for example, shift from collective bargaining to servicing members at the national level) and the choice of target group (for example, organising atypical workers). These developments suggest that the three dimensions identified by Bernaciak and Kahancová in the Introduction to this volume complement each other. Moreover, in contrast to the general trend in line with which employees on standard employment contracts tend to represent the bulk of union members (Heery 2009), the case of SITT shows that atypical (outsourced) workers can also form the predominant group of union members which, in turn, can trigger the unionisation of employees on standard employment contracts.

This chapter has three main sections. First, it introduces the Romanian unions, arguing that their reliance on statutory rights made them vulnerable to external challenges such as the 2008 economic crisis. Second, it discusses the empirical findings concerning unions' innovative actions in the recent context of a deregulated labour market. At

1. The findings presented in this chapter are based on primary data collected for the EU project 'The rise of the dual labour market: fighting precarious employment in the new member states through industrial relations' (PRECARIR) (VS/2014/0534), funded by the European Commission and Dublin City University. We want to thank other contributors to this book, particularly Magdalena Bernaciak, for their very helpful feedback on preliminary versions of this chapter.
2. A total of 20 interviews conducted in 2015: 11 respondents were senior union officials; seven respondents were representatives of employer associations; and two were senior government officials.

national level, it examines two novel initiatives adopted by BNS aimed at strengthening its legitimacy: the ‘smart trade union’ initiative illustrates a shift in the confederation’s focus from collective bargaining to servicing, while the civic initiative is an example of involving union rank-and-file members in developing legislative projects. At sectoral level, the focus is on FSC’s organising campaign in the retail sector launched to ensure the union’s survival. At company level, it examines how a global outsourcing plan has triggered the establishment of the first union in the IT sector in Romania. Finally, the discussion and conclusion section shows that, in these best case scenarios, the crisis was used by labour organisations as an opportunity to employ innovative actions that boosted unions’ internal legitimacy.

1. The context of trade union actions

Bohle and Greskovits (2012) argue that Romania represents a special type of neoliberal society with weak state institutions, high collective bargaining centralisation and coverage and a relatively high mobilisation power of trade unions. The labour laws adopted during the 1990s supported the development of bipartite and tripartite consultation and negotiation between trade unions, employers and the government. The statutory *erga omnes* extension of collective agreements³ resulted in almost 100 per cent collective bargaining coverage before 2010 (Trif 2016a). The restructuring of companies led to a massive decline in union membership (union density fell from 90 per cent at the beginning of the 1990s to around 33 per cent in 2008), but union density remained one of the highest in the region (Trif 2013). Also, the number of days not worked per thousand workers per annum in Romania was approximately twice the Central and Eastern European (CEE) average during the 1990s (Crowley 2004).

The support lent by Romanian labour organisations to gradual economic reforms and their links to political parties enabled them to play a key role in establishing one of the most favourable legal frameworks for employees in the region before 2008 (Trif 2008). The Romanian unions became one of the strongest in CEE by preserving their political role, but the interplay between the political system and unions led to serious challenges for the labour movement. Unions had weak internal legitimacy as their role and influence was primarily determined by their statutory rights, gained by union confederations’ involvement in national-level decision-making via lobbying, their participation in tripartite fora and union leaders’ involvement in politics.⁴ Confederations played a key role in the establishment of a comprehensive legal framework for industrial relations (Hayter *et al.* 2013; Trif 2013), but their involvement in socio-political decision-making (for example, the Economic and Social Council – the national tripartite body – which had to be consulted and could sanction any bills concerning economic and social policies), made them co-responsible for the economic problems that followed. Unions were perceived as ineffective at improving workers’ living standards (Kideckel 2001) in the context of wage earnings in Romania being amongst the lowest in the EU. Furthermore,

3. This refers to a collective agreement being generally binding within its field of application, covering all employees and employers, including those which are not members of the parties to the agreement.

4. A former union president, Victor Ciorbea, served as Romania’s prime minister between 1996 and 1999.

the discrepancy between unions' declared mission and their actual activities, particularly 'the lavish and corrupt lives of some leaders compared to the meagre lives of workers' (Kideckel 2001: 113) and the involvement of union leaders in politics in the 1990s, broke workers' trust in unions and their leaders (Korkut 2006). Apart from unions being the only societal institution that survived the fall of the communist regime, they preserved a reliance on external sources of legitimacy rather than on membership support (Kideckel 2001; Korkut 2006), which resulted in weak internal legitimacy.

Similar to other CEE countries, company-level unions constitute the basic unit of the Romanian union movement as employees join and pay membership fees to those organisations (Trif *et al.* 2016). Two or more company-level unions can create a federation, while two or more federations can set up a confederation. This organisational structure resulted in the fragmentation of trade unions, but their statutory rights before 2011 led to a degree of functional integration (Trif 2016b). Vertical integration was supported by the favourability principle, in line with which lower-level collective agreements could only improve on the conditions of employment set at higher levels. Furthermore, legal provisions entitled company-level unions and sectoral federations to negotiate collective agreements if they were affiliated to a representative union at a higher level in the union hierarchy. At the same time, the *erga omnes* principle supported horizontal integration within the union movement as the law required all representative unions at a specific level to negotiate a single collective agreement covering all employees in the bargaining unit. Multiple unions often operated at each level, although the latter provision forced all unions operating within a bargaining unit to cooperate during the collective bargaining process.

