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The crisis and national labour law reforms: a mapping exercise. Country report: Hungary
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# Hungary

The first real signs of deregulatory labour law reforms in Hungary came in June 2009 when the Hungarian Parliament adopted amendments to the Labour Code allowing the temporary introduction of more flexible working time. The new amendments provided that statutory working time of eight hours a day, or 40 hours a week excluding overtime, may be increased to 44 hours a week, as long as the average basic working time does not exceed 40 hours a week over the reference period (between 1 April 2009 and 31 December 2011). Such an increase in working time is possible only on the basis of a written agreement between employer and worker. For instance, if the employer decreases working time to 30 hours a week between 1 September 2009, and 31 December 2011, the total amount of working time reduced during that period is 160 hours (40 hours – 30 hours = 10 hours per week; 16 weeks x 10 hours = 160 hours), which the employer may use flexibly until 31 December 2011. While the employer needs the employee's consent, he is free to use the working time 'stock' as he pleases. The new regulation also provides for a series of guarantees, the key guarantee being the 44-hour limit on the working week. Furthermore, employees whose working time exceeds 40 hours per week are protected from termination of their employment relationship unless for personal reasons until 31 December 2011. However, during the period of increased working time, employees' basic remuneration does not vary.

Second, the amendments provide that as of 1 June 2009 an employer has the possibility to unilaterally set the working time reference period at four months. Under the previous regulation, the employer could unilaterally order a three-month reference period for calculating basic weekly working time. This reference period, however, could be extended to 12 months under certain circumstances by way of collective agreements.

Third, the amendments also provide that employers do not have to grant rest time to employees if no work is performed during on-call duty.

Finally, the amendments allow employers to reach agreement with employees on increasing annual overtime to 300 hours, but this must be done by way of collective agreement or by individual agreement between employer and worker. This arrangement was formerly reserved for employees with special skills and there was a 200-hour limit. However, employers still have to prove that they requested, without success, a public employment agency to fill the vacancy before resorting to such agreements.

During summer 2009 and based on a ruling of the Hungarian Constitutional Court questioning the codetermination rights granted to national and sectoral social dialogue structures, the Hungarian Parliament adopted two acts – Act LXXIII on the National Interest Reconciliation Council (*Országos Érdekegyeztető Tanács, OÉT*) and Act LXXIV on sectoral social dialogue committees (*Ágazati Párbeszéd Bizottságok, ÁPB*) – revising the

powers of these structures and setting representation criteria for the organisations involved. The new system came into force in October 2009. These acts amend the extent of social dialogue by reducing their role, which used to be quite significant. Furthermore, representation criteria concerning participation in the national tripartite forum and the bipartite sectoral social dialogue committees have been revisited. Hitherto, the prevailing principle was self-regulation and mutual recognition, even if there was a list of criteria. Both at national and sectoral level, participation is now conditional on the weight of the organisation, in other words, the number of members and participation in the economy and labour market. However, at national level, organisations that are already members of the National Interest Reconciliation Council can stay and even veto the admission of an applicant organisation. This new definition of representativeness affects the procedure for extending sectoral collective agreements. Indeed, the sectoral social dialogue committee will have to determine whether the signatory organisations are representative enough – for employers, whether they represent businesses which employ at least 50 per cent of employees, and for unions, whether they obtain at least 50 per cent of the votes in works council elections – to be permitted to ask the competent Minister for an extension of the agreement they negotiated.

In 2010, the new government, a coalition of the Hungarian Civic Union (FIDESZ) and the Christian Democratic (KDNP) parties, said it wanted to introduce a new constitution and civil law, as well as a new Labour Code. The draft code was published by the Hungarian Government on the website of the Ministry for National Economy in July 2011.

