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1 Introduction, background

This study was prepared in the framework of the “*NEWEFIN - New Employment Forms and Challenges to Industrial Relations*” project (Supported by the European Commission - Application ref. VP/2017/004/0028 *Improving expertise in the field of industrial relations*). The study examines the Hungarian legal infrastructure of new employment forms, especially in the context of industrial relations.

Act I of 2012, the Labour Code (hereinafter: LC) entered into force on 1 July 2012. The Act is based — to a great extent — on traditional employment and full-time contracts of indefinite duration. The LC includes a brief, traditional – relatively vague, and seemingly very broad — statutory definition of the employment relationship, the employer and employee. Accordingly, “an employment relationship is deemed established by entering into an employment contract. Under an employment contract: a) the employee is required to work as instructed by the employer; b) the employer is required to provide work for the employee and to pay wages.” (LC § 42.). “‘Employee’ means any natural person who works under an employment contract.” [LC § 34 (1)]. “‘Employer’ means any person having the capacity to perform legal acts who is party to employment contracts with employees (LC § 33.).

The notion of employee covers both typical and atypical employees. In terms of legal policy, the official ministerial reasoning of the LC (2012) stated the following: “One of the fundamental tools for creating flexibility in employment is the regulation of the so-called atypical forms of employment. In this respect, the Proposal sets out to provide wider scope for the agreements of the parties and only intervenes in the shaping of the forms of employment by the parties inasmuch as necessary to enforce the best interests of employees as a guarantee and to protect important public interests.” The LC does not use the notion of ‘atypical’ because even within atypical forms of employment specific forms of work performance and employment have emerged. Therefore, the LC is emphasising that employment relationship is not a homogeneous concept, contains specific rules relating to individual, specific types of employment.

Hungarian labour law is based on a classical ‘binary divide’ between subordinate and independent workers (i.e. employees and the self-employed). While the notion of employee has a relatively clear traditional definition (see above), Hungarian labour law has no clear, established definition of self-employment per se, on its own. In practice, self-employed persons are independent contractors who work under a civil law contract (regulated by the Civil Code², hereinafter: CC). In the Hungarian understanding, the notion of self-employment is rather an abstract phrase, which has several technical, functional interpretations in various fields of law (e.g. social security law, tax law, anti-discrimination law etc.). In sum, there is a lack of a clear-cut, one-off category of self-employed workers in Hungary.

The paper describes and analyzes the Hungarian infrastructure of non-standard forms of work in a structure of four tiers: 1. Non-standards forms of employment in the LC (the rather ‘classical’ atypical employment relationships); 2. Unique Hungarian non-standard forms of employment ‘on the edge’, on the periphery of labour law, as tools of employment policy (simplified employment; cooperatives; public works and household work). Even if these forms are very different, they have some basic common characteristics, as it will be pointed out throughout the present paper; 3. Non-standard forms of employment ‘in the grey zone’ (sham

² Act V of 2013.

civil law contracts; economically dependent self-employed persons); 4. Non-standard forms of employment of the ‘future’ (employment forms of the gig economy).

As for the last, the gig economy is immature in Hungary, platform work, as such, is neither defined nor regulated. Moreover, platform work (as a phenomenon) is immature, hardly visible and marginal; it is not perceived (yet) as a separate regulatory / employment field and it also lacks specific policy (etc.) attention.³ Platform work is not really discussed as an issue. However, given the lack of a ‘critical mass’ of the phenomenon, the lack of specific attention cannot be evaluated as a big failure. The current legal regulation does not deal with platform work’s expected challenges.

2 Legal framework

2.1 Non-standard forms of employment in the Labour Code

The LC is based on traditional employment and full-time contracts of indefinite duration. Chapter XV of the LC deals with “Special Provisions Relating to Employment Relationships According to Type.” The legislator’s aim is to offer a relatively comprehensive legislation on so-called atypical forms of employment in this Chapter (plus Chapter XVI regulates temporary agency work). The below listed forms of employment hold one common feature: all of them are based on an employment relationship.⁴ Obviously, other forms of employment can and do exist on the labour market, but in the absence of regulation, it is very difficult to ascertain them.

The basic policy objectives backing the regulation of atypical employment relationships are clear from the background documents, early drafts and the ministerial reasoning of the new LC. In this context — in line with Gyulavári and Kártyás⁵ — it is useful to cite the Hungarian Work Plan (which was a consultation document published by the government in 2011 to lay down the framework for the revision of labour market regulation). The main aim of the Plan was to remedy the — at that time — very low employment rate in the country. It was the operational programme for the prime minister’s ambitions to create ‘one million new jobs in the next ten years’ and to build up a labour market in Hungary which can be “the most flexible in the world”.⁶ The Plan set out three fundamental observations on atypical employment. Firstly, it acknowledged that the flexible forms of work contribute to the general flexibility and competitiveness of the labour market and can also assist certain disadvantaged job seekers in finding employment. Secondly, the Plan envisaged a regulatory method for atypical employment according to which the parties of the employment relationship should be allowed to freely design most of the details of the atypical employment relationship instead of providing for a detailed regulation of this form of work in labour law. The lack of meticulous regulation of some new atypical forms of employment (on-call, job sharing, employee sharing) has both advantages and disadvantages. On the one hand, the parties are free to design the contract in harmony with their own needs. On the other hand, the often too sketchy regulation can create uncertainties and requires a lot of expertise, creativity and awareness. Thirdly, the Plan also

³ See for further details: Meszmann T. Tibor (2018).

⁴ Kiss György (2016) 234.

⁵ Gyulavári T. and Kártyás G. (2015a) 86-87.

⁶ The Prime Minister’s speech as cited by Gyulavári T. and Kártyás G. (2015a) 47.

stated that EU labour law (directives dealing with atypical employment) should be implemented as flexibly as possible, making use of all the possible derogations legally available.

The following atypical forms of employment are covered in Chapter XV:

- fixed-term employment relationships;
- on-call work;
- job sharing;
- employee sharing;
- teleworking;
- out-workers;
- simplified employment and occasional work relationships;
- employment relationships with public employers;
- executive employees;
- incapacitated workers.

Part-time work is also regulated in the LC, but without very detailed regulation. Pursuant to § 88 of the LC ‘daily working time’ shall mean the duration of working time fixed by the parties or specified by employment regulations for: *a*) full-time jobs; or *b*) part-time jobs. There is one form of mandatory part-time employment regulated in the LC for the sake of family-friendly purposes: employers shall amend the employment contract based on the employee’s proposition to part-time work covering half of the regular daily working time until the child reaches the age of four, or the age of six in the case of parents with three or more children [§ 61 (3)].

2.1.1 Fixed-term employment relationships

§ 192 of the LC regulates fixed-term employment. The interval of fixed-term employment shall be determined according to the calendar or by other appropriate means. The date of termination of the employment relationship may not exclusively depend solely on the party’s will, if the duration of the employment relationship is not determined by the calendar. In the latter case, the employer is required to inform the employee of the expected duration of employment. In Hungary, there are no restrictions on the first-time use of fixed-term contracts.

The duration of a fixed-term employment relationship may not exceed five years, including the duration of an extended relationship and that of another fixed-term employment relationship concluded within six months of the termination of the previous fixed-term employment relationship. Where an employment relationship is subject to official authorization, it may only be concluded for the duration specified in the authorization. If the authorization is extended, the duration of the new fixed-term employment relationship may exceed five years together with the duration of the previous employment relationship.

In relation to possibly abusive “chain-contracts”, the LC contains a relatively vague and soft prohibition (a kind of a ‘double-test’): on the one hand, a fixed-term employment relationship may be extended, or another fixed-term employment relationship may be concluded within six months from the time of termination of the previous one upon the employer’s legitimate interests. On the other hand, the agreement may not infringe upon the employee’s legitimate interest. Accordingly, Hungarian labour law does not prescribe exact, maximum number of

prolongations, or concrete grounds, but applies the above mentioned ‘double-test’ as a general clause (open norm). The employer’s legitimate interest is a broad notion, but, for example, the general aim to cut costs of employment is surely not enough.⁷ Should the above-mentioned conditions fail to exist, the employment contract will be partially invalid. Correspondingly, the employment relationship shall not automatically become indefinite in such a case, but the general rules of invalidity shall be duly applicable. Accordingly, in line with § 29, the employer shall without delay terminate a legal relationship on the basis of an invalid agreement with immediate effect provided that the parties fail to terminate the underlying cause of invalidity. Furthermore, if the employment contract is invalid for a reason attributable to the employer and it has to be terminated as described above, the employer shall pay the employee an absence pay that would be due if the employer served ordinary notice and shall further duly apply the rules of severance pay.

The LC does not contain anymore the provision set in the former LC according to which the fixed-term employment shall automatically become indefinite, if the employee after the expiry of the fixed term works at least one additional day with his immediate superior being aware of it. The understanding of the notion of “immediate superior” frequently caused problems in practice. Furthermore, there were cases when the worker carried out some type of work after the cessation of the fixed-term employment without the parties having a real intention to make the employment relationship indefinite. Thus, under the current legislation, if the employee continues to work after the cessation of the fixed-term employment relationship, the employment contract between the parties shall be considered as simply invalid (see above). However, invalidity on the grounds of failure to set the contract (or its prolongation) in writing may only be alleged by the employee within a period of thirty days [§ 44 LC] .

Under the previous, 1992 Labour Code, it was not possible to terminate the fixed term employment relationship by way of ordinary dismissal. The new LC unlocked this ban, and makes it possible to terminate the fixed-term contract by ordinary dismissal, however, only in specific cases, namely: the employer may terminate the fixed-term employment relationship by dismissal when undergoing liquidation or bankruptcy proceedings, or for reasons related to the worker’s abilities or in case maintaining the employment relationship is no longer possible due to insurmountable obstacles beyond the power of the employer [§ 66 (8) LC]. The employer also has a possibility to terminate the fixed term employment relationship with immediate effect without reasoning. The only requirement is to “pay off” the employee: to pay the employee absentee pay due for twelve months, or in case the time remaining from the fixed period is less than one year, for the remaining time [§ 79 (2) LC]. Employees are also required to give reasons for terminating their fixed-term employment relationship by dismissal. The reason given may only be of such a nature that would render maintaining the employment relationship impossible or cause unreasonable hardship in light of the worker’s situation [§ 67 (2) LC].

2.1.2 Call for work

§ 193 of the LC deals with “call for work”, as a specific form of part-time employment. On-call work primarily targets people who for some reason are not able or temporarily do not want to work regularly. Such employees can be employed in jobs for up to six hours a day and they shall work at times deemed necessary to best accommodate the function of their jobs. In other words: instead of a fixed schedule, the obligation of the employee to perform work is adjusted to the deadlines attached to the duties. In this case, the duration of working time reference period

⁷ Decided by the Supreme Court: EBH 1999.136.

may not exceed four months. The biggest factor of flexibility is that the employer shall inform the employee of the time of working at least three days in advance (in contrast to the general rule, according to which the prior notification period is seven days / 96 hours).