Inter-union cooperation was further facilitated by the lack of a clear division between the old reformed unions and the newly established organisations in Romania. In 1993, the reformed and the largest of the new union organisations merged to create the National Free Trade Union Confederation of Romania – Frația (CNSLR-Frația), the country's largest confederation. There are four other important union confederations: the National Trade Union Block (BNS); the National Democratic Trade Union Confederation of Romania (CSDR), created in 1994 as the result of a split from CNSLR-Frația; the National Trade Union Confederation Cartel Alfa; and Meridian. Despite a widely-publicised proposed merger of three of these five confederations in 2007, namely CNSLR-Frația, BNS and Meridian, did not eventually take place (Trif 2008). Since 2011, there have been further attempts by BNS to merge with CNSLR-Frația and Cartel Alfa, but these plans were abandoned by 2013 (Fulton 2013).

The reliance of unions on their statutory rights made them vulnerable to external challenges such as political and economic cycles. Romania was severely affected by the recent international financial crisis (GDP declined by 6.6 per cent in 2009, followed by a further reduction of 1.6 per cent in 2010), and thus it borrowed EUR 20 billion from the Troika consisting of the European Union (EU), the International Monetary Fund (IMF) and the European Central Bank (Trif 2016a). The conditions attached to the international financial assistance agreement supported Boc's centre-right government in undermining unions' fundamental rights, namely the freedom of association of workers and the rights to bargain collectively and to strike (Trif 2016b).

In 2011, the government downgraded employee collective rights through the adoption of the so-called Social Dialogue Act (Law 62/2011) and their individual rights through amendments to the Labour Code (Trif 2013).

The five national confederations tried to use their political role to contest these reforms. They signed a cooperation protocol with the opposition, in which the latter promised to reverse the employment regulations introduced by the centre-right coalition in exchange for union support in the 2012 elections. When the centre-left opposition came into power in 2012, it tried to change the Social Dialogue Act provisions. The Troika strongly opposed that bill, however, stating that ‘...we strongly urge the authorities to limit any amendments to Law 62/2011 to revisions necessary to bring the law into compliance with core ILO conventions’ (European Commission and IMF 2012: 1).

To conclude, unions’ political role and their reliance on statutory rights proved inadequate to deal with recent political and economic upheavals. The late 2000s crisis represented an opportunity for the centre-right government to curb union power by radically downgrading collective and individual employment rights. The next section focuses on the innovative actions undertaken in this difficult context by unions at national, sectoral and company levels.

2. Innovative union actions: examples of best practices

In line with the conceptualisation developed by Bernaciak and Kahancová in the Introduction to this volume, the term ‘innovative union actions’ refers to deliberate activities that are either different from those used in the past or employed to address new challenges. We accordingly focus on three dimensions of innovative union actions, namely: (1) changes regarding unions’ organisational structure; (2) unions’ choice of strategies vis-à-vis employers and/or the government; and (3) the selection of a target group for their actions. We examine unions’ initiatives at different levels.

2.1 National-level developments: counteracting old and new challenges

The most dramatic changes in unions’ role and influence as a result of the labour law amendments in 2011 occurred at the national level. First, prior to 2011, the five union confederations and their employer counterparts negotiated each year a national collective agreement that stipulated minimum rights and obligations for the entire labour force. However, the SDA prohibited cross-sectoral collective bargaining in 2011. Second, the role of union (and employer) confederations in national tripartite institutions was diminished. The government ignored virtually all the suggestions agreed by the institutions concerning the substantive and procedural austerity measures adopted since 2009, and so unions withdrew from those bodies in 2011 (Trif 2016b). A new National Tripartite Council was established under the SDA provisions, but it was not operational until 2016. Finally, the SDA hindered the organisation of nationwide protests by prohibiting unions from getting involved in industrial action if their demands required a legal solution to resolve the conflict. In practice, this provision

outlaws protests demanding amendments to the law. Thus, apart from losing their role in collective bargaining, the use of political instruments by union confederations was severely hampered by the new law.

Union confederations were deprived of their most important instruments of action after 2008, and thus their legitimacy declined a great deal. In addition to their failure to influence the austerity measures introduced unilaterally by the government (Stoiciu 2012), some union leaders were accused of corruption. There had been an organised campaign to intimidate and discredit the leaders of the five main confederations launched by Boc's centre-right government (Varga and Freyberg-Inan 2015; Trif 2013), but some union leaders did appear to be corrupt. Petcu, the former leader of CNSLR-Frația, was arrested in 2011 for allegedly accepting a bribe from a businessman over the building of an education centre (Trif 2013). All in all, media reports about the alleged corruption of union leaders damaged the organisations' legitimacy and led to the decline in union membership: CNSLR-Frația, for instance, lost more than half of its members between 2008 and 2014 (Stoiciu 2016). Overall, union density declined from 33 per cent in 2008 to around 20 per cent in 2015 (Guga and Constantin 2015).

Nevertheless, the falling membership trend was also affected by other factors, such as the 2011 removal of the legal obligation of employers to collect union membership fees at company level. Company-level unions found it more difficult to collect membership fees and so they have also become more reluctant to provide confederations with the agreed share of membership fees (Trif 2016a). Government actions in downgrading collective rights and intimidating union leaders have intensified the loss of trust in the leaders of the confederations which, in turn, led to the vertical fragmentation of the union movement.

The recent legal changes also accelerated the horizontal fragmentation of Romanian labour organisations. Before 2011, the five confederations used to work together using political instruments: they signed a cooperation protocol with the centre-left opposition; sought to influence government decision via tripartite bodies; and mobilised workers to protest against labour law changes (Trif 2013). However, the limited effects of their political actions, combined with the prohibition of cross-sectoral collective bargaining and corruption allegations targeting confederation leaders, undermined inter-union cooperation at national level.

