

Tax & Legal Weekly Alert

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Tougher conditions for employers imposed by recent changes to the Law on the social dialogue

The most important changes brought by Law no. 1/2016 amending and supplementing Law no. 62/2011 on the social dialogue relate to (i) the establishment of activity sectors; (ii) withholding of union dues by the employer; (iii) the association of trade unions and employers or employers' associations; (iv) the representation of parties to collective bargaining.

Amendments to Competition Law

As of January 1st, 2016, the Competition Law was significantly amended by regulating new legal concepts (for example "competition whistleblowers"), restating the terms of settlement procedure in case of admission of guilt by undertakings during investigations of the Competition Council and by clarifying the nature of the decisions of the Competition Council and the moment when they can be put into execution by the authority.

Tougher conditions for employers imposed by recent changes to the Law on the social dialogue

Law no. 1/2016 amending and supplementing Law no. 62/2011 on the social dialogue (“Law on the social dialogue”) was published in the Official Gazette no. 26 of 14 January 2016 and entered into force on 17 January 2016.

The most important changes relate to:

- Establishment of activity sectors;
- Withholding of union dues by the employer;
- Association of trade unions and employers or employers’ associations;
- Representation of parties to collective bargaining.

Establishment of activity sectors

- The legal provisions contained in art. 1 point r) of the Law on the social dialogue stating that activity sectors comprise fields of activity as defined under the National Classification of Economic Activities were repealed;
- Activity sectors shall be established by the National Tripartite Council and will be approved through a Government Decision.

Withholding of union dues by the employer

- Employers shall be required to withhold and pay union dues to the trade union, provided the following conditions are met:
 - The trade union submits a request to this end;
 - Trade union members express their consent in view of withholding and paying the union dues to the trade union.

Association of trade unions and employers or employers’ associations

- Trade unions will be able to affiliate, at national level, only to one union federation. Likewise, a union federation will be able to affiliate, at national level, only to one union confederation.
- Employers will be able to affiliate, at national level, only to one employer’ federation. Likewise, an employers’ federation will be able to affiliate, at national level, only to one employer’ confederation.

Representation of parties to collective bargaining

- New rules concerning the representation of parties to the collective bargaining were adopted, as follows:
 - From the part of employers:
 - **At branch level and group of companies:** collective negotiations shall be undertaken by the legally constituted and representative employers’ associations.
 - From the part of employees:
 - **At company level:** collective negotiations shall be undertaken by the legally constituted and representative trade union.

In cases where at company level exists a trade union which, even though is not representative, is affiliated to a representative union federation within the activity sector within which the company is part of, negotiations shall be undertaken by the union federation representatives.

In companies where no trade unions exist, negotiations shall be undertaken by the elected employees’ representatives.

Please note that the above mentioned amendments were not correlated with art. 135 Para. (1) of the Law on the social dialogue, which provides that in cases where at company level exists a trade union which, even though is not representative, is affiliated to a representative union federation within the activity sector within which the company is part of, negotiations shall be undertaken by the union federation representatives upon the request and on the basis of the union's mandate, alongside the elected employees' representatives.

Implications and recommendations for employers

Withholding of union dues by the employer

Our recommendation is to ensure, prior to withholding and paying union dues to the trade union, that union members expressed their consent in writing to that effect (their express consent being required under the law).

Representation of parties to collective bargaining

- Limitation of the employers' possibility of bargaining and concluding collective labour agreements at group of companies' level in cases where the group of companies is constituted voluntarily.
- A conflict was created between the various legal provisions regulating the representation of employees to the collective bargaining at the level of companies where no representative unions exist.

Our recommendation is to verify whether at company level exist non representative trade unions affiliated to a representative union federation, respectively if employees have elected their representatives, in view of concretely assessing the impact generated by the amendments to the Law on the social dialogue for your company.

For further questions regarding the aspects mentioned in this alert, please contact us.