After having disbanded the standing tripartite body, the Hungarian government submitted a first comprehensive revision of the Labour Code to Parliament in March 2011 and consultations opened on 22 July following the publication of the text on the website of the Ministry for National Economy (and thus not of Social Affairs and Employment!), giving the social partners just two weeks to react by 5 August. On 11 August the government organised a one-day consultation with the trade unions and a separate one with the employers. The request of both sides to set up a tripartite social dialogue on the issue was rejected by the Ministry for National Economy. The whole process as well as the content of the amendments was fiercely opposed by the national trade unions. In a joint letter of 4 September 2011, the six Hungarian trade union confederations (ASZSZ, ÉSZT, LIGA, MSZOSZ, MOSZ and SZEF) requested ILO technical assistance to examine the proposed Labour Code amendments as regards their compatibility with Hungary's obligations under a number of ILO Conventions. A high-level mission composed of trade union leaders from the ITUC and the ETUC also visited the country at the end of August and the beginning of September 2011. Also in September, the government started consultations with just two of the six trade union confederations and three of the nine employers' organisations. Based on these consultations a second draft of the revised Labour Code was made public on 30 September 2011. According to Toth (Toth 2012), a new wave of protest forced the government to reach a compromise with the unions over the regulation of union rights and entitlements, an aspect that remained contested as the second draft did not contain any changes compared to the first version. On 2 December an agreement was signed between a number of the unions aimed at partially re-establishing the rights of the trade unions as they had been under the old Labour Code. Agreement was also reached that the new Labour Code would only enter into force on 1 July 2012. However, after the Parliament had adopted the new Labour Code, the Ministry of Interior Affairs submitted a bill on a wide range of issues amending several laws whereby one amendment provided for the chapter of the Labour Code relating to trade union rights coming into force on 1 January 2012, i.e. 6 months earlier than foreseen in the compromise with the unions. Under union pressure, entry into force was again moved back to 1 July with the exception of the regulations on industrial

relations in the armed forces, whereby the government tried to by-pass those unions which had been most active in campaigning against the new Labour Code. On 8 November 2011, the ILO delivered its Memorandum of Technical Comments on Hungary's draft Labour Code, criticising several provisions on both collective and individual rights which run counter to Hungary's obligations under various ILO Conventions (ILO 2011).

The main Labour Code amendments were as follows:

– *Protecting employees from employment termination.* The Bill provides that an employment relationship may not be terminated by the employer during pregnancy, maternity leave, parental leave (if the child is under three years of age), the first six months of treatment related to human reproduction and regular or reserve army service. In contrast to existing regulations, sick leave is no longer classified as a protected category under the Bill, a change that was implemented with a view to reducing sick leave abuses. The Bill provides that termination of employment can be communicated during a period of incapacity due to illness, although the notification period commences only after the end of the incapacity due to illness. If an employee interrupts their parental leave before a child is three years old, their employment can be ended on the basis of extraordinary termination, due to incapacity, or due to operational reasons (economic grounds). In the latter case, the contract can be terminated only if there is no suitable vacancy matching the employee's work experience and capabilities or if the employee rejects an offer made by the employer to work in such position. This rule is applicable to termination of employment within five years prior to retirement age.

– *Reduced legal protection against unlawful dismissal.* Whereas the "old Labour Code" foresaw that, when a court found that an employer had unlawfully terminated an employee's employment, the employee could request to continue being employed in his/her original position. The court may in such circumstances and at the employer's request release the employer from having to reinstate the employee in his/her original position, if the continued employment of the employee cannot be expected of the employer. These provisions were not applicable if a) the employer's action violated the principle of the due course of the law, the principle of equal treatment, or termination restrictions, or b) the employer had terminated the employment relationship of an elected trade union representative covered by specific statutory protection. Should the employee not request to be reinstated in his/her original position or should the court release the employer from this obligation, the court was empowered, after weighing all applicable circumstances - in particular the unlawful is and its consequences – to sentence the employer to the payment of not less than two and not more than twelve months' average earnings to the employee. In such cases, the employment relationship is deemed to have terminated on the day the court handed down its ruling on the unlawfulness of the action. In the case of unlawful dismissal, the employee was to be reimbursed for lost wages (and other emoluments) and compensated for any damages arising from such loss. The portion of wages (and other emoluments) or damages recovered otherwise was neither to be reimbursed nor compensated.
  Under the new provisions, there are no more general obligations for re-instatement. The employer is to provide compensation for all losses caused through the unlawful dismissal. The damages thus paid may not exceed the total amount of the employee's twelve-month absence pay. Re-instatement is however still possible at the employee's request and if *a)* the dismissal has not taken account of the normal period of notice; b) dismissal is discriminatory, or c*)* the employee was an employee representative at the time of dismissal. Apart from there being no more general rule