In 2011, the interplay between the external and internal challenges put the survival of trade union confederations at stake. In this dire context, where traditional political and collective bargaining instruments failed to defend employee interests, BNS utilised a new political instrument, namely a civil society initiative, to amend the new Labour Code regulations. BNS sought to use a provision of the Romanian constitution that allows citizens to initiate a bill if it is supported by at least 100 000 citizens with voting rights. Despite having more than 200 000 union members and inviting the other four confederations to support the scheme, BNS was unable to gather 100 000 signatures in 2012 (interview BNS 2015). Nevertheless, the confederation secured the required level of support in a second attempt to introduce this bill in 2014.

The 2014 campaign was the first initiative by a Romanian union confederation to invite individual citizens and rank-and-file members, as well as lower-level union officials, to have a direct input into a draft bill. Apart from gathering signatures, BNS consulted its supporters on the draft law and incorporated some of their suggestions in its proposal (interview BNS 2015). The democratic process used to gain support for the civil legal initiative helped BNS tackle key challenges to its legitimacy. First, union members recognised that, rather than furthering leaders' interests, the confederation genuinely sought to improve employment conditions, which helped rebuild rank-and-file members' trust. Second, the campaign improved bottom-up communications within the organisation and boosted internal democracy which, in turn, enhanced vertical integration within the confederation. Finally, it increased the union's external legitimacy vis-à-vis the government; it made it more difficult for the cabinet to ignore the amendment proposal as it was supported by a large number of citizens. The bill was passed by the Senate in 2015 and approved by the relevant committees of the Chamber of Deputies in 2016, although it still needs to be debated in a plenary session of the Chamber of Deputies.

The civil initiative can be regarded as a continuation in terms of the political role of union confederations, but it was the first time this instrument had been used to amend labour legislation. It also marks a radical departure from earlier union initiatives insofar as it relied on high levels of rank-and-file involvement. Hence, this democratic process is a novel union strategy in the Romanian context. Nevertheless, it seems that additional measures are needed to reverse the substantial decline in unions' role and influence since 2008.⁵ Furthermore, in many highly unionised large companies, local officials still use their position for personal gain, according to a national union official:

'The large majority of local leaders (not all of them) act like they are owners of the company-level unions. Very few of them consult their members and involve them in the decisions taken. With these 'ownership rights' over the union organisation, union leaders use their position to get involved in local politics, make money and get high power status in the local community' (interview BNS 2015).

Attempts to tackle such behaviour further weaken labour organisations: when federations or confederations try to remedy the situation, company-level unions threaten withdrawal from higher-level organisations which may see the latter lose financial resources and face threats to their representative status.

In order to tackle both internal and external challenges, BNS decided to shift its focus away from collective bargaining to providing individual services to its members. It developed a virtual interface to improve communication with its members and the interconnections between its internal structures. The platform, launched in August 2015, was part of an initiative called 'smart trade union'. This required affiliated organisations and individual members to register on an electronic platform in order to gain quick access to a wide range of services, varying from assistance with collective bargaining for

5. BNS's membership dropped from 375 000 in 2008 to 253 227 in 2014 (Stoiciu 2016).

affiliated unions, to bargaining and occupational health and safety, as well as financial and legal advice. Considering that some members may not have internet or telephone access, this initiative provided three options for members to contact unions, namely: (1) to visit territorial or company-level unions operating in their geographical proximity; (2) to phone a specialised call centre that registers their queries and directs them to a dedicated team of experts in their specific area; and (3) to use an online platform to register their queries. In addition, the platform allows BNS to provide information and particular services to potential members, such as students, the unemployed and migrants working in Romania. If they register as associated members, they get free access to selected individual services such as support in finding a job and/or access to training schemes. The virtual service platform has been launched relatively recently and it is too early yet to assess its outcomes.

This initiative is innovative on all three of the dimensions identified by Bernaciak and Kahancová in the Introduction. First, BNS has changed its strategy from partnership with the government and employer associations via collective bargaining and tripartite negotiations to servicing its members. Second, its target group was broadened to include those who could potentially become union members. In this regard, the platform also allows the reaching of under-represented groups, including young workers, teleworkers and other workers on atypical contracts. It also facilitates support for workers wishing to change jobs either by moving to another company in Romania or abroad. Finally, as the ‘smart trade union’ concept seeks to provide transparency concerning all the actions taken by unions at each organisational level, it may reduce distrust and division between the different echelons within BNS. For instance, as the e-platform stores evidence on the registered number of members in company-level unions, it could eliminate the suspicions of federations and BNS concerning the under-reporting of membership by company-level unions. This initiative does not modify the union’s organisational structure, but it is likely to improve its functioning. Thus it adds a new, functional dimension to Bernaciak and Kahancová’s conceptualisation of organisational innovation.

