



The New Hungarian Labour Code - Background, Conflicts, Compromises

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The new labour code, the 2012 I. Act, will come into effect on 1 July 2012. The new code will replace the Labour Code 1992, which was passed into law immediately following the democratic transition from state socialism. The details of the 1992 Labour Code established a combination of fairly flexible regulations with some strict minimum standards. It was envisaged that sectoral and workplace-level collective bargaining by sectoral unions and workplace-level unions would ensure better terms and conditions for workers than those stipulated by the minimum standards of the labour code.

Nonetheless, Hungarian society and the economy changed profoundly during the nineties, which affected the regulation of the working environment. The state-owned company sector has practically ceased to exist, with the exception of large public utility companies, and a vibrant privately owned economy has sprung up. This newly created economy, however, has developed into a dual economy, comprising two very different segments. One segment consists of medium-sized and large companies, mostly foreign-owned, integrated into the worldwide supply networks. Within this segment, the major concern of companies is flexibility to be able to respond quickly to changes in market demands and a legal environment which enables the adaptation of best manufacturing practices. The second large segment of the new private economy comprises micro and small enterprises, mostly domestically owned, where formal employment intertwines with undeclared employment. The accession of Hungary to the European Union in 2004 brought about a further wave of fundamental changes in the concept and regulation of the labour code. This profound restructuring of the economy had a major impact on unions. Sectoral collective agreements have not played any major role in regulating terms and conditions of employment. The role of workplace collective agreements has also considerably diminished, covering only a minority of employees, mostly in larger companies.

The profound changes in the economy and in regulation in the wake of EU accession necessitated the re-legislation of the labour code. In 2004, the then governing left-liberal coalition government had initiated a complete re-drafting of the labour code. A new concept of regulation was hoped for, which would align the legislation of the working environment with that of contractual law, which enables a less rigid, more flexible system of regulation. According to the reasoning, a more flexible legislation would allow for a reduction of the amount of undeclared work and would also help companies to be more competitive. The preparations for the new code, however, were abandoned by the government because unions vehemently rejected the concept of the re-legislation, arguing that it aimed to weaken workers' rights.

In 2010, however, the freshly elected right-wing Orbán government placed the re-legislation of the labour code back on the agenda. The government aimed for a new labour code which

- 1) makes the regulation of the working environment flexible in order to convert Hungary into one of the most competitive economies in Europe, and
- 2) cuts the traditional rights of unions to a minimal level, which would allow little more than their mere existence in workplaces.

The process of social dialogue

The draft of the Labour Code 1992 was negotiated with a view to reaching a compromise with social partners in the standing tripartite body. The re-legislation of 2012, however, was marked by selective and half-hearted negotiations on the part of the government.

The key for the selective negotiations was that in March 2011, just before publishing the draft of the new labour code, the government disbanded the standing tripartite body. This created an institutional vacuum which made it possible for the government to carry out a selective consultation process.

The process of consultation over the draft of the new labour code began on 22 July 2011, shortly after the publication of the text of the first draft of the labour code. At the same time, the Ministry of National Economy requested that social partners submit their opinion in written form within two weeks, by 5 August 2011.

The draft shocked unions as it eliminated almost all entitlements and minimum standards stipulated by the Labour Code 1992 and also envisioned eliminating all traditional union rights. The six national trade union confederations, however, did not manage to submit one joint proposal to the government. They formed two distinct blocks along historical schisms. Two union confederations, the LIGA and the Workers' Council, which were established during the transition period and reportedly have closer ties to the right-wing governing parties, submitted one joint opinion. The other block was formed by the four confederations – MSZOSZ, Autonomok, SZEF and ÉSZT - which are the successors of the former communist union organisation. This block also submitted one joint opinion to the ministry with a list of amendment proposals.

The government held a one-day consultation at an expert level with all union confederations on 11 August. After the consultation, the unions criticised the fact that the experts were not open for real negotiations. The unions demanded that the government launch a social dialogue process with all social partners in a tripartite forum. The government also held a separate expert-level consultation with the employers' confederations. The employers were pleased with the draft. Nevertheless, they also requested the launch of a tripartite social dialogue process with social partners. The Ministry of National Economy, however, rejected the request. Clearly, the government did not want to enter into a consultation process with the prospect of reaching a compromise with social partners over the contested issues.