Florentina Munteanu
Associate Partner Reff & Associates
Attorney at Law
+40 21 207 52 75
fmunteanu@reff-associates.ro

Ana - Maria Vlăsceanu
Consultant
+40 21 222 16 61
avlasceanu@deloittece.com



Amendments to Competition Law no. 21/1996

Law no. 347/2015 approving Government Emergency Ordinance no. 31/2015 amending and supplementing Competition Law no. 21/1996 ("Competition Law") was published in the Official Gazette no. 973 dated December 29, 2015.

We have listed below the main amendments to the law enforceable as of January 1, 2016.

Decisions of the Competition Council

- **Decisions for granting access to confidential information**
Decisions for granting access to confidential information have been excluded from the list of decisions of the Competition Council that constitute unilateral administrative acts of individual application, with direct impact on the possibility to challenge them separately in front of administrative courts.
- **The moment when the Competition Council's decisions establishing fines or authorization fees in the case of economic concentrations constitute enforceable titles**
Competition Council's decisions setting fines or authorization fees in the case of economic concentrations constitute enforceable titles without any further formality, within 30 days as of their communication.

The authorization fee for economic concentrations

The authorization fee payable in the case a decision for authorizing an economic concentration is issued is referenced to the time when the Competition Council is making the analysis and is issuing the decision, as follows:

- **between 10,000 euro and 25,000 euro** (the limits of authorization fees remain unchanged as to the previous regulation) in the case a non-objection decision is issued when there are no serious doubts about the compatibility of the economic concentration with a normal competitive environment or when doubts were removed by the commitments proposed by the parties and accepted by the Competition Council;
- **between 25,001 euro and 50,000 euro** in the case a decision authorizing the economic concentration (simple or conditioned by obligations and/or conditions which parties must observe) is adopted after an investigation of the Competition Council due to its having serious doubts regarding compatibility with a normal competitive environment.

Introducing the legal concept of „competition whistleblowers”

“**Competition whistleblowers**” are defined by the Competition Law as “individuals who provide to the Competition Council, at their own initiative, information on possible infringements of the law”. According to this new provision, any individual who is aware of a possible breach of the Competition Law can provide the information to the Competition Council, under the following assurance:

- by observing the confidentiality, and
- without this action being considered a breach of the confidentiality obligation set forth by the labor legislation.

Introducing the legal institution of interviews in order to gather evidences

In order to gather evidences, competition inspectors, except beginners, in exercising their duties, may hold interviews with any natural or legal person, with their consent, through any means, including electronic available means.

It is expressly established that the act of providing inaccurate or misleading information during this procedure constitutes an offense.

Changes brought to the settlement procedure

The terms of settlement procedure in case of admission of guilt by undertakings during the investigations of the Competition Council have been significantly amended.

- Thus, the admission of guilt must take place only prior to the hearings. In a situation where recognition occurs before the communication of the statement of objection, the Competition Council may apply a simplified procedure;
- The undertaking admitting its guilt may benefit from a reduction of the fine by a percentage ranging between 10 and 30% applied to the base level of the fine but the level of the final fine imposed cannot be lower than 0.2% of the total turnover achieved in the year prior to the sanctioning;
- The undertaking will, however, lose the benefit of the fine reduction in the case where it files an action for annulment against the decision of the Competition Council, at the request addressed by the Competition Council to the courts. It was removed from the law the provision stating that if the undertaking had challenged the decision of the Competition Council, the authority was free to use the admission of guilt, leading to the conclusion that once the undertaking challenges the decision of the Competition Council, the latter would not be able to use the terms of the recognition against the respective undertaking.

Removing the Competition Council's interdiction to collect certain documents

The interdiction for the Competition Council to collect and / or use as evidence preparatory documents produced by the undertaking with the sole purpose of exercising the right to defense has been removed. Documents covered by attorney-client privilege still remain protected.

For further questions regarding the aspects mentioned in this alert, please contact us.

Andrei Burz-Pinzaru
Partner Reff & Associates
Attorney at Law
+40 21 207 52 05
aburzpinzaru@reff-associates.ro

Florentina Munteanu
Associate Partner Reff & Associates
Attorney at Law
+40 21 207 52 75
fmunteanu@reff-associates.ro

Andrea Grigoras
Senior Associate
Attorney at Law
+40 21 207 98 16
agrigoras@reff-associates.ro



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