2.2 Sectoral level: organising workers in multinational corporations in the retail sector

The 2011 legislative changes also had a negative impact on sectoral trade unions. The new legal provisions did not abolish sectoral collective bargaining, but trade unions were de facto unable to negotiate new sectoral collective agreements in the private sector after 2011 (Trif 2016a; Stoiciu 2016). Previously, the social partners that fulfilled the representativeness criteria (or were affiliated to a representative confederation) could negotiate collective agreements that covered all employees and employers in a particular industry sector. The social partners had agreed on 32 branches that were eligible for collective bargaining, out of which 20 had collective agreements in 2011 (Trif 2013). The new law redefined 29 industrial sectors eligible for collective bargaining according to NACE activity codes. It obliged the social partners to restructure and re-register with local courts and prove that they were representative in the re-defined sectors. Trade

union federations were keen to become representative in the re-defined sectors to be able to bargain collectively on behalf of their members, but there was a disincentive for employer associations to become representative. This was because sectoral agreements ceased to be generally applicable in 2011; they apply only to employers who are members of the employer organisations that signed the collective agreement although, where employer organisations cover more than 50 per cent of the labour force in the sector, the social partners could ask for an extension of the collective agreement (Trif 2016a). According to recent data, only seven⁶ out of 29 economic sectors have both representative trade unions and employer organisations (Stoiciu 2016). Thus, many union federations lost their bargaining function as they had no counterparts with which to negotiate sectoral collective agreements after 2011.

Furthermore, the 2011 legal changes made it very difficult for some union federations to fulfil the representativeness criteria. Prior to 2011, federations could obtain representative status either by having 7 per cent union density in a particular sector or by being affiliated to a representative confederation. The latter option was abolished in 2011, after which date the federations had to meet the membership threshold in order to be eligible to negotiate a sectoral collective agreement. Federations that did not fulfil this condition had two options: they could either merge with other unions in the sector – if these existed (Guga and Constantin 2015) – or they could seek to organise non-unionised workers in the sector. In 2015, there were eight sectors without representative union federations, namely retail, textiles, wood processing, postal services, industrial and civil construction, tourism, assistance and consulting services, and sports activities (Stoiciu 2016).

The Federation of Commerce Unions (FSC) was one of the organisations that lost its representative status in 2011; prior to the reform, it had derived this status from being affiliated to a representative confederation. Despite being the only federation operating in the retail sector, FSC membership represented less than 1 per cent of the sectoral labour force (interview FSC 2015). It lost the majority of its members in the 1990s, when most retail companies were privatised; similar to other countries, the majority of retail employees work either in small firms or in multinational companies (MNCs), both of which are very difficult to unionise (Mrozowicki *et al.* 2013). In 2015, the retail sector had 730 000 employees, out of which approximately 100 000 worked in large MNCs while the remaining 86 per cent were employed in small and medium enterprises (Stoiciu 2016). In effect, there were very few unionised companies in the retail sector.

In order to ensure its survival, FSC used external resources and implemented internal structural changes. In the 1990s, it had taken out a loan of EUR 100 000 from Danish unions. The declared purpose of the loan was to be used to organise workers, but it appears that it was primarily used to buy an office in a central location in Bucharest (interview FSC 2015). FSC did not manage to increase its membership so it was unable to pay back the loan. In this critical context, the union changed its leadership during an extraordinary congress in 2001. The new team sold the city centre office and bought

6. The sectors are: agriculture; energy and gas; food industry; furniture industry; car manufacturing and metalworking; public utilities and waste management; and transportation.

a far cheaper one on the outskirts. It subsequently planned to use the money received from selling the central office to pay back the loan and launch an organising campaign.

The FSC's organising campaign took place in three stages. In the first phase, which lasted between 2003 and 2005, the union sought to develop 20 territorial (county) organisations to create a critical mass of union structures and activists in order to reach the threshold needed to become representative at the sectoral level. The territorial organisations were expected to recruit members in companies operating in their respective areas. In the context of high labour turnover, their initial attempts to organise retail workers were not successful as many recruited workers, including those who were trained to recruit others, left the retail sector. Also, one respondent involved in this campaign indicated that the new members were afraid to reveal their union membership because they were fearful of losing their jobs (interview FSC 2015). None of the new union structures survived, but the organising team did train around 500 union activists during the first phase, some of whom subsequently helped organise workers. Furthermore, the Danish unions decided not to take back the loan given to FSC when it became clear that the new leadership was using the resource to organise workers.

Despite the failure to set up territorial structures, the experience gained from the first attempt to organise workers played a key role in preparing and implementing the second phase of the organising campaign. Between 2006 and 2009, FSC focused on organising workers in MNCs. FSC is affiliated to UNI Global, and the union's leadership team asked other affiliates of the confederation for advice and support in recruiting this group of employees.

First, the German trade union ver.di provided support in the form of training and access to relevant senior managers in German companies operating in Romania, which helped FSC unionise workers in several retail chains such as Metro, Real and Selgros. By 2008, up to one-third of the labour force in these three MNCs was unionised and unions successfully negotiated company-level collective agreements that covered all employees.

Second, FSC gained the assistance of UNI Global to organise workers at the Carrefour chain. The request for UNI Global support for trade union recognition came when a local initiative to organise Carrefour workers resulted in the harassment of the union members and their leader (interview FSC 2015). UNI Global put pressure on the Carrefour management to allow FSC to unionise workers in their Romanian subsidiaries as freedom of association was covered by the International Framework Agreement signed by the company. Following discussions between a member of the European Works Council (EWC) and senior human resource managers, a decision was taken to allow the chain's unionisation and to reinstate the company-level union activists who had been fired. The first company-level collective agreement in Carrefour was subsequently concluded in 2009. Despite its initial resistance, Carrefour has developed a workplace partnership with the company-level union that involves regular monthly meetings between the two parties. According to the management, these regular consultations enable the company to resolve problems at an early stage. This, in turn,

reduces voluntary labour turnover that is particularly challenging in the context of high emigration (interview Senior Manager Carrefour 2015). After Carrefour, FSC managed to organise workers in other MNCs, such as Billa and Penny, but union density in those chains was rather low by the end of 2010.