Call for work is comparable, but not identical with so-called “zero hour contracts”. While in “zero hour”-type contracts (as a form of casual work) the employer is not obliged to provide the employee with regular work, in the Hungarian version of call for work the employer is obliged to provide the employee with regular work within the agreed part-time framework (via a maximum four-month regulated reference period). Consequently, genuine “zero hour contracts” do not exist in Hungary.

2.1.3 Job sharing

§ 194 of the LC regulates another specific form of part-time employment: job sharing. Under such a scheme, the employer may conclude one employment contract with several employees for carrying out the functions of a single job jointly. Where any one of the employees to the contract is unavailable, another employee to the contract shall fill in and perform the functions of the job as ordered. Accordingly, the concerned employees undertake the obligation to duly perform the tasks according to their own schedule. The scheduling of work shall be governed by the provisions on flexible working arrangements (it is up to the employees). Wages shall be distributed among the employees equally, unless there is an agreement to provide otherwise. Such an employment relationship shall cease to exist when the number of employees is reduced to one, because in this case the employment contract concluded for this specific variety of part-time work will lose its original rationale. In this case, the employer shall be liable to pay the employee affected absentee pay covering a period that would otherwise be due in the event of dismissal by the employer; furthermore, the rules on severance pay shall also apply.

2.1.4 Employee sharing

§ 195 of the LC deals with employee sharing. It means that several employers may conclude one employment contract with one employee for carrying out the functions of a job. Employee sharing might have different varieties, such as when the employee fulfils his duties for multiple employers simultaneously, or when the duties are fulfilled consecutively.

As a guarantee, such an employment contract shall clearly indicate the employer designated to pay the employee’s wages (this is independent from the method of sharing costs agreed upon by the employers among themselves). The shared employee will be subject to the collective agreement that is in operation in the company paying the wages (unless agreed otherwise).

The liability of employers in respect of the employee’s labour-related claims shall be collective (joint and several). Unless otherwise agreed, the employment relationship may be terminated by either of the employers or by the employee. The employment relationship shall cease to exist when the number of employers is reduced to one.

As Kártyás describes it, employee sharing can be useful especially in three scenarios. Firstly, in cases where the work is physically performed in one place but for several organisations (for example: a receptionist works in an office tower where over a dozen employers are located). Secondly, in case of a group of companies connected by ownership or close business relationship wants to exchange workforce for various reasons (such as unexpected need or

surplus in personnel, or a temporary need for specialists in one of the organisations). Thirdly, in case of micro enterprises that could not afford to employ a worker (even on a part-time basis), but could use a part-time or full-time position if an employee works for several of them.⁸

2.1.5 Teleworking

§ 196-197 of the LC regulates teleworking, which refers to activities performed regularly at a place other than the employer's premises, using computers and other means of information technology (computing equipment), where the end product is delivered by way of electronic means. Using information technology (computing equipment) and delivering products electronically distinguishes teleworkers from home-workers or out-workers. The teleworker's non-standard employment relationship is established on the basis of a special contract of employment in which the parties have to specify that the contract is concluded for teleworking purposes only. § 46 of the LC regulates the employer's general obligation to inform the employee about the applicable conditions to the contract or employment relationship. In addition to the general range of information, the employer shall also inform the teleworker of any inspections conducted by the employer; any restrictions regarding the use of IT equipment or electronic devices; and the department to which the employee's position is connected.

One of the specific features of teleworking is the limitation of managerial prerogative. To be exact, the employer's right of instruction, as a main rule, is exclusively limited to the identification and definition of the scope of work the employee shall deliver to the employer. The employer's right of control is also limited. Monitoring the completion of the work assignment shall not comprise any right of the employer to inspect any information stored on the employee's IT equipment (which is used to perform the work), that is unrelated to the employment relationship. The employer may restrict the use of computing equipment or electronic devices it supplies solely to the work the employee performs on its behalf. Unless there is an agreement to the contrary, the employer shall determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work.

In order to eliminate the isolation of teleworkers, the employer shall provide all information to persons employed in teleworking as is provided to other employees. Furthermore, the employer shall provide access to the employee for entering its premises and to communicate with other employees. Apart from that, teleworkers enjoy a high degree of autonomy. For example, in the absence of an agreement to the contrary, the employee's working arrangements shall be flexible.

It must be noted that Hungarian labour law practice makes a distinction between teleworking (described above and regulated by the LC) and (often only occasional) 'home office' (which is not specified in the LC). If the employer permits the employee to work from home only on an ad hoc basis, it does not necessarily have to be included in the employment contract, and the employer may provide for this and its rules in a unilateral instruction or regulation. In the case of ad hoc work at home, the employer basically determines the place of performance or even

⁸ Kártyás Gábor (2016b) 2-3.

gives employee the right to choose. Furthermore, the OHS-related obligations of the employer are considered to be ‘lighter’ in case of home-office (as compared to genuine teleworking).⁹

2.1.6 Outworkers

§ 198-200 of the LC deals with outworkers. Outworkers may be employed in jobs that can be performed independently, and that is remunerated exclusively on the basis of the work done. Such an employment contract shall define the work performed by the employee, the place where work is carried out and the method and extent of covering expenses. The employee’s home or another place designated by the parties shall be construed as the place of work. Outworkers are not to be confused with teleworkers: while the former carry out mostly manual work, teleworkers perform IT-based work.

Similarly to telework, unless otherwise agreed, the employer’s right of instruction is limited to the specifying of the technique and work processes to be used by the employee. In the absence of an agreement to the contrary, the employee shall carry out the work using his own means. In the absence of an agreement to the contrary, the employer shall determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work. In the absence of an agreement to the contrary, the employee’s working arrangements shall be flexible.

The employee shall be reimbursed for the expenses actually incurred in connection with the work, or - if the expenses actually incurred cannot be determined - a fixed flat-rate sum shall be paid to the employee. Payment of remuneration and expenses shall be withheld if the work done is deemed insufficient due to reasons attributable to the employee. Payment of remuneration and expenses shall be reduced if the employer is able to use the product in part or in whole.

2.1.7 Non-standard employment relationships based on the special qualification of the employer or the employee

2.1.7.1 Employment relationships with public employers

The legislator developed a specific regulatory approach related to the labour law of state/municipality-owned corporate sector (businesses in public ownership, such as public utilities, public transportation etc.). These specific provisions are basically ‘cogent’ in their nature, according to which employers are prohibited from concluding employment contracts (or collective agreements) in derogation from the law. This strict regulatory concept reflects the wish for better enforcement of public interests and better protection of public money, since the operation of these employers is guaranteed mainly by public resources (however, they are within the scope of private labour law).

⁹ Cf.: Pál Lajos (2018)

§§ 204-207 of the LC deals with the labour law of state/municipality-owned corporate sector. The LC lays down the definition of public employers, which means a public foundation, or a business association in which the State, a municipal government, a nationality self-government, an association of municipal governments, a territorial development council, a budgetary agency or a public foundation has majority control either by itself or collectively (the notion of ‘majority control’ is also defined in the LC precisely).

The Code severely limits the scope of collective autonomy and collective bargaining in the case of state/municipality owned companies. In this sector, collective agreements must not deviate from the basic mandatory rules on notice period, severance pay, wages, some working time rules (e.g. daily breaks) and industrial relations issues (including union representatives’ rights, legal protection, and time-off). This cogent regulatory concept reflects the governmental intention to safeguard public interests and to protect public budgetary money. However, this harsh differentiation between public and private companies breaks with the traditionally sector-neutral nature of Hungarian labour law, and it has been heavily criticized by almost all affected stakeholders (trade unions and employers alike).¹⁰ This set of rules hit the unions at major public utility companies harshly and it has the capacity to undermine their organisational strength.¹¹ Not only collective autonomy is limited in relation to publicly owned employers, but trade unions operating at such employers are also hindered inasmuch as publicly owned employers may not provide (for example, in collective agreements) operating conditions or rights to trade unions (e. g. time-off) that are in excess to those provided by the law.¹² As such, the law – practically speaking – penalizes trade unions operating at publicly owned employers, since the law prevents them from achieving a better position than the statutory minimum. This fact is especially remarkable, if one takes into account the Hungarian reality: after the change of regime (in the beginning of the 90s), the trade union movement has suffered the least losses in the public utility sector, therefore, this is where the strongest trade unions operate¹³, sometimes under good conditions. However, this cogent regulatory solution impedes these trade unions and the management of publicly owned companies to manage their labour relations on a creative way. As Berki warns, this regulatory solution – which narrows down the role of collective bargaining – can undermine the expected role of the state (“public”) as a model/exemplary employer.¹⁴ Nevertheless, the interpretation of the prohibition of derogation is not without problems. § 206 allows “no derogation” from Chapters XIX-XXI of the LC (Chapter XIX: General Provisions on Industrial Relations; Chapter XX: Works Councils; Chapter XXI: Trade Unions). According to one – strict – interpretation, “no derogation” means an absolute ban on regulation of these matters (and perceives these Chapters of the LC as a fully exhaustive, complete, non-alterable set of rules). However, according to another – less strict – understanding, the concept of “no derogation” cannot prevent the parties from regulating those matters – in a collective agreement for example – which are not at all covered and touched upon by the respective Chapters of the LC. For instance, as Berki notes, in this logic, nothing could hinder the trade union and the employer from creating a social committee in a collective agreement to aid employees in need, according to specific rules, through a fund mutually financed by them. It is easy to comprehend that the proper and stable interpretation of § 206’s

¹⁰ In this context, Nacsa and Neumann emphasize a further harmful side-effect of this rule. They call it “negative solidarity”. The essence of this tendency is described as follows: “As the law implied stricter labour standards for the public sector, now private-sector employers also incline to implement public sector rules into the collective agreement and aimed to levelling downward labour relations. Therefore sectoral union’s main concern is to prevent such ‘negative solidarity’ of employers.” Nacsa B. — Neumann L. (2013)108.

¹¹ Tóth A. (2012) 8.

¹² § 206 LC.

¹³ Berki E. (2015) 67.

¹⁴ Berki E. (2015) 73.

“no derogation”-principle would be crucial for the existence, status and vitality of trade unions at publicly-owned enterprises. Yet, current Hungarian legal practice is not clear in this regard (even the Ministry’s respective opinions are somewhat confusing). In this context, it is also debated, to what extent an employer can support (directly or indirectly) a trade union at all. ILO-norms are cautious – but not radical – on this point and prohibit only those – financial or other – support for workers’ organisations which carry the object of placing such organisations under the control of employers or employers’ organisation.¹⁵

2.1.7.2 Executive employees

§§ 208-211 regulates the specific — ‘non-standard’ — labour law status of executive employees. According to the LC, ‘executive employee’ shall mean, firstly, the employer’s director (“no. 1 manager”), and, secondly, any other person under the direct supervision of the former and authorized - in part or in whole - to act as the director’s deputy. Thirdly, employment contracts may also invoke the provisions on executive employees if the employee is in a position considered to be of considerable importance from the point of view of the employer’s operations, or fills a post of trust, and his salary reaches seven times the mandatory minimum wage. The latter category is called ‘designated’ executives. As such, only the agreement of the parties — and not to the unilateral decision of the employer — can extend the very flexible rules pertaining to the executive employees, and only under the above-described preconditions. The LC presumes that executive employees hold a stronger position on the labour market, thus, they need less protection.