The unions, however, mounted a campaign to pressure the government, which included demonstrations, a media campaign and putting pressure on the government through the ILO and the Commission of the European Union. They also asked the ILO and the European Commission to assess whether the draft was in line with ILO recommendations signed by Hungary and with EU directives. The ILO expert opinion, which was prepared in a very short time, supported the claims of the unions in several issues. A media uproar over the drastic cuts of traditional entitlements also strengthened the point of the unions. Employers

demanded proper consultation as well, while opposition parties also sharply criticised the draft – but of course from a different point of view.

The pressure forced the government into a u-turn in early September. It invited two of the six union confederations – LIGA and the Workers' Council Movement - and three of the nine employers' association – MGYOSZ, VOSZ and AFEOSZ – to negotiate concerning the draft. The four trade union confederations which were left out protested against the selective consultation. Following this protest, the government invited MSZOSZ, the biggest left-wing union confederation, to participate in the consultation procedure. Parallel to the consultations held by the Ministry of National Economy, the Prime Minister held a meeting with the President of LIGA and the President of VOSZ to consult them over the key issues of the draft on 20 September 2011.

Based on these negotiations, the government prepared a second draft, which was made public on 30 September 2011. The second draft re-established some of the minimum standards and entitlements of employees. The draft, however, did not change the regulation concerning union rights. Despite the protest of unions, the government submitted the draft to the parliament two weeks later.

A new wave of union protest, however, forced the government to reach a compromise with unions over regulation of union rights and entitlements. On 2 December, an agreement was signed by LIGA, MSZOSZ and the Worker's Council Movement which partially re-established some of the traditional rights of the unions. A separate agreement stipulated that the new labour code would enter into force only on 1 July 2012, half a year later than the government had originally planned. One of the conditions of the government for entering into a compromise with the unions was that the partners of the agreement had to declare that they had been consulted properly and that they supported the main direction of the new legislation. This agreement guaranteed the government that there would be no further public protests on behalf of the unions

After the parliament had passed the legislation of the new labour code, the Ministry of Interior Affairs submitted a bill on a wide range of issues amending several laws. One article of this bill stipulated that the chapter of the labour code which regulates industrial relations would enter into force on 1 January 2012, half a year earlier than the code itself. Unions immediately protested against this change, accusing the government of breaching the earlier agreement which established that the whole code would enter into force on 1 July 2012. The government accepted the unions' demands in most of the points, but insisted on introducing the new regulations on industrial relations in the armed forces earlier. As the unions of the armed forces had been the most active in campaigning against the new labour code, and indeed against other measures of the government, it has been widely claimed by unions that this measure was aimed at weakening the unions of the armed forces.

The most important changes in the regulation of the working environment

The key feature of the new labour code is that it intends to align the regulation of the working environment with that of contractual law enshrined in the civil code. Therefore, the new labour code, as a principle, allows collective agreements - or a works agreement in cases where there are no unions – and individual labour contracts to regulate the content of work differently to what is stipulated by the law. To achieve flexibility, the new code allows agreements to deviate to the benefit of the employer, and not only to that of the employee. For example, Code 2012 stipulates that the basic holiday allowance is 20 days, and also states that employees are to receive additional holidays based on their age. But at the same time, it also allows for a collective agreement (works agreement) to reduce or even cut all additional holidays based on age. In practice, this means that the Code 2012 only stipulates 20 days basic holiday as a minimum standard and all additional holiday may be subject to agreement. This example shows that this shift towards flexibility may result in a considerable deterioration of previous minimum standards set by the labour code.

The new labour code also shifts some of the risks related to employment from the employer to the employee. For example, the Code 2012 stipulates that in case of unavoidable external influence (force majeure), such as a power cut, the employee is no longer entitled to receive the basic salary. The risk posed by unavoidable external influence is thus shifted to the employee from the employer. The regulation of the employers' liability for damages has also changed to reduce the risk of employers, with the Code 2012 stipulating that the employer is only liable for damage which is within the overseeing capacity of the employer and which the employer could have averted. The Code 2012 introduces the payment of guarantee deposit requirements for employees. The employer may namely stipulate in the labour contract that an employee whose work includes handling money or other valuables must hand over a precautionary guarantee deposit, which could be as high as one monthly salary, for covering possible losses. The code has also increased the compensatory burden on employees for causing harm to the employer. If an employee causes harm through negligent work, then he/she could pay as much as 4 months' absence payment as compensation, a rule which greatly increases the compensation burden on employees.

There are some key changes concerning the rules of termination of employment which tend to favour the employers' side.