The third phase of the organising campaign commenced with FSC's annual congress in 2011, which approved two important changes. First, FSC switched its affiliation from CNSLR-Frația, whose leader was associated with corruption allegations, to Cartel Alfa. Second, FSC re-focused its organising efforts on MNCs that had over 20 per cent union density in order to get 'real representativeness', namely, over 50 per cent density (interview FSC 2015). This latter change was triggered by the 2011 legal reforms which increased the representativeness threshold from 33 per cent to at least 50 per cent at company level and abolished the provision that allowed company-level unions to become representative by being affiliated to a representative federation. Following the implementation of the Social Dialogue Act, several company-level retail unions lost their representative status. FSC's consolidation efforts were successful in four MNCs: by 2012, more than 50 per cent of the labour force was unionised at Carrefour, Selgros, Metro and Real which enabled company-level unions, with the support of FSC, to negotiate collective agreements.

The long-term organising campaign staged by FSC was innovative on all three dimensions identified by Bernaciak and Kahancová in the Introduction. First, the top-down approach to recruitment – that is, the strategy of organising workers at the company level by a sectoral federation – is rather novel in Romania given that, as a rule, federations associate already established unions (Guga and Constantin 2015). In the case of FSC, the federation's activists visited the outlets of retailers and held discussions with individual workers during their lunch or cigarette breaks and at the end of their working day in order to convince them to join unions. According to a union official, this was a very difficult period: 'We worked very hard for the three years, sleeping in poor conditions, in a van or in hostels – wherever we could find very cheap accommodation – and we ate canned food' (interview FSC 2015). Despite international support in the form of training and access to relevant management representatives in MNC hierarchies, the unionising process was, in a way, similar to developments in the early stages of the creation of the union movement in Western Europe. Second, the organisational changes implemented by FSC, in particular the leadership change and the switch of confederal affiliation, have not been very common in Romania. According to senior managers at Selgros and Carrefour, the FSC leadership elected in 2001 played a pivotal role in convincing them of the potential benefits of working with unions. Finally, FSC targeted workers in MNCs who are often very difficult to unionise, particularly in the service sector.

Apart from organising workers and negotiating company-level collective agreements, FSC negotiated a sectoral collective agreement in 2010 that included the most favourable provisions of company collective agreements. Some MNCs were unhappy with this sectoral agreement and contested the legitimacy of the employer organisation that had signed it, and they decided to create a new employer association in 2011 to enable them

to negotiate sectoral collective agreements. In a way, then, the increase in the power of trade unions led to the creation of a new employer association in the retail sector.

2.3 Company-level developments: organising IT workers

The 2011 legal changes undermined fundamental union rights to organise workers and to bargain collectively at the company level (Trif 2016b). First, the SDA requires a minimum of 15 workers from the same company to form a union, whereas previously 15 employees working in the same profession could set up an organisation. In effect, the SDA makes it impossible for unions to organise workers and bargain collectively at over 90 per cent of Romanian companies as they have fewer than 15 employees (Barbuceanu 2012). Secondly, the SDA increases the required membership threshold from one-third to at least one-half of the total company labour force and forbids company-level unions from obtaining representativeness through affiliation to representative federations. Consequently, the total number of collective agreements declined by 25 per cent between 2008 and 2013 (Trif 2016a). Furthermore, representative unions negotiated just 15 per cent of the total number of collective agreements in 2015 (the others were signed by other employee representatives); whereas, prior to 2011, they negotiated all collective agreements (Guga and Constantin 2015).

In this context, employers faced little resistance to the adoption of cost-cutting measures to tackle the economic downturn, such as salary cuts in the public sector and massive lay-offs in the private sector (Trif 2013). Between 2008 and 2011, the total number of employees was reduced by 13 per cent; over 85 per cent of these lay-offs were in the private sector, mostly in the manufacturing, construction and retail sectors (Stoiciu 2012). Moreover, the Labour Code changes of 2011 allowed employers to use different forms of temporary employment and outsourcing to reduce labour costs (Trif 2016a). Under these difficult circumstances, many company-level unions struggled to survive and justify their *raison d'être* to their members. Nevertheless, the cost-cutting measures also led to a greater need for workers to organise in order to deal with these new challenges. For instance, the plan to outsource almost one-third of the labour force at Alcatel-Lucent Timișoara (ALU), the Romanian branch of the French telecommunications multinational company, triggered the unionisation of IT workers in several companies.

The IT sector had not been heavily affected by the recession and IT employees were relatively well-paid, but there was an increase in job insecurity and labour market dualisation as a result of efforts to reduce costs in the sector. In 2009, a French member of ALU's EWC found out by chance that the company planned to outsource 500 (out of 1700) of its Romanian employees involved in maintenance services to Wipro Technologies Romania (hereafter, Wipro),⁷ a local branch of an Indian IT services corporation. It was estimated that the outsourcing would reduce labour costs by 25 to 30 per cent (Mihai 2010). The outsourcing plan was part of a global Maintenance

7. The EWC member found a copy of a memorandum containing the outsourcing plan for the Romanian branch lying forgotten on a photocopier.