The employment contract of executive employees enjoys almost full freedom of contract as it may derogate — both in melius and in peius — from the provisions of Part Two of the LC (with only some exceptions set out in the Code). This rule is much more flexible than the basic rule of the LC in this regard (§ 43), according to which the parties in the standard employment contract can depart from the provisions only in favour of the employee if this departure is not prohibited by rules on the employment relationship.

Executive employees shall work under flexible working time arrangement (thus, they are not entitled to a compensation for overtime, extra work, and it is not mandatory to have their working time recorded). Collective agreements shall not apply to them. As opposed to ‘standard’ employees, executive employees shall be subject to full liability for damages, even if the damage is caused by negligence only. Executive employees need to face more simple (more flexible) rules on dismissal. As a main rule, in the case of ordinary notice issued by the employer, there is no obligation to state the reasons for the notice. This is derived from the confidential nature of such employment relationships. As regards the termination of employment with immediate effect on grounds of gross violation of the employment contract, this can be exercised within three years (instead of one year stipulated in the general rule).

In relation to executive employees, the LC contains detailed provisions on the conflict of interests. These, on the one hand, restrict the engagement of the senior employee in other activities (for example, they may not enter into additional employment-related relationships), and on the other hand, restrict his business activities.

¹⁵ § 2 (2) of C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

2.1.7.3 Incapacitated employees

§§ 212-213 deals with incapacitated employees. The Constitutional Court in its ruling 548/E/2006.AB established the case of the violation of the Constitution by nonfeasance, saying that the legislation does not contain statutory provisions regarding the employment relationship of a person lacking capacity. The LC fulfils this gap.

Incapacitated employees or employees whose legal capacity has been partially limited having regard to employment may conclude employment relationships, but only under some specific conditions, among which the most important ones are the following: they can be employed only for jobs which they are capable to handle on a stable and continuous basis in the light of their medical condition; the functions of the employee's job shall be determined by definition of the related responsibilities in detail; the employee's medical examination shall cover the employee's ability to handle the functions of the concrete job; the employee's work shall be supervised continuously so as to ensure that the requirements of occupational safety and health are satisfied; the provisions pertaining to young employees shall apply to these employees, with the proviso that they may not be compelled to pay compensation for damages or restitution (because of the total lack of discretionary capacity).

2.1.8 Special Provisions on Temporary Agency Work

§§ 214-221 of the LC contain special provisions on Temporary Agency Work (TAW). For the purposes of the LC 'temporary agency work' shall mean when an employee is hired out by a temporary-work agency to a user enterprise for remunerated temporary work, provided there is an employment relationship between the employee and the temporary-work agency (placement); 'temporary-work agency' shall mean any employer who places an employee, with whom it has an employment relationship, under contract to a user enterprise for temporary work supervised by the user enterprise; 'user enterprise' shall mean any employer under whose supervision the employee performs temporary work; 'temporary agency worker' shall mean an employee with a contract of employment with a temporary-work agency with a view to being assigned to a user enterprise to work temporarily, where employer's rights are exercised collectively by the temporary-work agency and the user enterprise (employee); 'assignment' shall mean when the temporary agency worker is placed at the user enterprise to work temporarily.

The duration of assignment may not exceed five years, including any period of extended assignment and re-assignment within a period of six months from the time of termination of his/her previous employment, irrespective of whether the assignment was made by the same or by a different temporary-work agency.

The following entities may function as temporary-work agencies in Hungary: a) a company established in an EEA Member State that is authorized under national law to engage in the activities of temporary-work agencies, or b) a business association established in Hungary whose members have limited liability, or a cooperative society in respect of employees other than its members, provided that it satisfies the requirements prescribed in the LC and in other legislation and it is registered by the government employment agency. Where a temporary-work agency is excluded from the register, the provisions on invalidity shall apply with regard to employment contracts.

The LC contains various prohibitions in relation to TAW. The assignment of employees is not allowed, among others, with a view to replacing employees on strike. The user enterprise shall not have the right to order an agency worker to work at another employer (prohibition of sub-delegation). An agreement shall be considered invalid if it contains a clause to ban or restrict any relationship with the user enterprise following cessation or termination of the employment relationship on any grounds; or if it contains a clause to stipulate the payment of a fee by the employee to the temporary-work agency for the assignment, or for entering into a relationship with the user enterprise.

Collective labour law-related aspects of TAW are not really regulated, but the LC prescribes that the user enterprise shall inform the local works council of the number of temporary agency workers employed (and of the employment conditions) and on vacant positions at least once in a six-month period, and shall keep the temporary agency workers it employs informed on a regular basis.

The relationship between the agency and user enterprise is a private law relationship, but some aspects of it are regulated by the LC. For instance, the agreement between the agency and the user enterprise shall specify the material conditions of placement, and the sharing of employer's rights. The agreement shall be made in writing. An agreement between the agency and the user enterprise shall be null and void if: a) the agency and the user enterprise are affiliated by way of ownership in part or in whole; b) at least one of the two employers holds some percentage of ownership in the other employer, or c) the two employers are connected through their ownership in a third organization. The agreement between the agency and the user enterprise may contain a clause to stipulate that non-wage benefits shall be provided to the employee by the user enterprise directly. The LC lists in details the matters about which the user enterprise shall inform the agency in writing (e.g.: its normal course of work; the person exercising employer's rights; the manner and the timeframe within which to supply the information necessary for the payment of wages; the qualification requirements pertaining to the work in question etc.).

Unless otherwise agreed, the agency shall be required to cover all employment-related justified expenses, such as the employee's costs of travel and the costs of a medical examination if one is required for employment. When requested by the user enterprise, the agency shall, before the first day of employment, supply to the user enterprise: a) a notification the temporary-work agency has submitted to the state tax authority concerning the data of the person employed by the employer and the payer, containing the date of commencement of the insurance relationship, as prescribed by the legislation on taxation; and b) a copy of the document in proof of being admitted into the register of temporary-work agencies in accordance with specific other legislation.

Unless there is an agreement to the contrary, the user enterprise shall supply all information to the temporary-work agency by the fifth day of the month following the current month, which are required for the payment of wages, and for carrying out tax declarations, the employer's data disclosure and payment obligations relating to the employment relationship. The user enterprise shall supply the above-specified information to the temporary-work agency within three working days from the last day of employment, if employment is terminated during the month.

As for the temporary employment relationship between the agency and the employee, the employment contract shall contain a clause indicating that it was concluded for the purpose of TAW, and shall contain a description of the work and the base wage. Besides the general information-giving obligation of the employer at the time of concluding the employment contract, the agency shall inform the employee of the registration number assigned. Before each assignment the agency shall provide to the employee another set of information (including the

identification data of the user enterprise; the beginning date of the assignment; the place of work; the normal course of work at the user enterprise; the person exercising employer's rights on the user enterprise's behalf; the particulars on travel to work, room and board). During the assignment, some elements of the employer's rights and obligations (relating to, among others, occupational safety, working time and rest periods, and keeping records thereof) shall accrue upon the user enterprise.

The LC contains the principle of equal treatment in relation to TAW: the basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment, those available to the employees employed directly by the user enterprise under employment relationship. The basic working and employment conditions, in particular, cover the following: a) the protection of pregnant women and nursing mothers; b) the protection of young workers; c) the amount and protection of wages, including other benefits; d) the provisions on equal treatment. As regards the amount of wages and other benefits, there are some possible exceptions to the principle of equal treatment, according to which the provisions on equal treatment shall apply only as of the one hundred and eighty-fourth day of employment at the user enterprise with respect to any employee: a) who is engaged with an agency in an employment relationship established for an indefinite duration, and who is receiving pay in the absence of any assignment to a user enterprise; b) who is recognized as a long-term absentee from the labour market (as defined in a separate law, Act CXXIII of 2004); c) who is working within the framework of temporary agency work at a business association under the majority control of a municipal government or public benefit organization, or a registered public benefit organization.

There are some TAW-specific rules also in terms of termination of employment in the LC. The employment relationship may only be terminated by the agency, but the termination of the assignment itself shall be construed as a valid ground for dismissal (as a reason in connection with the agency's operation). The notice period shall be fifteen days (which is shorter than in general). If termination is effected by the agency the employee shall be exempted from work during the notice period unless otherwise agreed. The employee may terminate the employment relationship without notice if the grave infringement or misconduct is committed by the user enterprise. The user enterprise shall notify the agency in writing concerning any infringement on the employee's part within five working days from the time of gaining knowledge. The time limit (15 days) for extraordinary dismissal (without notice) commences upon delivery of the information. The employee shall always submit the notice for termination of the employment relationship to the agency.

As regards, liability for damages, in connection with any damage caused, or any violation of rights relating to personality committed by the employee, the user enterprise may demand compensation or restitution from the employee (directly, under the rules of labour law). By agreement between the agency and the user enterprise, the provisions of civil law on liability for damages caused by an employee shall apply. In the application of the provisions of civil law on the employer's liability for damages caused by an employee the user enterprise shall be construed as the employer, unless there is an agreement between the agency and the user enterprise to the contrary. For any damages caused to the employee, or for any violation of the employee's rights relating to personality committed while on assignment the user enterprise and the temporary-work agency shall be subject to joint and several liability.

The most important fields of agency work in Hungary are as follows: manufacturing (65.8% of total revenue), commerce, automotive production (4.9% of total sales), warehousing (total revenue was 4.3%), administrative services (11.2% of total revenues), information and

communication (3.4% of total net sales) etc.¹⁶ The platform economy is not measured and not relevant in terms of agency work.

Act CXVI of 2018 (modifying the LC), effective as of 1 January 2019, authorizes the Government to decree the minimum fee payable to temporary-work agencies for temporary agency work. This measure — along with other new guarantees¹⁷ — aims to further ‘whitening’ the sector of TAW.

2.1.9 Making the standard non-standard?

Besides the listed atypical forms of employment, it is important to note that the default, ‘standard’ Hungarian labour law itself offers a plenty of possibilities to alter the structure and content of a seemingly standard employment relationship in a way which includes a huge array of flexibility and atypicality. Thus, the formally ‘typical’ can easily be turned into materially ‘atypical’ via flexible contractual arrangements and work organisation.

In general, labour law is now seen in Hungary not as ‘social law’, but rather as one instrument of economic and employment policy. The official reasoning of the draft LC contained the following formulations of such policy-objectives: “reducing the regulative functions of state regulation”, “implementation of flexible regulations adjusted to the needs of the local labour market” etc.¹⁸ One can have the impression that the unrestrained faith in the omnipotence of the market and the contract (as a regulatory tool) overshadows the state’s role as the guardian of decent working conditions.

