

## **Summary - Policy paper**

### **Hungary**

**DIADSE** – “Dialogue for Advancing Social Europe – DIADSE” project (Supported by the European Commission - Industrial Relations and Social Dialogue Program, nr VP/2014/004 - VS/2013/0037).

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The study intends to examine the effects of labour and social reforms in Hungary in the context of industrial relations. In this perspective, the study aims to put specific focus on two issues: to analyze how the great economic crisis has affected – directly and indirectly – these labour law reforms and how social dialogue and collective bargaining have played a role in these reforms.

On the whole, the direct economic effects of the global crisis have been limited in Hungary, as the post-2010 government’s policies have had a more fundamental transformative impact on politics, including labour issues. The post-2010 government has had an overwhelming parliamentary majority which allowed the government to create a ‘strong state’. Marginalization of social dialogue, abandoning of established tripartism, re-shaping the institutional foundations of collective bargaining and flexibilization of employment contracts law have been part of this endeavour. A new Labour Code (Act I of 2012) fitted well into this concept and it puts an overwhelming emphasis on quantitative concerns, specifically on the overriding objective of job creation (and the quality of jobs, the concept of ‘decent work’ etc. were not really issues from a labour law perspective). All in all, it is very difficult to talk about crisis-related labour law reforms in Hungary and the crisis has not been rigorously discussed from a labour law point of view. This fact is also a reason for focusing on the Labour Code (and its effects) itself in this paper.

The Hungarian DIADSE Report puts the new Labour Code (and its background, its effects, its transformative role, its context in industrial relations etc.) into the focus of the investigation, as the new Labour Code is definitely the central piece of labour market reforms in Hungary during the study period of the DIADSE-project (2008-2015).

The research particularly examines the role of the social partners in the reforms of labour law and social dialogue, albeit the adoption of the new Labour Code was coupled with a relatively selective and half-hearted consultation process, together with a great extent of informality and an atmosphere of governmental rigor. In general, erosion of social dialogue has been a trend in the last half decade and one can have the impression that the very idea that public policy measures should be transparent and agreed on through the social dialogue institutions suffers serious deficit. Parallely, union actions in response to reforms in Hungary were fragile and imperfect.

The general revision of labour law and the new Labour Code turns the whole world of labour law upside down: all fields of labour regulation are affected by significant changes, alterations. The new Code, in general, offers more flexible regulations and reduces, to a certain extent, the labour law risks and burdens for employers, while on the other hand, a decrease of employees’ rights is detectable (at the same time, the new Code contains a few improvements for workers too). From a technical, purely professional point of view (the clarity of the regulations etc.), the Code shows a rather good progress and it provides a far more detailed, elaborated and transparent system of rules (but on a very complex way). In general, the new Labour Code seeks to increase the parties’ – collective and individual – autonomy and significantly reduces any legislative intervention. As such, labour law is mostly seen in the ambit of civil law (and basically as one instrument of

economic and employment policy) and not conceptualized as a field of purposive social law anymore.

As it is impossible to comprehensively examine the new Labour Code in such a contribution, the paper focuses on some central conceptual changes. In our opinion, the following five analyzed tendencies are epitomizing the essence of recent labour law reforms in Hungary and might give an impression about the trend and regulatory style of the new Code:

- Conceptual shift in the idea of labour law;
- Rearrangement of the legal sources of labour law;
- Re-regulation of collective labour law and the structure of industrial relations;
- Conceptual change in the legal protection against unlawful dismissal;
- Some distinctive changes in individual employment contracts law.

After outlining the general economic, political context and objectives of labour law reforms (Chapter 1), the paper (Chapter 2) puts forward an elaborated analysis and discussion on these five above-mentioned particular labour law issues. Additionally, the paper (Chapter 4) highlights the related roles, positions, reflections and initiatives of social partners, paying attention to all standard and relevant levels of industrial relations (including national, sectoral and company-level social dialogue). The paper concludes with the exploratory analysis of the labour market effects of the reforms (Chapter 4).