Services Agreement between ALU and Wipro, in line with which Wipro was to take over specific maintenance and engineering activities in Romania, India, Germany, France, China, Morocco and Egypt. The French EWC member subsequently passed on this information to a Romanian colleague with whom he was working on a separate project (interview SITT 2015).⁸ He was keen to inform his Romanian colleagues as he had seen the deterioration of working conditions for outsourced employees in a French branch in which outsourcing to Wipro had already taken place. The outsourced employees were expected to do the same tasks in the same workplace as they had at ALU, but their remuneration and other benefits would be reduced to the level prevailing at Wipro. The perceived unfairness of a sudden worsening of working conditions, as well as it being evident which employees were going to be outsourced, made it easier to organise ALU employees despite the lack of tradition of IT workers in Romania being organised (interview SITT 2015). The EWC provided support in the form of activist training and the French EWC member visited the Romanian branch and informed the Romanian workforce of the negative consequences of outsourcing at the French branch. Ultimately, the company's outsourcing plan triggered the establishment of the first trade union in the IT sector in Romania in 2009, namely SITT.

The initial aim of this union was to negotiate better terms and conditions of employment for the outsourced employees. The outsourcing of maintenance services was a global strategy, so SITT did not consider that it could stop it. There was also a rather limited time to register as a union and begin collective bargaining as the outsourcing plan was to be implemented within a couple of months. Between September and December 2009, the newly created trade union was involved in negotiations with company management, with support from UNI Global and Cartel Alfa, to which SITT had become affiliated. Following a series of protests and strikes in December 2009, staged primarily to support the union's demands for job security provisions for the outsourced workers (Ziare 2009), SITT concluded a collective agreement with the local management and the ALU chief executive officer. This happened on 22 December 2009, just a few days before the outsourcing plan was implemented in January 2010. The agreement protected the outsourced workers from lay-offs for a period of 18 months. It also provided for a redundancy package, namely a lump sum of between three and ten months wages paid to ALU workers depending on their years of service (interview SITT 2015).

SITT was amongst the first unions in Romania to adopt a novel territorial structure that was based on organising employees in different companies. The 2011 legal framework did not explicitly prohibit employees from different companies joining the same union, so the ALU workers who were outsourced to Wipro remained members of SITT. Nevertheless, the increase in the representativeness threshold to more than 50 per cent of the workforce triggered an organising campaign at both ALU and Wipro (interview SITT 2015) and, by 2012, SITT became representative in both companies. Furthermore, when in 2012 ALU outsourced 100 workers to Accenture, the latter also remained SITT members. The union managed to uphold working conditions for the ALU workers outsourced to Accenture, with the exception of bonuses which were paid on the basis

8. At that time, the Romanian branch had no members in the EWC or a trade union.

of the performance of the ALU branch (interview SITT 2015). It was reported that entry-level wages for IT graduates in Accenture were around 40 per cent lower than those for ALU employees (interview SITT 2015); also, Accenture provided real-time information about the performance of each employee to 'name and shame' those with poor performance. In this context of high stress levels and substantial wage differentials between employees doing similar jobs, SITT managed to recruit additional members in Accenture. In 2014, there was another wave of outsourcing from ALU to Accenture and Wipro, as well as some insourcing from Accenture (that is, the re-employment by ALU of its previously-outsourced workers).

All in all, the frequent cost-motivated changes of employer for specific groups of workers who, in practice, were performing the same job for the same organisation spurred the creation of a novel territorial union federation. This type of structure is still relatively rare in Romania, but it has been adopted by unions in several other large companies that had been divided into several undertakings (Trif 2016a). In the latter cases, the union that used to represent the entire company continued to represent workers in each undertaking. The fragmentation of ownership, coupled with the decentralisation of collective bargaining, has therefore led to an increase in the importance of territorial multi-employer collective bargaining (Trif 2016b).

SITT's activities have been innovative on all three dimensions identified in the Introduction. First, its organisational structure is innovative due to employees from different companies joining a territorial union directly whereas, as a rule, territorial and other federative structures are formed by agreement between two or more company-level unions (Guga and Constantin 2015). SITT's structure was a response to the relatively new challenge of frequent, costs-motivated changes of employer being experienced by employees effectively working in the same workplace. Second, the union's strategy vis-à-vis the employer could be considered innovative in several inter-related dimensions: (1) the union bargained collectively with a particular employer, but the negotiated provisions had to be followed by another employer too; (2) similar to the employer, SITT hired lawyers to help company-level teams negotiate collective agreements, which is unusual in Romania (Trif 2016b); (3) the union negotiated the first collective agreement not only with the local management but also with the CEO of the French company, who also signed it; (4) the new union received international support from the company's EWC and from UNI Global for its collective bargaining and organising activities. Third, the target group was also novel insofar as SITT managed to organise young IT professionals and outsourced employees working in MNCs. Moreover, outsourced workers became the predominant group of union members, which led to the unionisation of employees on standard employment contracts following the success of the union in negotiating improved working conditions for the outsourced workers. This is contrary to the general trend in line with which employees on standard employment contracts represent the bulk of union members (Heery 2009).

To sum up, the new challenges aimed at reducing labour costs, coupled with a lucky coincidence concerning the initial information about the outsourcing from ALU to Wipro, led to the creation of SITT and the launch of important innovations in relation to union structure, strategy and choice of target group. The newly elected union

leaders lacked experience in organising and collective bargaining, but it seems that being ‘novices’ enabled them to think ‘outside the box’. They were highly-educated IT professionals used to solving IT problems, and their professional skills arguably helped them find novel solutions to the employment challenges that they faced. They also sought advice and support from more experienced organisations. Last, but not least, SITT is a new union with no links to the pre-1989 communist unions, so it did not face difficulties related to communist legacies which is an issue for many traditional unions (Trif 2016a).