On the collective level, in the new Code the general nature of the rules of law is that the collective agreement may depart from the provisions of the law without restriction, that is, even to the employee’s detriment, which means that the law, in contrast to the collective agreement, is dispositive (i.e. absolute dispositive) in its nature (in other word, this is the fully dispositive character of the Code, as a main rule; the Act lists only the cases in which a deviation is not allowed, or only allowed in melius). 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. As a consequence, in practical terms, parties to a collective agreement can almost fully (re)write their “own labour code”, with plenty of deviations and specialities.

On the level of individual agreements, in general, there is an increased possibility in the new Labour Code for ‘in peius’ individual contractual derogations. However, the main rule is maintained that the employment contracts may only depart from the ‘rules relating to employment’¹⁹ in favour of the employee, on a general basis.²⁰ There are some exceptions to this main rule in the new Code, as the new Code strives to enhance the regulatory margin of the parties’ agreements (in line with the civil law origins of labour law). As such, the Code offers

¹⁶ Pénzügyminisztérium (2017): Összefoglaló a munkaerő-kölcsönzők 2017. évi tevékenységéről.

¹⁷ For instance, as of 2019, the registration fee is increased for agencies (to 15 million HUF).

¹⁸ Even though the Hungarian Labour Code has been already quite flexible in an international comparison in the last decades, the government declared in 2010-11, that the Hungarian labour market shall be “the most flexible in the world”. Cited by Gyulavári T. and Kártyás G. (2015b) 234.

¹⁹ For the purposes of the Labour Code, ‘employment regulations’ shall mean legislation, collective agreements and works agreements, and the binding decisions of the conciliation committee. § 13 LC.

²⁰ See § 43 (1) LC: Unless otherwise provided for by law, the employment contract may derogate from the provisions of Part Two and from employment regulations to the benefit of the employee.

some exceptional possibilities for the parties to derogate – by way of individual agreement – from the ‘rules relating to employment’ also to the detriment of the employees. Taking into account the typically unequal position of the parties, these agreements can easily be risky and abusive for employees. For instance, while it is a basic pillar of labour law that employers shall provide the necessary working conditions, the text of the LC contains a remarkable exception: “unless otherwise agreed by the parties” [§ 51 (1) LC]. Derogations like this might completely alter the character of the seemingly standard employment relationship.

The standard employment relationship might become somewhat further flexibilized via the new rules of working time adopted in December 2018: the Parliament passed the Overtime Act, effective as of 1 January 2019. This new amendment to the LC raises the possible overtime hours, based on individual agreements with employees, which agreement overrides even the collective agreements made with trade unions. This is called "voluntary overtime" (which is a prime example of further flexibilization of the ‘standard’ employment relationship). In a given calendar year two hundred and fifty hours of overtime work can be ordered (as a default rule). However, in addition, maximum one hundred and fifty hours of overtime work can be ordered in a given calendar year subject to agreement between the employee and the employer in writing (voluntary overtime). The employee may withdraw from the agreement at the end of the given calendar year [§ 109 (1)-(2) LC]. The amount of overtime that may be ordered based on the collective agreement is limited at three hundred hours in a given year. In addition to the above, maximum one hundred hours of overtime work can be ordered in a given calendar year subject to agreement between the employer and the employee in writing (voluntary overtime). It must be noted that one of the most serious impacts of the new regulation is curbing trade union rights by introducing individual consent/agreement for the plus 150/ 100 hours (instead of being conditioned on a collective agreement). The employee may withdraw from the agreement at the end of the given calendar year [§ 135 (3) LC]. It must be noted that — as a guarantee — the employee’s withdrawal from such ‘voluntary overtime’ agreements (up to four hundred hours) may not in itself serve as grounds for termination [§ 66 (3) b) LC]. Critics of the new provision say that it makes employees vulnerable to the whims of employers, as they are not necessarily in the position to say no to a request of some "voluntary overtime". The new legislation leaves the 48 hours/week work limit unchanged but raises the maximum of the working time overtime banking period to 3 years (from 1 year): where justified by objective or technical reasons or reasons related to work organization, the maximum duration of working time banking fixed in the collective agreement can be thirty-six months [§ 94 (3) LC]. It must be mentioned that the opposition consistently refers to the new law as the "Slave Law". The modification faced intense criticism, sparking the heaviest street protests under the current government. The vice chairman of the Vasas ironworkers union, told Reuters: “This government just makes laws with scant consultation of those affected.”²¹

2.2 Non-standard forms of employment ‘on the edge’ of labour law, as tools of employment policy

2.2.1 Simplified employment and occasional work relationships (SE)

²¹ <https://www.reuters.com/article/us-hungary-protest/hungarians-protest-against-slave-law-overtime-rules-idUSKBN1O70FM> (Last visited: 09. 03. 2019.)

Although the construction of simplified employment and occasional work relationships (hereinafter: SE) is partly regulated by Chapter XV of the LC (as a specific form of the employment contract), it has a dual nature: Act LXXV of 2010 on Simplified Employment regulates this form of work and its administrative, public law aspects, while the LC (Title 89, among the various forms of ‘atypical’ employment) regulates the labour law side of it (§§ 200-203). Even though SE is formally an employment relationship, more precisely an atypical one, it is probably the most atypical one, being relatively far from the protective level of the standard employment relationship. In fact, the SE-system is a kind of ‘budget/ low-cost’, or ‘second-class’ employment relationship, partially ‘outsourced’ from the scope of standard labour law (the LC defines the applicable and the non-applicable labour law rules).

The SE system provides a cheap, administratively less burdensome and flexible — but also less protective — way of occasional employment. It is a form of casual work, or marginal part-time employment. Officially, it is intended to tackle undeclared work, and it may also be a “stepping stone” to the labour market. According to Kiss, simplified employment and occasional work relationships are based on social considerations; they are a support measure for small businesses to establish employment relationships in particular with home workers.²² In practice, SE is quite widespread²³, thus one may have the suspicion that is also often used by employers to substitute standard employment by SE (and save contributions/taxes).²⁴ Kártyás also reports that “employers might use SE to replace fixed-term contracts under the LC and save the social security contributions.”²⁵

SE comprises two types of temporary work: casual work (which is possible in all sectors, for all employers²⁶) and seasonal work (only in some specific sectors: agriculture, tourism, walk-on actors for film studios). Casual work in the form of simplified employment has a temporal limitation: it can be used for a maximum of 5 consecutive days for a maximum of 15 days a month and 90 days a year. The time-limits are related to one employer–employee relationship, hence it is possible that a worker works on SE all year long. Besides the temporal limit, the number of casual workers employed on a given day is also limited by law (‘headcount limit’): the maximum number of casual workers a company can employ at a given day depends on the average number of full-time employees it had in the previous six months.

From a labour law point of view, as a main rule, the general rules of the LC are applicable to SE, unless the Act on SE or the separate title of the LC governs otherwise. In sum, the applicable labour law rules are more flexible than the general provisions of the LC, as illustrated below.

Administrative costs are reduced as no written employment contract is needed, or a pre-set, uniform template can be used. Declaration of employment may be fulfilled via an online application or by telephone.

Casual workers can never have a long enough contract period to gain eligibility for paid annual leave.

Scheduling of working time is very flexible (for example: the employer is not obliged to give the employee advance notice on the working time schedule; working time can be scheduled to working days unequally without taking into account the so-called reference periods; the

²² Kiss György (2016) 234.

²³ Its predecessor (1997-), the casual employee’s booklet (alkalmi munkavállalói könyv, AM-könyv) was also very popular, but gave rise to a lot of abuse and manipulation in practice. Authorities have found that in many cases the casual employee’s booklet was used to employ the worker permanently, but under more flexible rules. Kártyás Gábor (2016a) 2.

²⁴ Cf. Gyulavári Tamás (2018a) 123.

²⁵ Kártyás Gábor (2016a) 12. See also in this regard: Meszmann T.Tibor (2016) 15.

²⁶ Which is a very broad, soft rule, according to Gyulavári. Gyulavári Tamás (2018a) 131.

employee can be employed on Sundays and on public holidays as on usual working days, and the employee is not entitled to the statutory Sunday wage supplement; the employee is not entitled to sick leave, maternity leave, parental leave or other statutory leaves with pay).

Most strikingly, SE entails lower, more flexible minimum wages (as of 2013): employers have to pay only at least 85% of the general national minimum wage and 87% of the national minimum wage for employees with secondary level qualifications (guaranteed wage minimum). Practically speaking, this might be one of the biggest enticements of the whole SE-system for employers (in light of this, Gyulavári heavily criticizes this regulatory solution and states that this differentiation can have no rational explanation²⁷).

Other rules of the LC are generally applicable to SE (for example, there is no difference with respect to the rules of termination of the employment relationship, however, the temporary nature of SE means practical exclusion from severance pay etc.). The extremely temporary nature of SE practically hinders some other entitlements (such as access to training, bonuses, collective rights).

SE enjoys a preferential regime of common charges, which is very easy to calculate and administer: employers must pay only a flat rate daily contribution (covering all common charges attached to employment), depending on the category of SE-employment. The flat rate daily contribution rate is irrespective of the hours worked. As a consequence, the employee is not considered to be fully insured according to social insurance legislation, however he/she gains entitlement to pension, accident-related healthcare and unemployment insurance (healthcare is not covered).

It must be noted that any employment contract for SE shall be considered null and void if the parties are engaged under an employment relationship at the time it was concluded. Furthermore, an existing employment contract may not be modified by the parties to conclude SE.

According to an empirical study, authorities often find that SE is also often a field of ‘semi-undeclared work’, as the employees’ declared earnings are often supplemented by the employer in cash (which constitutes a grave violation of tax rules) and other forms of malpractices are also found during inspections. In sum, SE “generally means poor working conditions.”²⁸

2.2.2 Cooperatives: students (SC) and pensioners²⁹

Act X of 2006 on Cooperatives regulates unique non-standard forms of work via cooperatives. The Act on Cooperative regulates four specific types of cooperatives: school cooperatives (SCs), social cooperatives, agro-economic cooperatives, general interest associations of pensioners (i.e.: pensioners’ cooperatives). Via these cooperatives, the legislator created specific frameworks of work for certain well-defined groups of workers (students, the ‘needy’, people working in agriculture, those receiving old-age pensions), in which employment entails substantially lower costs, and, at the same time, as a ‘price’ of cheap and flexible employment, these workers are excluded from the standard shelter of labour law and are placed in a significantly less favourable, more flexible legal position.³⁰ Two out of these four forms of cooperatives — school cooperatives and pensioners’ cooperatives — give rise to specific

²⁷ Gyulavári Tamás (2018a) 134-135.

²⁸ Kártyás Gábor (2016a) 12.

²⁹ For further details, see: Kun Attila (2016).

³⁰ Sipka Péter — Zaccaria Márton Leó (2017) 23-24.

triangular form of work, which bears a strong resemblance to the structure of temporary agency work.

The cooperative undertakes sub-tasks according to the needs of its market-based partners (principals / customers) and performs it with its members (students, pensioners), under its own control, but under the professional supervision of the partner, mostly at the partner's premises.