covering reinstatement, the amendment reduces to 12 months the amount of an employee's average salary payable on unlawful dismissal.

- *Termination of fixed-term contracts*: Under the new rules it is now also possible to terminate a fixed-term employment contract a) during the course of liquidation or bankruptcy proceedings, or b) in the event of the employee's incapacity.

- *Probation period*: the new rules increase the probation period to three months

– *Working time*. The bill introduces a number of changes affecting labour law:

  - An employer may change agreed working hours – due to unforeseen circumstances – four days before the change (under the existing framework it was seven days) becomes effective.

  - The bill defines the requirements for working on Sundays and public holidays, only allowing such work in the context of activities that serve the public interest or are objectively necessary for the proper functioning of the employer, and for seasonal work or non-stop processes. It is also possible when work is multi-shift, for standby work or for part-time jobs performed exclusively on Saturday and Sunday.

  - The annual limit on overtime is raised from the present 200 hours up to 250 hours, which could be increased to 300 hours by a collective agreement.

  - The new rules also provide for a so-called "settlement period". In the absence of a reference period defined in a collective agreement, an employee is required to complete the weekly working time determined on the basis of daily working hours and the general working time schedule over a period determined by the employer ("settlement period"). The length of the settlement period shall be 16 weeks.

– *Allowances (for irregular working time)*. The new Labour Code redefines basic pay and wage supplements. The statutory minimum wage is determined as basic pay. As regards wage supplements:

– employees obliged to work on Sundays (excluding part-time employees working solely on Saturdays and Sundays) are entitled to a 50 per cent wage supplement;

– employees obliged to work on bank holidays are entitled to a 100 per cent wage supplement;

– employees working in alternating shifts between 18:00 and 06:00 are entitled to a 30 per cent wage supplement;

– in the case of night work, employees are entitled to a 15 per cent wage supplement;

– in the case of work performed during irregular working times ordered beyond the daily working time under the normal schedule of work or beyond the reference period or the settlement period, at the employer's discretion, the employee shall be entitled to a 50 per cent wage supplement or free time. The free time thus awarded may not be less than the irregular working time ordered or the

duration of the work executed, in addition to which the employee is entitled to the pro rata part of basic pay falling thereon.

The Labour Code regulates the statutory minimum wage. This is to be set by the Government, following consultations with the National Economic and Social Council. The statutory minimum wage is to be set taking the following requirements into account: sector of activity, national labour market characteristics, the state of the national economy, and labour market characteristics in specific branches and regions.

– *Employee damages for malfeasance or negligence*. The Bill provides, like the current regulation, that an employee is obliged to compensate an employer for damages caused by violation of his employment duties, whether intentional or due to negligence. The burden of proof lies with the employer with respect to the amount of the damage, proof of misconduct (malfeasance or negligence) and causation. However, in contrast to the current 1.5 monthly average salary limitation, the Bill provides for 4 months for negligence and unlimited liability for gross negligence or intentional wrongdoing. No compensation is provided for damage the emergence of which is not foreseeable at the time it was caused or which emerges due to culpable conduct on the part of the employee or through an employer failing to meet his obligation to limit the damage.