The case of SITT demonstrates that it is possible to organise and mobilise any type of worker. The union was set up during the recession, it organised young IT workers and, in fewer than five years, it has managed to become representative and negotiate collective agreements in three MNCs in the IT sector. This case also shows the importance of strategic leadership and international union collaboration, and it highlights the need for unions to respond to global MNC strategies to reduce labour costs. Nevertheless, the successful story of SITT constitutes an exception rather than the rule in the Romanian context. Moreover, the union has not yet managed to become representative at sectoral level, even though it has members in other IT companies. At present, it is striving to win over 50 per cent union density in companies such as Microsoft, Athos and Continental.

Discussion and conclusion

This chapter showed that, despite the major external and internal challenges that the Romanian labour movement has been exposed to since 2008, certain unions have been able to turn the crisis into an opportunity for union innovation. It examined three instances of best practice in this regard at national (BNS), sectoral (FSC) and company (SITT) levels.

At all three levels, trade unions were heavily affected by changes in the labour law, albeit in different ways. At national level, the prohibition of cross-sectoral collective bargaining and the outlawing of protests that demanded amendments to the law made it difficult for union confederations to justify their role after 2011. The loss of external legitimacy provided by legislation led to fragmentation and divisions within the union movement which, in turn, translated into a further decline of internal legitimacy. Against this background, BNS adopted two innovative actions aimed at increasing its legitimacy. The ‘smart trade union’ initiative marks a shift in the focus of a union confederation from collective bargaining to the servicing of members and potential members, while the civic initiative illustrates a radical change in the process of involving union rank-and-file members in developing legislative projects. It needs to be underlined that, even though the 2011 attack on statutory employee rights was the main driver behind both BNS initiatives, these also addressed the long-standing problem of the declining reputation of unions among workers and the increasing disconnection of the union leadership from grassroots organisations and activists (Kideckel 2001; Korkut 2006). The crisis provided an opportunity for internal changes within BNS. The confederation had already developed the ‘smart trade union’ initiative in the course of the 2000s, but

it was not able to implement it before the crisis. According to a senior union official, this was because many affiliated organisations did not want BNS to have a record of their individual members (as confederations and federations receive a percentage share of the fees collected by company-level unions and, sometimes, the latter report lower membership numbers in order to limit their contributions), or information concerning the support provided by them to individual members (interview BNS 2015). The crisis reduced the resistance of the lower echelons as their survival was also put at stake; this, in turn, allowed BNS to implement changes that made the organisation more transparent. Hence, concerns over actual survival during the crisis facilitated radical changes in the functioning of union confederations. The BNS case shows that unions' organisational innovations may concern not only structural aspects, such as changes of leadership or mergers of existing organisations, but also functional improvements within unions' organisational structure.

At sectoral level, the case of FSC demonstrates that innovative actions in relation to organisational structure, strategy and target group can help even very weak federations to survive. FSC had long-standing problems related to the limited levels of financial resources associated with low union membership. Leadership change in 2001 played a pivotal role in triggering organisational changes, in particular the switch to a different confederation and the strategic re-orientation towards organising workers in MNCs. All in all, the developments within FSC substantiate Hyman's (2007) argument concerning the importance of leadership and organisational learning for generating new initiatives that help unions survive and thrive.

Innovative actions at national and sectoral levels were triggered by the 2011 legal reforms and were aimed primarily at increasing unions' resources in order to survive, but the third case examined in this chapter presents an example of innovative union action undertaken in response to an international economic challenge, namely a multinational's global strategy to reduce labour costs by means of outsourcing. It demonstrates, first, that any workers, including the young IT workers employed by MNCs, can be unionised when their job security and income is at stake. Second, it shows that an international response from workers is needed to deal with global plans to reduce labour costs by MNCs. It also reveals the crucial role that EWCs can play in protecting the working conditions of employees working in subsidiaries operating in different countries, and in supporting the efforts of company-level unions to defend the interests of their members. Last but not least, this case illustrates the importance of decisions taken by certain individuals, particularly those in leadership positions. Unionisation would not have been possible without the information shared informally by the French EWC member with his Romanian colleague and his willingness to support his Romanian colleagues in their endeavour to organise workers. The local SITT leadership, for its part, played a key role not only in organising the outsourced workers, but also in unionising workers in other IT companies, which led to the creation of a novel territorial organisational structure. Even though it operated in unfavourable legal and economic circumstances, SITT managed to become representative and further its members' interests in several IT companies by utilising traditional instruments such as organising, strikes and collective bargaining alongside new methods such as international support and the use of external legal support during collective negotiations. Furthermore, atypical (outsourced)

workers became core members at each unionised company which, in turn, facilitated the unionisation of their workforces. In addition to the strategies of inclusion, exclusion and elimination that unions exhibit towards atypical workers, this study adds a new dimension to Heery's (2009) account by showing that atypical workers may become core union members.

To conclude, this chapter demonstrates that the dire circumstances that threaten the very survival of labour organisations may also represent an opportunity for trade union innovation. The selected case studies show that the unions that have adopted innovative practices have managed to survive and, sometimes, even increase their role and influence. Interestingly, all three organisations examined here had charismatic leaders, which seems to be a necessary condition for adopting novel practices, even though it is not necessarily sufficient. In all three instances, the trade unions' actions were innovative with regard to organisation, strategy and choice of target group, which suggests that these three dimensions identified by Bernaciak and Kahancová are mutually reinforcing. Last but not least, our study demonstrates that international support for national unions plays an important role in adopting and implementing innovative actions, particularly among MNCs. Still, further research is needed to determine the circumstances under which national unions are likely to get support from unions operating in other countries, as well as from global unions and EWCs. By the same token, it would be interesting to establish the circumstances under which this international collaboration is mutually beneficial for all parties involved, as it seems that, otherwise, it may not be sustainable.