In the following, we mostly deal with SCs, but it must be noted that — as of 2017 — the relatively new construction of general interest associations of pensioners (i.e.: pensioners' cooperatives, in Hungarian: KNYSZ) follows basically the same regulatory model. General interest associations of pensioners are established with the objective to provide employment for active elderly persons, to reactivate them on the labour market, and to advance their economic and social status. Other objectives of a pensioners' association shall include providing a way to remise the wealth of knowledge and experience the members have gathered over the years to the generations to come. In achieving their objectives pensioners' associations serve the public interest as well.³¹

SCs fulfil a significant role on the labour market and they have a dominant and unique market-share in the field of youth employment. Work via a school cooperative is 'cheap' for users (SCs enjoy "full immunity" from social security contribution, no social contribution tax is to be paid³²) and flexible, because such form of work is not an employment relationship under the LC anymore. Between 2011 and 2016 the regulation of the employment relationship between SCs and their member could be found in the LC, however, since September 2016 these rules were transferred to Act X of 2006 on Cooperatives. Thus, members of SCs are not to be considered employees anymore. However, according to Kiss³³ and others³⁴, it is questionable that this solution complies with the EU-law requirements (bearing in mind the CJEU's³⁵ interpretation of the notion of employee). In sum, working as a member of a SC entails lower level of labour law protection. The member of the SC has a legal relationship with the cooperative, but work usually occurs in the organization of a third party ('customer'), with whom the SC concludes a civil law contract for the completion of an agreed task. The SC only organizes the work and provides the necessary workforce.³⁶

As their mandate, SCs — as specific forms of cooperatives — are set up to provide students attending pedagogical and educational institution and students engaged under student relationship with higher education institutions with the opportunity to perform work and to facilitate their practical training. The economic cooperation between the SC and its members (the students), the mode of personal involvement shall be laid down — within the framework of the statutes — in the membership agreement. The membership agreement shall provide for specific responsibilities within the scope of personal involvement of SC members. What the most important is that students of SC groups receiving full-time education may fulfil the requirement of personal involvement also within the framework of the provision of services by the SC to a third party ('external service'). The legal relationship for the provision of external

³¹ See for further details: Hajdú, József (2018).

³² To be precise, SCs are granted full immunity from social security contribution (social contribution tax: SZOCHO) when employing full-time students. This exception created for SC-members can be explained by the fact that full-time students have automatic (so-called 'solidarity-based', state-financed) eligibility for social insurance (health services). In other words: full-time students have a status in social security because of their position as students, not because of their employment. See: Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services.

³³ Kiss György (2017) 499.

³⁴ Sipka Péter — Zaccaria Márton Leó (2017) 28.

³⁵ Court of Justice of the European Union. For instance: C-270/13. 26-41.

³⁶ For further details see: Gyulavári T. and Kártyás G. (2015a) 152-157.

service is not an employment relationship, but a unique relationship entered into on the basis of a membership agreement relating to external services between the SC and its students receiving full-time education, where students of the SC groups receiving full-time education perform their personal involvement, and for which the relevant provisions of the Civil Code relating to personal service contracts and the provisions of the Labour Code indicated in the Act on Cooperatives shall apply. Accordingly, this is a hybrid, *sui generis* legal relationship, being a mixture of civil law, labour law and the law on cooperatives. The legal status of the student is based on the so-called personal service contract which is regulated in the CC. For this reason, the student cannot be regarded as an employee. However, some rules of the LC still apply.

Working via SC is truly a hybrid, *sui generis* legal relationship.³⁷ Firstly, it is not inherently part of labour law: not only because it is not regulated by the LC anymore (since 2016), but the student has no labour law-like obligation to perform work and to be at the employer's disposal, and the SC has also no obligation provide work continually. In other words: neither the SC has the 'duty to employ' and the obligation to guarantee a set of quantity of work, nor the student is obliged to accept all individual tasks offered by the SC (and students are only paid for the jobs taken). This is a sort of 'pay as you go'-structure of employment. Secondly, it is also not a genuine civil law contract since in the performance of external service, the recipient of the external service has the right to give instructions directly to the students. This right is very much of a labour law-like nature as it covers, in particular, the method, time and scheduling of the performance of the work. In terms of legal theory it is doubtful how – and to what extent – an employer-like status can be created by way of a simple civil law contract. Furthermore, the civil law nature of the construction is also confuted by the fact that students do not accomplish any genuine entrepreneurial activities; they typically perform micro, fractional tasks (in a well-organized framework). Thirdly, working via SC is also not a genuine business law-related activity, as SCs — formally — operate as cooperatives (in principle: "one member, one vote"³⁸). Fourthly, SCs are also not genuine non-profit organisations as they execute business services for the external contractors and they generate profit. Fifthly, this form of work is also not a genuine cooperative-like activity, for several reasons. For instance: SCs do not aim to have their own activities, services (they carry out various services for external contractors for a fee³⁹); apart from the opportunity of work, SCs do not really offer extra, tailor-made services for their members (such as training, social services etc.); SCs do not handle common assets of the members etc.

Work via SCs entails a 'double' contractual structure.⁴⁰ First, the prior 'framework' agreement shall indicate (usually when joining the SC as a member) the following: a description of the responsibilities undertaken by the member; the minimum amount of remuneration and other related benefits due to the member for specific work performed for the recipient of the external service; and the means of communication between the SC and its members for any period when no work is performed. Second, in case of a concrete 'assignment', the actual provision of external service within the scope of personal involvement may be taken up on condition that the SC and the given member agrees in writing about the concrete conditions of work (the person of the service recipient; the work to be performed specifically; the amount of

³⁷ Cf. Simon Balázs (2018) 203.

³⁸ However, as civil law is basically dispositive, this principle might be altered in the statute of SCs. Act V of 2013 on the *Civil Code* contains the basic provisions on cooperative societies.

³⁹ As such, the students' 'salary' paid by the user can be actually considered as a cost.

⁴⁰ Under the previous regulation (between 2011 and 2016) this contract was qualified as an (atypical) *contract of employment*. As of 2016, it is not regarded as a contract of employment anymore.

remuneration and other related benefits, and the time of payment thereof; the place where work is to be performed; the duration of work).

As mentioned before, the provisions of the LC apply only partially (as indicated in the Act on Cooperatives) and / or on a modified way to the SC sector. The issue of annual paid leave is emblematic in this context: the provisions of the LC on holidays shall apply to SC members providing personal involvement, other than students receiving full-time education and other students, with the derogation that time spent in the provision of external service shall be recognized as time spent at work, where one day of paid holiday shall be given for each thirteen days at work. As such, student members who receive full-time education are not entitled to holiday (only other members of the SC, who are very rare in practice). Some basic working time regulations (rest breaks, daily rest periods), the specific protective rules for young workers⁴¹ and the statutory set of minimum wage rules apply to the SC sector, but many protective labour law rules do not (for example: limits on working time scheduling; statutory wage supplements; rules on the termination of the employment relationship; labour law-based limitations on the employee's liability for damages; objective, labour law-based liability of the employer for damages⁴²; rules of TAW, such as the maximum duration of the assignment, equal treatment etc.). Furthermore, SC members' actual contractual freedom might be limited, as, for example, the statute of the SC can determine many aspects of the working conditions.

There are many positive features of the activities of SCs. First and foremost, SCs fulfil a unique, gap-filler role on the labour market. On the one hand, they offer cost-effective, prompt, flexible and customized solution for firms. On the other hand, they support students to find secure, official, temporary jobs in their leisure time, they promote the idea of self-care, the acquisition of work experience etc. Furthermore, such form of work can help to reduce the rate of undeclared work.

SCs try to effectively match specific labour market supply and demand. While "regular" employees usually prefer some kind of security (employment security, income-security, working time security, social security etc.), full-time students' work-related preferences often coincide with employers' utmost need for flexibility. Students rather need and favour occasional, sporadic work (they often prefer to work only for short periods, at weekends, during holidays etc.). Furthermore, they are often not as much dependent on their income as regular employees (given that they usually have other sources of income such as scholarships, family support etc. and they are mostly motivated to earn some extra money) and they prefer flexible working hours (seeing that they need to fit their work to studies). Full-time students' (who are attending colleges and universities) main 'job' is to study; paid-employment is normally just a side-activity for them which might be really irregular. In other words: it seems that precariousness (a condition of existence without predictability or security) is not only the overall pressure of contemporary labour markets, but kind of a 'typical' way of existence for students. This factual situation creates huge opportunities for employers and legislators alike when employing students and regulating students' atypical employment.⁴³

There are many, apparently positive guarantees in the regulation. For example: in principle, the activities of SCs shall be consistent with the educational and training objectives of the educational institutions and a pedagogical and educational institution or a higher education institution must participate in the foundation and operation of SCs as a member. Furthermore:

⁴¹ 'Young worker' shall mean any employee under the age of eighteen. § 294 (1) a) LC.

⁴² Even though the civil law rules of liability apply, there is a guarantee that for any damage sustained by the member involved in the provision of external service, or for any violation of his or her rights relating to personality committed during work performed for the service recipient the school cooperative and the service recipient shall be jointly and severally liable.

⁴³ For further details see: Kun Attila (2016).

at least ninety percent of the SC's membership shall be made up of natural persons attending an educational institution. An SC may not be transformed into a business association. SCs are allowed to merge with other SCs only. The SC shall distribute at least 85 per cent of its annual net turnover among the members in the proportion of their personal involvement. The SC shall place at least 10 per cent of its taxed profit into a fellowship fund for the purpose of education and training etc.

Apart from the positive aspects of SC-based work, a number of concerns might be raised about the actual regulation and factual operation of SCs, especially from a labour law point of view (and from the perspective of 'fairness').

Firstly, SCs are in fact TAW-type 'players' on the labour market (focusing exclusively on students), but, legally speaking they do not qualify as TAWs and the whole construction is partially 'outsourced' from the scope of labour law (i. e. the LC). The legislator aimed that the work-related relationships between SCs and their members shall not to qualify as a special type of TAW, but they are to be considered *sui generis* employment. However, the only real difference as opposed to TAW is that the parties of the legal relationship are specified: the worker can only be a full time (secondary school or university) student and the 'agency' can only be a SC. Apart from that, in practice, SCs are functioning in the vein of special temping agencies. After all, the practical difference between TAW and SC-work is vague.⁴⁴ This approach is, at the very least, ambiguous according to many experts (especially from the perspective of EU-law compliance).⁴⁵ Ideally speaking, this would be a collaborative form of employment, however, in reality it is not really different from the purely business model of agency work. The definition of 'assignment' contained in Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work also perfectly fits for the position of students employed via SCs, even if they are not formally labelled as agency workers. Thus, the harsh distinction made between the two legal categories (TAW and SC-employment) and the Hungarian way of extraction of SCs from the scope of Directive 2008/104/EC seems to be artificial und unreasonable.