- The code has increased the period of probation to three months, which makes it possible for employers to dismiss new employees during a longer period of time without any explanation.
- The Code 2012 allows for the dismissal of an employee during the period of sick leave, which is contrary to the old regulation.

- It is no longer the duty of employers to re-employ unlawfully dismissed employees. In the new code, reinstatement can be awarded only if equal treatment was not respected or a union official was fired, thus breaching the law.
- The Code 2012 makes it cheaper to terminate employment for employers by stipulating that the lump sum shall be determined based on basic salary and not based on average income.

The re-regulation of working time and shift supplements increases flexibility, which benefits companies as it allows employers to have more flexible arrangements concerning working time and to avoid paying overtime in the case of a sudden surge of demand for work.

- The code raises the statutory limit of maximum overtime hours from 200 to 250 per calendar year.
- Collective agreement (works agreement) could further raise the annual overtime sum to 300 hours per calendar year.
- Another measure allows employers to change the working time regime with notification of just four days, while the earlier regulation stipulated a notification period of seven days. This latter regulation also allows employers to arrange working time more flexibly and avoid paying overtime in the case of a sudden surge of demand for work. The new labour code only stipulates having a one-shift supplement, which is 30% of the basic salary for employees, to which only those who are working regularly between 6pm and 6am are entitled. Nonetheless, partners can agree to have a salary which includes compensation instead of paying supplements, or to have a monthly fixed amount of compensation instead of the supplements. These rules may allow employers to bargain down compensation to an even lower level.

The legislation of the new labour code clearly changes the balance of regulation between employers and employees. Altogether, the lowering and diluting of minimum standards, flexibilisation and shifting of some of the risk of employment to the employee makes the regulation more beneficial for employers. It ensures flexibility for employers and, at the same time, lowers the security net for employees.

Regulation of industrial relations

In 1992, the government aimed to adapt the German industrial relations system for use in Hungary. It originally wanted to see works councils as the sole workers' organ of employee input at the workplace with the right to conclude work agreements. At the same time, the

intention was to shift collective bargaining to the sectoral level in order to set the basis for works agreements, as in Germany. Unions, however, wanted to preserve their exclusive bargaining rights at the workplace level and saw in the works councils an artificial institution, whose main mission would be to help destroy their workplace presence. After tough negotiations, a compromise was reached: works councils were created, but they were only granted rights to be informed and consulted about determined issues. Unions retained their exclusive bargaining rights and some entitlements to ensure their proper functioning in the workplaces. Unions were also entitled to be informed and to be consulted over issues which were deemed to be important for their bargaining activity. Therefore, somewhat confusingly, the law mandated the co-existence of workplace-level unions and works councils which were granted partly overlapping rights. In practice, however, this confusing legal situation has rarely caused trouble. A smooth cooperation between local unions and works councils has developed in most workplaces.

The new labour code puts unusually large emphasis on agreements between employers and unions and on making them key partners so that employers are able to achieve the full flexibilisation potential of the new code. Given that flexibilisation is designed to benefit employers in this case, one would think that the labour code would reinforce the position of unions in order to ensure a more balanced power relationship in the working environment and thus achieve a fair compromise between flexibility and the legitimate interests of employees concerning security. On the contrary - one of the main aims of the government was to cut unions' rights down to that of mere existence. The compromise reached in December only restored some of the traditional entitlements and rights of unions at the workplace level. As a whole, the regulations of the new code cut the entitlements and rights of unions dramatically.

Probably the most painful changes for unions in the new code are the cuts to the entitlements and rights of union activists.

- The new labour code only provides legal protection to 2 to 6 union officials, depending on the size of the workplace, while the Code 1992 provided legal protection to all officials. Also, the new code has substantially reduced the statutory working time exemption for performing union duties.
- It has also ended the legal possibility to demand pecuniary compensation to the union for non-used exempted working time by union officials, which had served to provide unions with an additional source of funding.
- The new labour code has also stripped the working time exemption for union activists for the purposes of trade union education.
- The Labour Code 2012 has ended the consultation and information duties of employers towards unions. Another very sensitive change for unions is that the new labour code no longer mentions the right of unions to participate in the electoral committee, which organises the works council elections.

- The labour code prohibits unions at state-owned companies from negotiating better conditions for themselves above the minimum standards provided by the law. This stipulation will hit the unions at major public utility companies and is likely to undermine their organisational strength. Only unions at privately owned companies can negotiate better conditions for themselves, in a collective agreement, than the minimal standards which the labour code provides.