Interview list

Interview with senior union official, BNS confederation, Bucharest, 17 July 2015.

Interview with senior official, FSC federation, Bucharest, 20 July 2015.

Interview with senior manager, Carrefour retail chain, Bucharest, 21 July 2015.

Interview with senior union official, SITT union, Bucharest, 28 July 2015.

References

- Barbuceanu S. (2012) Annual review 2011 on labour relations and social dialogue in South East Europe: Romania, Belgrade, Friedrich-Ebert-Stiftung.
- Bohle D. and Greskovits B. (2012) Capitalist diversity on Europe's periphery, Ithaca, Cornell University Press.
- Crowley S. (2004) Explaining labor weakness in post-communist Europe: historical legacies and comparative perspective, *East European Politics and Societies*, 18 (3), 394-429.
- European Commission and IMF (2012) Romania: draft emergency ordinance to amend law 62/2011 on social dialogue – joint comments of European Commission and IMF staff, 12 October 2012. <http://www.ituc-csi.org/IMG/pdf/romania.pdf>
- Eurostat (2016) Database. <http://ec.europa.eu/eurostat/data/database>
- Fulton L. (2013) Worker representation in Europe, Labour Research Department and ETUI. <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Romania/Trade-Unions>

- Guga S. and Constantin C. (2015) Analiza impactului noii legislatii a dialogului social adoptate in 2011. Cercetare Sociologică Şi Juridică, Bucharest, Asociația CONECT. www.asociatiaconect.ro/upload_res/Cercetare_impactul_legislatiei_muncii.pdf
- Hayter S., Vargha C. and Mihes C. (2013) The impact of legislative reforms on industrial relations in Romania, Budapest, International Labour Office.
- Heery E. (2009) Trade unions and contingent labour: scale and method, *Cambridge Journal of Regions, Economy and Society*, 2 (3), 429-442.
- Hyman R. (2007) How can trade unions act strategically?, *Transfer*, 13 (2), 193-210.
- Kideckel D. A. (2001) Winning the battles, losing the war: contradictions of Romanian labor in postcommunist transformation, in Crowley S. and Ost D. (eds.) *Workers after workers' states. Labor and politics in postcommunist Eastern Europe*, Lanham, Rowman and Littlefield, 97-120.
- Korkut U. (2006) Entrenched elitism in trade unions in Poland and Romania: an explanation for the lack of union strength and success?, *Economic and Industrial Democracy*, 27 (1), 67-104.
- Mihai A. (2010) E normal să externalizezi când costul per angajat este cu 30% mai mare decât la un centru de BPO, in *Ziarul Financiar*, 27 June 2010. <http://www.zf.ro/business-hi-tech/e-normal-sa-externalizezi-cand-costul-per-angajat-este-cu-30-mai-mare-decat-la-un-centru-de-bpo-6452264>
- Mrozowicki A., Roosalu T. and Senčar T. B. (2013) Precarious work in the retail sector in Estonia, Poland and Slovenia: trade union responses in a time of economic crisis, *Transfer*, 19 (2), 267-78.
- Stoiciu V. (2012) Austerity and structural reforms in Romania: severe measures, questionable economic results and negative social consequences, Berlin, Friedrich-Ebert-Stiftung. <http://library.fes.de/pdf-files/id-moe/09310.pdf>
- Stoiciu V. (2016) 2015 Annual review of labour relations and social dialogue: Romania, Bratislava, Friedrich-Ebert-Stiftung. www.fes.de/cgi-bin/gbv.cgi?id=12471&ty=pdf
- Trif A. (2008) Opportunities and challenges of EU accession: industrial relations in Romania, *European Journal of Industrial Relations*, 14 (4), 461-478.
- Trif A. (2013) Romania: collective bargaining institutions under attack, *Transfer*, 19 (2), 227-237.
- Trif A. (2016a) Social dialogue during the economic crisis: the survival of collective bargaining in the manufacturing sector in Romania, in Koukiadaki A., Tavora I. and Martinez Lucio M. (eds.) *Joint regulation and labour market policy in Europe during the crisis*, Brussels, ETUI, 395-439.
- Trif A. (2016b) Surviving frontal assault on collective bargaining institutions in Romania: the case of manufacturing companies, *European Journal of Industrial Relations*, 22 (3), 221-234.
- Trif A., Koukiadaki A. and Kahancová M. (2016) The rise of the dual labour market: fighting precarious employment in the new member states through industrial relations (PRECARIR): comparative report (Croatia, Czechia, Greece, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia), Research project VS/2014/0534 financed by the European Commission, Dublin, Dublin City University. http://www.dcu.ie/sites/default/files/dcubs/comparative_report_precarir_2016_final.pdf
- Varga M. and Freyberg-Inan A. (2015) Post-communist state measures to thwart organized labor: the case of Romania, *Economic and Industrial Democracy*, 36 (4), 677-699.
- Ziare (2009) Greva generala la Alcatel-Lucent Timisoara, 15 December 2009. <http://www.ziare.com/afaceri/firma/greva-general-a-la-alcatel-lucent-timisoara-976135>
<http://library.fes.de/pdf-files/id-moe/08949.pdf>

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