Secondly, SCs enjoy preferential tax-treatment (i.e.: SCs can employ students on a much 'cheaper' and competitive way than any other kind of employers), however, they rarely exercise extra 'social', cooperative-type functions towards their members, apart from organizing employment. In light of this, it is debatable, to what extent SC – as a specific legal form – deserves such a preferential, exclusive treatment in labour, social security and tax law. However, the extensive lobby-activity of the SC-sector seems to be successful. Ideally speaking, the maintenance of SCs' current privileged status would be justly reasonable only under improved and additional requirements of professionalism (e.g. study-related job-possibilities for students, enhanced pedagogical function, 'extra' social services for students etc.). In this context, it is also often argued – but never precisely justified – that subsidized SC-employment might also have a kind of harmful 'supplanter' effect on the labour market, especially towards low-skilled workers, career-starters or even towards new forms of work (such as platform work⁴⁶) etc.

⁴⁴ The issue was also raised by the European Commission, which carried out an investigation in this regard. Noted by Kiss György (2017) 509. The situation was settled by diplomatic means and by the changing of the legal regulation of SCs in 2016. Simon Balázs (2018) 208.

⁴⁵ Kiss György (2016) 234.

⁴⁶ Platform work might be a competitor for the SC sector in the future, because platforms could directly match supply and demand, so that students might have the chance to organize their occasional employment more independently and without any intermediary (the SC), and possibly for higher remuneration.

Thirdly, this form of employment is probably the most flexible type of employment within the Hungarian labour law architecture.⁴⁷ SCs are full and exclusive beneficiaries of a highly advantageous labour, social and tax law architecture. It is doubtful, to what extent such flexible rules take into account students' immense potential vulnerability⁴⁸ at work.

Fourthly, in practice, the relationship between SCs and pedagogical and educational institutions and higher education institutions is often very superficial and loose. On the whole, it is open to discussion, to what extent are the genuine 'cooperative' ideas realized in the practice of SCs. SCs are both economic 'players' and social 'entrepreneurs'. In other words: a cooperative's main objective is to satisfy their members' economic and other societal needs. In general, the economic mandate of SCs seems to be perfectly fulfilled, why the social side of their activities suffers from deficits, as everyday experience show. As Sipka and Zaccaria notes it, the (re)integration of designated social groups into the labour market must not be confined to the providing of the job itself.⁴⁹ However, SCs rarely do more.

Fifthly, an earlier targeted empirical study⁵⁰ found that the factual labour market function of SCs is not as obviously positive as one might expect it in the light of the extraordinary state support. In principle, students might be employed for almost all kinds of tasks, from simple manual / unskilled work to the most advanced professional tasks (such as translating, IT-work, office work, sales etc.). However, SCs mainly offer for students non-professional, non-targeted, low-quality jobs, typically with no (or little) relation and relevance to their ongoing studies or potential career-prospects (e.g.: semi-skilled physical jobs, distribution, data recording, promotion, agricultural works etc.). The jobs organized by SCs usually have no real reference-value for the further career and they mostly represent a low prestige. According to the empirical research findings, such form of student employment has no significant added value in terms of targeted socialization for work; it only provides some general work experience and 'work ethic' socialization-effect, if any. For the sake of objectivity, one must not that — as about 55 % of all students do not have any work experience upon completion their studies⁵¹ — any kind of work experience offered by SCs, even if is not targeted and matched to the ongoing studies, might be useful on the real labour market to some extent. It is also supported by empirical research findings that when one compares the various legal forms of employment available for students⁵², it is obvious that — although one of the most common — SC-work helps the least young people to work in their profession during their studies, to find permanent work after the completion of studies (especially in their learned profession), and to guarantee a more favourable labour-market situation.⁵³

In sum, SCs are regulated on quite a controversial manner in Hungarian law and that they seem to be heavily and disproportionally over-supported by public policy as opposed to their factual activity and effectiveness. The SC-sector seems to operate as a kind of state-funded 'business' and it is not fully evident, what are the extra services (in terms of social and employment policy) carried out by SCs in exchange for the exceptional state-support. Kiss argues that the whole employment policy applicable to cooperatives should be changed in Hungary.⁵⁴ However, this

⁴⁷ Hoffmann C. Gabor (2013).

⁴⁸ Students are not experienced on the labour market and have very few work experience, they often need extra supervision etc.

⁴⁹ Sipka Péter — Zaccaria Márton Leó (2017) 30.

⁵⁰ Gábor Kártyás – Rita Répáczki – Gábor Takács (2012).

⁵¹ <http://tamop248.hu/nmh/kisceg/iskolaszovetkezet.pdf> (Last visited: 10. 12. 2018.)

⁵² For example: regular employment, atypical employment, work via a temporary work agency, private law contracts, apprenticeship etc.

⁵³ Gábor Kártyás – Rita Répáczki – Gábor Takács (2012) 135.

⁵⁴ Kiss György (2017) 514.

is not very realistic in the short term, as this type of employment has taken root in the Hungarian labour market, despite all the controversy. It is remarkable that according to the ILO's definition, disguised employment can involve, among others, "masking the identity of the employer by hiring the workers through a third party, or by engaging the worker in a civil, commercial or cooperative contract instead of an employment contract".⁵⁵ In our case, the emphasis lies on the notion of the cooperative. It seems that the case of the SC sector in Hungary is prime example of this malpractice.

2.2.3 Public works (PW) programme

In 2010, the government introduced a new, gigantic public works (PW) programme (National Public Work Scheme) to those who have fewer chances to get a job on the primer labour market. The aim is activation and thus breaking the benefit-dependency of these people.⁵⁶ The most important goal of the PW is to help long-term unemployed individuals to become active again and to prevent jobseekers who recently lost their jobs from getting separated from the world of work. It seems that this programme continues to be the central and overriding element of the government's employment policy. Social benefit was linked to compulsory public work, while various benefits and pension-type supports (early or disability pensions) have been abolished or severely curtailed, with former beneficiaries being channelled into the same programme. All in all, anti-poverty programmes have been replaced by workfare measures.

From a labour law point of view, PW (Act CVI of 2011) is not only a form of ALMPs, but a special — non-standard — form of employment, as it is fairly different from 'standard' employment on the primary labour market. The rules of the LC apply to PW employment relationships, but with the derogations provided for in Act CVI of 2011. Public employment relationships can only be established for a definite period of time. The income collected under the PW scheme is higher than the amount of the social benefit, but lower than the general statutory minimum wage on the primary labour market (in 2019, the PW-related income is about 55% of the general statutory minimum wage, and it has a decreasing tendency⁵⁷).⁵⁸ Based on the public employment legal relationship, the public worker is entitled to social insurance and old-age pension. In the PW programme, the possible employers⁵⁹ and employees⁶⁰ are listed in the law, as well as the potential PW-activities. The Programme is under the control of the Ministry of Interior. Public employment is funded by the state in the form of public employment support. PW often stigmatise employees as workers who could not find better positions in the labour market.⁶¹

This large-scale PW programme is believed to stimulate labour market demand. Public work has, in fact, been the source of rising employment rates recently. On the other hand, the programme is under critics⁶², as the scheme has been developed at the expense of other active labour market measures and it offers a rather isolated, often demoralising, non-productive

⁵⁵ ILO (2016) 9.

⁵⁶ For a comprehensive and comparative analysis, see: *The Hungarian Labour Market 2015 (2015)*.

⁵⁷ For instance, the same proportion was around 80% in 2011, at the beginning of the Programme.

⁵⁸ See for detailed statistics: <https://kozfoglalkoztatas.kormany.hu/download/e/58/52000/KF%20B%C3%A9rek%20C3%A9s%20juttat%C3%A1sok%20v%C3%A1ltoz%C3%A1sa%202011-2019.pdf> (Last visited: 09. 03. 2019.)

⁵⁹ For example: municipalities or other organisations basically performing societal, public functions.

⁶⁰ For example: disadvantaged, low-skilled workers.

⁶¹ Kártyás Gábor (2016a) 14.

⁶² For a summary on this, see: Risak, Martin — Kovács Erika (2017).

working environment. Furthermore, employing people in PW projects for a short time and for little money may help the statistics, but, according to some opinions, behind such a policy there are no real sustainability concerns. The PW programme is not closely linked to the real, competitive labour market, so it is disputed how it can support smooth transition to the 'real' labour market. PW is also criticised for (re)creating "a political-clientelistic dependency" from local authorities and impacting labour standards negatively.⁶³

Back in 2014 a study was published by HAPN (Hungarian Anti-Poverty Network) titled 'The Workfare Scheme Trap'. It is a summary of a non-representative research. The main findings of the research are the following. The majority of public scheme workers are doing low prestige jobs. This type of employment does not really help the members of the target group to get back into the labour market. The salary is lower than the minimum wage; the living wage is under the poverty line as well. The workfare work scheme is unpredictable, the majority of people work part time and the working conditions are unfavourable. In spite of these facts, majority of respondents prefer to stay in this position, because the money they earn in short term is more than the level of relevant social transfers; and their opinion is that it is easier to get into the world of workfare work scheme than find their way back into the primary labour market. According to HAPN, the most threatening feature of this system is that workfare workers get into a vicious circle by the workfare work scheme, because in most of these cases they circulate in the world of grey/black labour market, workfare work scheme and social transfers. According to the most optimistic estimates of this research only 5-10% of the workfare workers can find their way back to the primary labour market.⁶⁴ It must be noted that these statistics have been continuously improving since then.

From a more positive perspective, it must be stated that the PW programme focuses specifically on territories where employment opportunities are very poor. Furthermore, public workers are increasingly provided by training programmes as well, in order to make them able to enter to the primer labour market after the transitional period of public work.⁶⁵ Due to the low transition rate to employment from the scheme, EU-CSRs continue to recommend complementing PW with more effective activation elements such as training or counselling. The government, to a certain extent, has made amendments to the scheme over the past years to follow these recommendations.⁶⁶ Orientation of public employees to the primary labour market has become a fundamental objective of the sectoral policymakers and has been further promoted through the continuous fine-tuning of the system.

There are more and more targeted programmes for PW participants focusing on integration, personalised services, incentives for finding regular employment, hiring subsidy measures, 'employment bonus' (fiscal incentives to PW participants and to their potential employers), career counselling programme etc. One of the activation programmes that combine PW with activation elements is the so-called 'Pathway to the labour market', ESF funded programme.⁶⁷ The programme is targeted at disadvantaged jobseekers and PW participants and offers tailor-made services to participants (personalised counselling, hiring subsidies, hiring cost subsidies, job trials, training and start-up incentives). The measure also extended the eligibility for the hiring subsidy for the long-term unemployed to former public workers. The programme is expected to reduce the number of registered jobseekers by supporting more than 188,000 jobseekers or inactive people by the end of 2021.⁶⁸ Another ESF funded measure is the so-

⁶³ Meszmann T.Tibor (2016) 17.

⁶⁴ Hungarian Minimum Income Network (2014).

⁶⁵ Hungary, Contribution to the 2015 United Nations Economic and Social Council (ECOSOC).

⁶⁶ Albert Fruzsina (2017).

⁶⁷ GINOP 5.1.110 and VEKOP 8.1.1.

⁶⁸ The Government of Hungary (2018) 13.

called ‘Training for low-skilled and public works participants’, which is a small scale programme targeted at jobseekers with primary education and on PW living in less-developed regions of Hungary.⁶⁹ The primary objective of the scheme is to provide training measures to the participants, but counselling and mentoring services also complement these activities.⁷⁰

On 20 March 2017, the Government adopted a comprehensive package of measures in order to reduce the proportion of public works. PW will be still available for those who are not able to find a job in the primary labour market. Better targeting of public works is supported by various programmes.