One of the main goals of the labour law reform has been to revitalize the contractual sources of labour law. The main aim is to strengthen the role of the collective agreement as a contractual source of labour law. This brand new regulatory concept significantly enlarges the role and influence of employers (employer interest representations) and trade unions on the labour market, while it simultaneously increases their responsibility and reduces the regulative functions of state regulation. This new regulatory context poses an enormous challenge for Hungarian trade unions: it is yet to be seen whether they can live up to the increased expectations and to become effective bargaining partners of employers within an even more autonomous and contractual system of labour law regulation. As early experiences show, bargaining parties are rather reluctant and cautious in innovatively using the increased scope for bargaining.

As it was already mentioned before, it is very hard to prove the direct effect of the crisis on labour law reforms in Hungary. The passing of a completely new Labour Code was much more a result of the strong-minded political will of the Government. In general, the new Labour Code seeks to increase the parties' autonomy and significantly reduces any legislative intervention. Although the new Code seems to be reasonably successful in general, some conceptual critiques might still be raised. The paper analyzes some critical cornerstones of the new labour law architecture of Hungary. In all fields there are some identifiable negative consequences – and/or possibly unwanted side-effects – of the reform. Firstly, the intended job-creating effect of the Code can't be proved. Secondly, the Code does not seem to practically intensify collective bargaining processes (in contrast with its aim). Thirdly, the re-regulation of trade unions and works councils have not brought about a meaningful revitalization of industrial relations, but has caused quite a lot of uncertainties and tensions. Fourthly, the new Code might undermine labour law compliance in general by leaving a large number of unlawful terminations without any meaningful sanction. On the whole, it would still be a misleading simplification to blame the current Government and the new Labour Code for all problems of the labour market in Hungary and especially for ineffective social dialogue processes. Only time will tell if social dialogue will revive or not in Hungary and legislation as such has a limited capacity in this context.

With regard to employment indicators, some years ago Hungary still belonged to the tail-enders of the EU, while by now the country has become a top performer concerning the pace of

improvement on the labour market. According to the latest data, a positive trend regarding growth in the number of people in employment has remained intact over the last couple of years. Despite these promising trends, there is still much to do and several more measures are necessary to maintain this positive tendency. Furthermore, it would be hard to construe a direct link between labour law reforms and improving employment indicators.

According to various indexes and everyday experience, labour law in Hungary is less and less perceived as rigid and restrictive, and it is not a noticeably problematic factor, not a real issue when doing business. No doubt, the new Code has met its original aim of increasing flexibility, but the real social consequences of such a reform are to be seen in the future.

The DIADSE project aimed to investigate, among others, how the social dimension of Europe both at the supranational and national levels has been affected by the latest socio-economic adjustments and how the EU social model might be re-constructed and advanced through social dialogue. In relation to Hungary, the following general policy proposals might be formulated in order to re-construct the country's vision about labour law (and social policy issues more generally) through – and in ‘tandem’ with – social dialogue.

Social partners, especially trade unions, are obviously experiencing a weakening of their role in national-level policy-making; erosion of institutionalized social dialogue is detectable. This tendency is particularly remarkable and troublesome if one takes into account the fact that in post-socialist countries – mostly for historical reasons – the institution of tripartite social dialogue – and the articulation of interests on the political level – usually plays more important role than bipartite collective bargaining and other forms of social dialogue. For a long time, tripartism and participation in national level politics (including intensive formal and informal lobbying) somewhat compensated for weak bargaining capacity at sectoral and firm level. Now, for many reasons, it is certainly time for an explicit shift in focus for unions: renewal should start rather at shop-floor and industry level. Furthermore, in our opinion, unions should concentrate their – increasingly limited – energies more on definite issues, professional matters, potent bipartite bargaining and trust-building movements, actions, rather than on structures, positions, privileges, internal conflicts and politics. The combination of the above-mentioned – well-expected – changes of perspectives might bring them closer to the people.