- *Employers' liability for damages.* The employer shall provide compensation for any loss caused to an employee in connection with his/her employment. The employer is exempted from liability if he can prove *a)* that the damage was caused by an unforeseen external circumstance beyond his control and which he could not be expected to avoid or eliminate, or *b)* that the damage was the unavoidable result of the conduct of the aggrieved party. In the event of the worker being put at the disposal of another employer, the employers are jointly liable. The employer shall compensate the employee for the entirety of his/her loss. No compensation shall be provided for damage for which the employer can prove that its emergence was not foreseeable at the time it was caused. However, no compensation shall be provided against that part of the damage that was caused by the employee's culpable conduct or which arose from the fact that the employee failed to meet his/her obligation to limit the damage.

- *Atypical forms of employment*: In line with the Commission's country-specific recommendations for 2011-2012 and advice from the OECD (Kierzenkowski 2012), the new Labour Code also regulates the following forms of atypical employment: fixed-term work, on-call employment, job sharing, employment established by multiple employers, telework, temporary agency work and work in the scope of inter-school cooperation.

- *Employees' representation*: The most intrusive changes relate to limitations to the rights of trade unions and increased rights for works councils. Looking at trade union (representatives) rights, the new Labour Code:

  - Only provides legal protection to 2 - 6 union officials, depending on the size of the company or establishment, while the 1992 Code provided legal protection to all officials.

  - Substantially reduces statutory time-off for performing union duties.

  - Ends the legal possibility for unions to demand financial compensation for non-used time-off by union officials, which had served to provide unions with an additional source of funding.

- Abolishes time-off for union activists for the purpose of trade union education.
- Removes an important provision regarding collective agreements and the role of trade unions. Whereas section 33 of the old regulation foresaw that:

> (1) A collective agreement may be concluded with an employer.
>
> (2) Subject to the exceptions set out in Subsections (3)-(5), a trade union shall be entitled to conclude a collective agreement with the employer if its candidates have received more than half of the votes in the works council ballot.
>
> (3) If more than one trade union operates a local branch at an employer, the collective agreement may be concluded jointly by all trade unions, provided that the candidates of such trade unions have jointly received more than half of the votes in the works council ballot.
>
> (4) If the conditions for the trade unions to conclude a collective agreement jointly are not met according to Subsection (3), the representative trade unions [Subsection (2) of Section 29] shall conclude the collective agreement together, provided the candidates of such trade unions have jointly received more than half of the votes in the works council ballot.
>
> (5) If the conditions for the representative trade unions to conclude a collective agreement jointly are not met, the trade union whose candidates jointly received more than 65 per cent of the votes in the works council ballot shall be entitled to conclude the collective agreement.
>
> (6) If, in the cases set out in Subsections (2) and (3) above, the trade union or the candidates of the trade union did not receive more than half of the votes in the works council ballot, negotiations may be held for the conclusion of the collective agreement. However, its conclusion is subject to the consent of the employees affected. The employees shall vote whether or not to grant such consent. The ballot shall be valid upon participation by more than half of the employees with voting rights for the election of the works council.

The new Section 266 merely stipulates that:

> (1) A collective agreement may be concluded by a) the employer or an employer interest representation based on the members' authorisation, and b) trade unions.
>
> (2) A trade union shall be entitled to conclude a collective agreement if the number of its members reaches 10 percent of a) the company workforce, and b) workers covered by the previous collective agreement.

While trade union rights are cut, those of the works councils are extended, making them the sole partner of the employer as far as information and consultation is concerned. Articles 262-265 now provide for the following:

**Para 262**

**(1)** It is the responsibility of the works council to monitor the observance of the rules relating to employment.

**(2)** In the interest of the fulfilment of its duties, the works council shall be entitled to request information and initiate negotiations, by stating its reasons, which the employer may not refuse.

**(3)** The works council shall inform the employees of its activities biannually.

**Para 263**

The employer and the works council shall jointly decide on the utilisation of welfare funds as well as on the utilisation of institutions and assets serving welfare purposes.

**Para 264**

**(1)** The employer shall, at least fifteen days prior to its decision, consult the works council with respect to measures being contemplated and draft regulations concerning larger groups of employees.