2.2.4 Household work (in tax law)

The so-called household work (HW) has a special status in Hungarian tax law. Household work is a personal service performed for a natural person as employer. Since 2010, wages from household work (i.e.: paid by a natural person ‘employers’ to household service ‘employees’) do not bear any common charges. This unique tax category (‘outside’ of the tax regime) is regulated by Act 90 of 2010 Chapter I. The category of ‘household services’ shall be interpreted narrowly, as only those activities are exempted from tax, which are listed in the Act (home cleaning, cooking, washing, ironing, child care, home teaching, home care and nursing, housekeeping, gardening), and no similar tasks can be considered as a household job.

The household worker must be a natural person performing household work who does not perform this activity as a sole proprietor or as an entrepreneur. The employer must also be a natural person. Such employment must be free from all kinds of business motives.

Although this form of employment is free of common charges (and it is exempted from the tax regime), the employer has to send a report (via an electronic form, or a phone-line) to the tax authority every month when he or she employs a household worker and has to pay a — rather symbolic — monthly flat rate registration fee (HUF 1,000; cca. EUR 3). The fee is irrespective of the days worked and of the amount of the wage. In the absence of a notification, the tax authority may impose a fine on the employer or may order the subsequent payment of common charges corresponding to the employment relationship.

In practice, as statistics show, despite the very low registration fee, household work is rarely registered (and / or such natural person employers are not aware that registration is compulsory). As Kártyás — and Kelemen as well — note it, household workers still form an “invisible workforce” in Hungary.⁷¹

The tax regime of household work is neutral towards the labour law status of household workers, and it is not a separate form of atypical / non-standard work. In other words: the household worker and the natural person employer may choose the form of their legal relationship freely (it might be an employment contract, contract of services under civil law, simplified employment, however, in practice, such work is often informal). After all, the construction of household work is not really seen as genuine ‘labour’; it is more perceived as an economic activity and a lawful source of auxiliary income. Furthermore, as no contributions are paid, the household worker is not covered by social security.

⁶⁹ GINOP 5.1.110 and VEKOP 8.1.1.

⁷⁰ Scharle Agota (2017) 4-5.

⁷¹ Kártyás Gábor (2016a) 6.; Kelemen Melinda (2013).

Household work can be mediated via platforms; there are some examples for this in Hungary (e.g. C4W).

2.3 Non-standard forms of employment ‘in the grey zone’

2.3.1 ‘Getaway/escape from labour law’ — Bogus contracts

In Hungary, employees are covered and protected by the provisions of the LC, while self-employed persons do not have ‘labour rights’, they are only covered by the Civil Code (CC).⁷² Circumventing the contribution (and tax) burden entailed by a traditional employment relationship and bypassing labour laws are the main drivers for ‘sham’ (‘bogus’) civil law contracts (as a ‘getaway/escape’ from labour law). In general, according to the LC, artificial agreements shall be null and void, and if such agreement is intended to disguise another agreement, it shall be judged on the basis of the disguised agreement [§ 27 (2) LC].

Albert and Gal take note of the following: “Bogus employment emerged after the end of communism as a way of saving costs: workers are subcontracted via small companies or individual entrepreneurs submit invoices rather than receiving a wage. The term ‘forced entrepreneurs’ or ‘entrepreneurs out of necessity’ (kényszervállalkozók) illustrates that well. It has been quite widespread to have a job as an ‘ordinary’ employee, and also to earn income as a kind of entrepreneur, even from the same employer. That is definitely bogus employment, in the sense that it happens in order to reduce taxes and social security contributions. Such arrangements are frequent and well known, but their exact extent is subject to scholarly debate.”⁷³

Hungarian labour law (as part of private law) is based on the freedom of contract. Therefore, the parties can basically choose the type of contract (under the LC or the CC) aimed at the performance of work for other persons. Nevertheless, the parties must take the criteria of the employment relationship into due consideration; for this reason, an indirect coercion (as Kiss calls it) prevails for choosing the type of contract in this context.⁷⁴ In other words: if work is performed in line with the essence of labour law provisions and has the attributes of an employment relationship, the parties are obliged to conclude an employment contract and the rules of the LC must be applied.

In principle, in case of an improper ‘classification’ of the work-related legal relationship, three main public bodies might play an important role (in general): labour courts, labour inspectorates, tax authorities. Firstly, Hungarian labour courts issued many controversial rulings in the given topic, but generally speaking they are ready to re-designate civil contracts as employment contracts when all circumstances of the given case are indicating the substance of an employment relationship. However, sometimes the idea of the “freedom of contract” represses the protection of workers. Case law practice in this regard goes back a number of decades. Secondly, as regards labour inspectorates, already the early version of the Labour Inspection Act (Act LXXV of 1996) gave labour inspectors the power to re-designate (reclassify) civil law relationships as standard employment relationships. In line with this power, labour inspectors can fine employers that employ workers on the basis of sham contracts

⁷² However, the self-employed are covered by basically the same social security scheme as employees in Hungary.

⁷³ Albert Fruzsina — Gal Robert I. (2017) 5.

⁷⁴ Kiss György (2016a) 241.

(such decisions may be challenged before a court). Thirdly, the tax administration (in Hungarian: NAV) also has the right to review employment related contracts in the course of its investigations, but only for taxation-related purposes (i.e.: the tax authority is not entitled to decide whether an apparently civil law contract is in fact an employment contract, but it can impose fines and/or retrospective tax- and/or contribution-refund).

As it was mentioned in the introduction, the LC includes a brief statutory definition of the employment relationship (and also of the employer and the employee). Accordingly, “an employment relationship is deemed established by entering into an employment contract. Under an employment contract: a) the employee is required to work as instructed by the employer; b) the employer is required to provide work for the employee and to pay wages” (§ 42). The elaboration of a more nuanced and sophisticated definition of the employee is the task of the judicial practice. There is no single, mandatory test. There is a tradition of differentiating between primary and secondary evaluation criteria of an employment relationship. The system of primary and secondary criteria was introduced by a Government Decree in 2005, which was a non-binding policy document (“Guidelines”) issued by the Ministries of Employment and Finance to introduce a uniform interpretation by labour and tax inspectors: Joint Decree of the Ministry of Employment and the Ministry of Finance No. 7001/2005. on the evaluation of legal employment relationships. This decree was used by the tax and labour authorities as well as by labour courts. The decree was repealed on 1 January 2011 (by Act No. 130 of 2010). Even though these “Guidelines” are not in formally force anymore, judicial practice still relies on them immensely. This set of guidelines has never been a legally binding formal legal source in itself. It is rather a form of “soft law”. The “Guidelines” were trying to accurately define the inherent attributes (or tests) of a dependent, traditional employment relationship. By doing so they were also facilitating a more accurate and thorough legal practice concerning the differentiation among the various types of contracts eventually underlying a work-related relationship. This catalogue of criteria is of great assistance and importance for the users of law as it lists clear-cut decisive factors in one single document that can be used to make authority supervisions more efficient. The “Guidelines” define a list of primary and secondary criteria based on formerly published decisions of the Supreme Court.

Under the “Guidelines”⁷⁵, the four primary attributes of a dependent employment relationship are the followings:

- The nature of the performed work-activity is defined as a relatively broad “job profile” (“scope of activity”) in the labour contract (while in civil contracts the tasks are rather defined by concrete, single tasks). One of the major attributes of an employment relationship is the regularity of the work-activity or the relative continuity of the “job profile”.
- Dependent employees shall fulfil all work duties in person, i.e. they are not entitled to sub-delegate their tasks or to utilize subcontractors.
- Mutuality of obligations: in dependent employment relationships the so-called “duty to employ” is imposed on employers, while — at the same time — employees are bound by the “duty of obedience” (and by the obligation of availability to perform work). Correspondingly, employers shall employ their employees in accordance with the rules and regulations pertaining to contracts of employment, labour relations and the provisions of other legal regulations. Employers also take the risk that the employees may not always have work to do. Dependent employees shall appear at the place and time specified, in a condition fit for work and spend the working hours performing work, or be at the employer's

⁷⁵ In details: Kun Attila (2007).

disposal for the purpose of performing work during this time. Such obligations are not present in civil law contracts.

- Dependent employees shall perform their work in accordance with the employer's unilateral instructions (“subordination”, “hierarchy”, “dependency”, integration into the employers’ organizational structure etc.).

According to the “Guidelines”, the secondary attributes of a dependent employment relationship are the following:

- Under a labour contract, employers shall organize work so as to allow the employees to exercise the rights and fulfil the obligations originating from their employment relationship. Employers are also obliged to give the information and guidance necessary for the performance of work. Employers can also command and control the activity of their employees (nearly in full details). In sum: strong personal subordination, substantiated by the broad direction, instruction and control of the employer are attributes of an employment relationship.
- In cases of dependent labour contracts employers have the right to organize the working time for their employees (of course, this power is limited by statutory measures to a great extent). As opposed to dependent workers, independent contractors are performing work according to their own schedules (or they are working along deadlines).
- The place of work is an obligatory element of a written contract of employment and it has to be specified (moreover, the place of work has many legal consequences, e.g. in relation to workers’ council rights, travel-cost compensation etc.) Notwithstanding, the place of work of independent contractors is rather irrelevant from a legal point of view.
- In dependent employment relationships employers shall pay employees’ wages regularly in accordance with the provisions pertaining to labour relations and as stipulated in the employment contracts. According to civil contracts, one-time (not-recurrent) fees are more typical. Taxation of wages and contractual fees also different.
- Employers shall reimburse employees for all necessary and substantiated costs incurred in the course of fulfilling their work-related obligations, as well as for all other required expenses incurred in the employer's interests, if the employer has approved them in advance. Moreover, in an employment relationship, the tools for work (and infrastructure etc.) must be provided for by the employers, while independent contractors are typically working with their own tools.
- Employers shall ensure proper conditions for occupational safety and health in observation of the provisions pertaining thereto. However, independent contractors have to secure their own safety and health by themselves.
- Traditional employment contracts shall be concluded in writing, which shall be provided for by the employer. This formal obligation generally does not exist concerning civil law contracts.

Primary criteria sometimes can be decisive factors in themselves, separately. However, secondary criteria are not suitable for demarcation in themselves; they always have to be complemented by other criteria. Generally speaking, there is no single criterion which could be considered as the crucial one. In other words: none of the tests is likely to be decisive on its own. The relevant authorities always have to test and establish on a case by case basis if in an individual case the specific “mix” of criteria is indicating the status of a dependent employee or not. Always the overall picture and the substance of a contract need to be taken into account. The applicability of labour law thus depends on the actual substance of the contract, not on its

formal label/title. According to previous case law, the primary and secondary criteria must be jointly evaluated and assessed with due consideration of the conditions and circumstances of the given case to determine whether the working relationship is characterised by the necessary degree of personal subordination required for an employment relationship.