The Labour Code 2012 has ended the consultation and information duties of employers towards unions. Another very sensitive change for unions is that the new labour code no longer mentions the right of unions to participate in the electoral committee, which organises the works council elections. The new labour code stipulates that only unions which have at least 10% of employees at a company as members or which will see at least 10% of all employees covered by the planned agreement are entitled to conclude a collective agreement.

While entitlements of unions were cut, those of works councils were selectively enhanced. From 1 July 2012 onwards, the works council is the sole partner of the employer as far as information and consultation is concerned. The new labour code also granted the task of monitoring the observance of employment rules to the works councils. Nevertheless, probably one of the most important changes is that works councils now have the right to conclude works agreements with the employer in cases where there is no collective agreement in force and no union organisation present at the workplace which is entitled to negotiate a collective agreement. The works agreement may regulate terms and conditions of employment as a collective agreement, with one important caveat: it cannot regulate wages and remuneration. As works councils retained their impartial status in connection with strikes organised at the employer's premises, which means that works councils shall not organise strikes and shall not support or prevent strikes, the bargaining capacity of works councils is weak. Moreover, they lack the co-determination rights which make German works councils so powerful and thus enable them to conduct real bargaining with employers.

The new labour code even reduces some of the entitlements of works councillors, despite granting them regulating power where there is a lack of a union. It only provides legal protection to the president of the works council, as opposed to the outgoing regulation, which provided employment protection to all works councillors.

Summary

The new labour code of Hungary is in line with the general trend of many recent labour law reforms across Europe in that it aims to allow more flexible regulation of work to help firms to regain competitiveness, while at the same time opening up the possibilities for cost cutting.

The Hungarian regulations, however, are likely to stand out of the crowd of recent labour law amendments by constituting a comprehensive re-regulation of labour law. The stated aim of the government was to carry out revolutionary changes in Hungary. It is thus no wonder that the government wanted a wholesale turnaround in the regulation of the working environment as well. Consequently, it was conceived as a comprehensive regulation which aligns labour law with that of civil law and shifts many risks of employment to the shoulders of employees. Some unions reported that if an employer used all possibilities offered by the new code to cut wages and flexibilise work arrangements, it may save 30% of the total wage cost.

The trick of the regulation is that employers can only achieve all potential flexibilisation and cost-cutting possibilities through concluding a works agreement with a works council.

The labour code drastically cuts the traditional rights and entitlements of unions. The law has curtailed the working time exemption and legal protection of union activists, which hurts the organisational strength of unions and undercuts their financial strength. One example of what will happen with unions was seen in the case of the police, who already announced that on 1 April 2012, all union entitlements would be cut to the minimum level stipulated by the law, including ending the automatic deduction of the union membership fee from the salary of union members. This measure is likely to disrupt union organisation in the police force and would make the union unable to meet with the legal minimum for concluding a collective agreement.

While the legislation weakens the position of unions, it elevates the rights of works councils. The most important change is that in case of a lack of unions at the workplace, a works agreement can be concluded with the works council. Works agreements could regulate all issues which a collective agreement could – even to the benefit of employers – with the exception of remuneration. The shift of the rights to be informed and consulted from unions to works councils is a clear „signal” that unions will suffer a substantial loss of entitlements and prestige.

In the parliamentary debate on the labour code, Prime Minister Viktor Orbán said that *“Employees are unacceptably vulnerable today ...unions will barely be able to defend workers... therefore the cabinet will bear the main responsibility for them”*. Unions, in turn, expressed that the government is cynical, and that the real aim of the code is to undermine unions. Unions fear that some employers may facilitate the elections of docile works councils, who would be the negotiating partners and facilitate the further flexibilisation of work to the detriment of employees.

It is widely feared that the new labour code, together with the disbandment of the standing national level tripartite body, aims to undermine unions’ organisational strengths and thus

considerably weaken an important check on government power, while at the same time giving a freer hand to employers to have more flexible work arrangements and the ability to cut costs.

It is no wonder that employers' associations and representatives of big business have expressly welcomed the new labour code. László Parragh, the president of the Chamber of Commerce and Industry, had openly demanded that the role of trade unions be reconsidered because they hinder the structural reform of the system. The "*giant obstacle of competitiveness*", as he labelled the outgoing labour code, has now been replaced by a flexible regulation which undermines the organisational strength of unions, the only force which could balance the negative impacts of the new legislation on behalf of employees.

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