Correspondingly, the revitalization and the real – much reasonable – unification of the trade union movement (especially that of fragmented national level confederations) are still pressing needs and open, potential issues in Hungary. Pleas for a united and strong trade union movement have been on the agenda of nearly all confederations for decades now, however, no effective, consensual actions have really followed.

As it is for social partners, it is also difficult to formulate simple – legal-technical – recommendations for the government of Hungary, as the labour law reform analyzed in this paper fits well to the complexity of various changes in the politics, economy and society carried out by the current governing party since 2010. No doubt, the government, or the Prime Minister himself, has a comprehensive and determined vision of the future, and ‘reforms’ of various policy-fields contribute to the accomplishment of this vision like pieces of a jigsaw puzzle. Therefore, the following recommendations might presume a sort of reconsideration (or amendment) of this overall vision. In other words, the following policy proposals are – to some extent necessarily – regardless to the political realities of implementation. Based on the lessons of the recent labour law reform, the recommendations below aim not only to mitigate unwanted negative consequences and minor side effects, they are rather formulated to help to restore the internationally recognized, original, purposive functions of labour law and disregard some of the initial objectives of the recent reform such as extreme flexibilization (in order to improve competitiveness) and the much debated idea of intended job creation through labour law reforms.

Conceptually, the following issues would certainly be highly important to be considered (and re-considered) in any future Hungarian labour law reform:

There would be a need to restore the basically social law nature of labour legislation, to implement not only the “flexibility”, but also the “security” part from the flexicurity concept (either in labour law, or within a wider, coherent system of labour-related / labour market-oriented regulation) and to improve the quality and decency of jobs.

For the sake of expansion of employee protection legislation, the first steps could be to revise the regulation of the legal consequences of unlawful dismissal and to create a new, fairer, more sensible equilibrium of rights, duties and risks between employers and employees.

In general, there would be a need for a slightly more ‘user-friendly’, more transparent character of labour regulation. Accordingly, there would be a need to direct more attention on the improved level of compliance with labour laws and to create incentives for labour market actors to consciously comply with labour laws.

Fighting poverty and wage-depression also assumes measures beyond the reach of labour law, however for this purpose a permissive labour policy can rely on collective bargaining and social dialogue (for instance, the union confederations’ recent ‘living wage’ campaign might meet employers relatively newborn strive to tackle emerging labour-force shortages).

Meaningful promotion of collective bargaining and facilitation of the conclusion of collective agreements would be a much desired policy-direction in the realm of the current, above-described regulatory structure of labour law. In line with international practices, such promotion by direct (and indirect) state intervention could be developed, both through legislation (effective incentives in labour laws itself) and through supporting measures (extensively available mediation-arbitration services; catalyzed sectoral social dialogue and well-working extension procedure; efficient education of employees and employers, especially in the SMEs-sector; exemplary ‘role model’ of employers in the public sector and / or in public ownership, etc.). In this respect, the overall and purposive revision of the regulation on trade unions’ and works councils’ workplace rights and conditions is to be reconsidered. The strike law also needs reforms, especially to help employees to be able to use the leverage of industrial actions in merit. On the other hand, promotion of collective bargaining should embrace supporting the development of social partner organisations via transparent, impartial mechanisms (instead of ad hoc grants) in order to substantially improve their capacity and professionalism.

The advancement of effective national level social and civic dialogue would also be highly important (not necessarily by resuming former institutions, but achieving meaningful participation anyhow), in the matching view of improving the general quality, computability and legitimacy of policy making.

In line with the above-mentioned flexicurity-concept, and in line with the expected idea of increased policy-coherency, complementary reform-steps should be added beyond the strict sense of labour law, on other related fields (such as labour market policies and social policies, public education, further training and life-long learning, income policies, industrial policies etc.), however, these issues are obviously beyond the scope of this paper.