**(2)** For the purposes of subsection (1), the following shall qualify as employer measures in particular:

*a)* reorganisation or restructuring of the undertaking or establishment, transformation of an organisational unit into an independent organisation,

*b)* introduction of production and project programmes and new technologies, modernisation of existing ones,

*c)* management and protection of personal data relating to employees,

*d)* use of technical devices to monitor employees,

*e)* measures to create healthy and safe working conditions and to prevent work-related accidents and occupational diseases,

*f)* introduction of new organisational methods, and the introduction and/or modification of performance requirements,

*g)* plans related to training,

*h)* the use of state funds to promote employment,

*i)* measures being considered regarding the rehabilitation of employees with impaired health or with limited working capacity,

*j)* work organisation,

*k)* principles of remuneration,

*l)* environmental measures related to company operations,

*m)* measures designed to observe the requirement of equal treatment and to create equal opportunities,

*n)* reconciliation of family life and work,

*o)* other measures identified in the rules relating to employment.

**Para 265**

The company shall inform the works council biannually of:

*a)* fundamental issues concerning its economic situation,

*b)* any changes in wages, liquidity related to the payment of wages, specific features of employment, utilisation of working time and specific features of working conditions,

*c)* the number of teleworkers in employment, and of the employer of and the positions of employees hired from elsewhere as part of labour lending arrangements (temporary employees).

**Para 266**

The works council shall adopt an impartial attitude towards strikes organised at the employer's premises, may not organise strikes and may not support or prevent strikes. The mandate of the works council members participating in a strike shall be suspended for the duration of the strike.

More importantly, the works council can now, under section 268, conclude agreements with the employer to regulate the terms and conditions of employment with the exception of wages and remuneration. One condition for this is that the employer is not subject to a collective agreement and that there is no trade union at the company authorised to conclude a collective agreement.

The new Labour Code, called Act I of 2012 to the Labour Code, was adopted on 13 December 2011 and entered into force on 1 July 2012.

On 6 May 2012, Parliament adopted Act LXXXVI of 2012 on the enforcement of the Labour Code and transition regulations (published in the Official Bulletin (Magyar Közlöny) No. 80 2012). It

came into force on 1 January 2013. This Act consists of two parts. The first regulates the enforcement of the new Labour Code. One of its main principles is that the provisions of the new Labour Code apply to existing employment relationships, though it also lists exceptions. For example:

Section 53
Derogation from the employment contract
(1) Employers shall be entitled to temporarily reassign their employees to jobs and workplaces other than those listed in the employment contract, or to another employer.
(2) The duration of employment as referred to in Subsection (1) may not exceed a total of forty-four working days or three hundred and fifty-two scheduled hours during a given calendar year. It shall be proportionately applied in cases of fixed-term and part-time employment, and when the employment begins in the middle of the year. The employee affected by a derogation from the employment contract shall be informed of its expected duration.

Section 101 Sub 1
(1) Work on Sundays may be scheduled within the framework of regular working time:
a) if the employer generally operates on Sundays on account of the nature of the business;
b) in seasonal work;
c) if work is performed in continuous shifts;
d) for employees working in shifts;
e) in stand-by jobs;
f) for part-time workers working Saturdays and Sundays only;
g) in connection with the provision of basic public services or trans-border services, where provision is necessary on that day based on the nature of the given service;
h) in the case of work performed abroad.
g) for employees, if their employer falls within the scope of commercial law.

The second part of the Act modifies 68 legal acts, *inter alia*: Act VII of 1989 on the Right to Strike, Act IV of 1991 on the Protection of Employment and Unemployment Benefits, Act XXXIII of 1992 on Civil Servants, Act XLIV of 1992 on the Programme of Employees' Share-Holding, Act LXVI of 1994 on the Wage Guarantee Fund, Act LXXV of 1996 on Labour Inspection, and Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.

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## Contributions by ETUC affiliated organisations:

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ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)