As of 01 January 2019, the Labour Inspection Act (Act LXXV of 1996) contains some new, clarifying provisions. Accordingly, when assessing a legal relationship, it should be taken into account that “the choice of the type of contract on which the work is based may not have the effect of restricting or impairing the application of provisions to protect the legitimate interests of the worker; and the contract may not be pulled out from the rules of the labour law by the will of the parties if its actual content is the subject of an employment relationship.” These provisions are not genuinely new in content, but they are codifying case-law and aiming to make the assessment more consistent.

According to estimations, a large number of employers are also ‘forcing’ their workforce into specific forms of taxation in order to create a cheaper, simpler alternative to the standard contractual employment relationship. The so-called KATA-taxation (introduced in January 2013) shall be underlined in this context (the original policy aims of KATA were to stimulate the growth of small businesses and to further the ‘whitening’ of some related sectors). KATA is a “Fixed-Rate Tax of Low Tax-Bracket Enterprises (KATA)”. Private entrepreneurs, sole proprietorships (as well as limited partnerships and general partnerships where all members are natural persons) may be eligible for the fixed-rate tax of low tax bracket enterprises. Up to an annual income limit, the low tax-bracket enterprise must pay only a monthly, preferential itemized tax (instead of normal taxation). Thus, KATA (this itemized, lump-sum tax) substitutes for the following tax types: entrepreneurial personal income tax, the tax on the entrepreneurial dividend base, corporate income tax, social contribution tax, health insurance and labour market contributions, pension contributions, health care contributions and vocational contribution. One major feature of KATA, beyond the lower, favourable tax burden, is its simplicity. KATA-payers mainly come from the service industry: hair-dressers, taxi-drivers, B-2-C businesses who operate with relatively small costs. In sum, KATA is aimed at making life easier for small businesses, but it is obvious that some employers are trying to shift the status of their employees into entrepreneurs (albeit the law contains some targeted clauses to prevent that). The essence of the itemised tax for small entrepreneurs (KATA) seems to be successful and popular, but as of 2020, the government plans to take action against the fact that increasing numbers of employers are forcing their employees into this form of taxation.⁷⁶

2.3.2 Economically dependent self-employed persons

As it was mentioned before, the Hungarian structure of working relationships is based on a binary system of employment contracts and civil law contracts (see: the Labour Code and the Civil Code), there is no ‘third category’. However, it must be noted that the first draft of the new LC (July 2011) attempted to extend the scope of the LC to other forms of employment (in the event of the existence of certain preconditions). The Proposal foresaw the category of “person similar in his status to employee” widely known in an increasing number of countries (i. e. economically dependent workers). Workers in this category depend economically on the users of their services in the same way as employees, and have similar needs for social protection. For that reason, the Proposal suggested extending the application of a few basic

⁷⁶ <https://www.kormany.hu/en/ministry-for-national-economy/news/the-eu-has-not-only-ruined-immigration-policy-but-also-economic-policy> (Last visited: 05. 10. 2019.)

rules of the LC (on minimum wage, holidays, notice of termination of employment, severance pay and liability for damages) to other forms of employment, such as civil (commercial) law relationships aimed at employment (a ‘person similar to an employee’), which in principle do not fall under the scope of the LC. This planned legislative solution intended to promote the social security of workers, regardless of the nature of the legal relationship within the boundaries of which work is performed. By virtue of this solution, the Proposal expected to reduce the evasion of the rules of labour law and the efforts made to seek release from the effect of labour law, and thereby it aimed to contribute to the legalisation of employment. This new legal category and concept would have been a ground-breaking development in Hungarian employment contracts law, but finally it was left out from the final text of the Code, mainly because of political debates and because of the rejection by social partners.

The original text of the Proposal was as follows:

3. § (1) The provisions of the present Act relating to leave, notice period, severance pay and liability for damages as well as the provisions relating to the mandatory minimum wage shall duly apply to the persons defined in subsection (2) (hereinafter referred to as „person with a status similar to employee”).

(2) With regard to the totality of the circumstances of the case, a person who does not work for another person on the basis of an employment contract shall be regarded as a person with a status similar to that of employee (worker) if

a) he works for another person in person, against a consideration, regularly and on a long-term basis, and

b) against the background of the fulfilment of the given contract, he cannot be expected to engage in any other regular, gainful activity.

(3) For the purposes of subsection (2),

a) work performed on behalf of a business organisation owned in majority by the person concerned or his relative shall qualify as work performed in person;

b) the relatives of the recipient of the service/work and those engaged in a regular business relationship with the recipient of the service/work as well as those qualifying as associated businesses under the rules of taxation shall be regarded as a single person or entity.

(4) The provisions of subsections (1) to (3) are not applicable if the regular monthly income derived from this contract exceeds five times the mandatory minimum wage in force at the time of the fulfilment of the contract.

According to the ministerial reasoning of the draft law, the Proposal defined the criteria of a person similar in his status to the employee on the basis of the relevant international regulations and law application experiences. This status could have been only determined with a view to the totality of the circumstances. Gyulavári concluded that the requirements of the Proposal were too rigorous and would have been difficult to comply with. He added that, in his opinion, not too many people would have chosen to work as employee-like persons, and the definition could have ended up being an empty clause very quickly. He also noted that the applicable labour law provisions were planned to be too weak.⁷⁷

The Proposal is not on the agenda anymore. Many labour lawyers believe that making new legislation in the field of classification by no means would be proper development to manage arising problems. For instance, a third category of workers (for example, in line with the

⁷⁷ Gyulavári Tamás (2014) 101.

Proposal presented above) probably would not really clarify status of workers rather than give even more floors to abuses.

2.4 Non-standard forms of employment of the ‘future’? – the gig economy

As it was mentioned in the introduction, the gig economy is immature in Hungary, platform work, as such, is neither defined nor regulated. Moreover, platform work (as a phenomenon) is immature, hardly visible and marginal; it is not perceived (yet) as a separate regulatory / employment field and it also lacks specific policy (etc.) attention. Platform work is not discussed as an issue.⁷⁸ If it is discussed at all, it is mostly from the perspective of taxation, not at all through the lens of labour law. As experiences show, the platform economy in Hungary is functioning mainly in sectors where, traditionally, rather informal services are characteristic (e.g. babysitting, household work, cleaning, taxi companies⁷⁹ etc.). Platform work itself shows a high level of informality in Hungary (without institutionalized practices, standards etc.).

As it was mentioned before, the Hungarian structure of working relationships is based on a binary system of employment contracts and civil law contracts. Thus, platform workers are either employees, or self-employed. The execution/performance of work/tasks can be based both on a contract of employment (LC) or on a contract of services (CC). In practice, platform workers are considered to be self-employed persons⁸⁰, especially by the platforms (and there are no countervailing policy, regulatory, case-law developments). Platform workers’ income, in principle, shall be taxed in Hungary as an income of self-employed person (and self-employed persons can choose various tax-schemes, including the KATA-scheme, described above). For example, the platform C4W (ClickForWork)⁸¹ states in its general terms and conditions the following: “The Service Provider is also not an employer of the Students, its activity is limited to the mediation of contracts for tasks.”⁸² Platforms act only as ‘matchmakers’ and do not intervene in the concrete contractual relationships to be concluded between the parties. Besides the ‘black or white’ categories — standard employment, or self-employment —, parties of platform work might choose other (non-standard) forms of legal relationships, out of which the most relevant and realistic are the following (however, no data exists to what extent these forms are used by platform workers): SE (a form of casual work), household work, KATA-taxation (see above all of them in details). SE is exempted from certain minimum labour and/or social protection standards or obligations. Household work is outside of the tax system. KATA is a preferential tax regime for small entrepreneurs.

It is a widely shared legal opinion that platforms mediating work shall qualify as “private labour exchange services” (i. e. private job brokerage agency). Some platforms are registered as such agency. Article 6 of Act IV of 1991 on Job Assistance and Unemployment Benefits lays down that, apart from government employment agencies, labour exchange services (“private labour

⁷⁸ See for further details: Meszmann T. Tibor (2018).

⁷⁹ Taxi companies are usually operating as organizing platforms for small entrepreneurs of taxi-drivers. ‘Taxify’ is the most ‘modern’, platform-style one.

⁸⁰ See for example: Taxify / Bolt writes about the drivers as “self-employed partners.”

<https://support.taxify.eu/hc/hu/articles/360003299760-Sof%C5%91r-Szab%C3%A1lyzat> (Last visited: 05. 05. 2019.)

⁸¹ C4W a job-mediating platform for students. In most cases, cleaning, shopping, home support, gardening are possible. According to 2019, there were about a thousand registered students on the platform and five hundred jobs available. The platform aims to try to legalize, institutionalize such types of work platform-based organization.

⁸² <https://clickforwork.hu/>

exchange services") may be provided by a person who is able to meet the relevant requirements decreed under authorization by this Act. Any person who wishes to pursue the activity of labour exchange services shall notify the competent government employment agency thereof. If the notifier is a private entrepreneur, the notification shall contain the notifier's natural identification data etc. The competent government employment agency shall maintain a register of the persons notified as referred to above and authorized the engage in the said activities. The Government is authorized to decree the conditions and detailed regulations relating to the provision of private labour exchange services and for the notification of private employment agencies. This system is subject to the provisions of Government Decree No. 118/2001 (VI.30.). The Decree uses the terms of temporary work agency (TWA) and private job brokerage agency (PJBA). Under the current Hungarian law, a private provider must be either a TWA or a PJBA, or it may apply for both licences at the same time. The Decree referred to above applies to all private recruitment activity, namely any job brokerage activity, apart from that carried out by the public employment service, the result of which could be a labour contract of any kind/type. In order to be granted a private labour exchange services licence, the private provider must demonstrate that some preconditions are met (for example: possession of a valid registration number issued by the competent government office; possession of a special degree, as specified by Appendix 1 of the Decree — e.g. general HR manager, economist, employment specialist, employment counsellor etc. — by the applicant or one of his/her employees; ownership/leasehold of office premises suitable for the activity; certificate of zero community (public) debt; deposit on certified bank account).

In the context of the gig economy, it must be mentioned that Uber had a unique story⁸³ in Hungary. Uber started its operation in Hungary in the autumn of 2014. From the beginning, there had been disputes over the lawfulness of its service. Taxi drivers protested against Uber, because they thought Uber drivers provided the same driving service as regular taxi drivers, but without complying with applicable legislation. According to regular taxi drivers and the government, Uber's aim was to avoid taxation. Uber took a stand against regulatory and state bodies claiming that it was not operating taxis, but was functioning as an online market-space. At a later stage, Uber and the Hungarian government seemingly found a compromise on how the business could operate legally, but in the end, a new Act (Act LXXV. of 2016 on the legal consequences of unauthorized passenger transport by car) entered into force in the summer of 2016, practically hampering Uber's operations. The Act sets out that the intermediary that provides passenger service has to comply with the rules applying to dispatching services. If the intermediary does not comply with these rules, the Transportation Authority can impose a fine and, if after this fine the intermediary continues providing such a service, it can order the cancellation of electronic data. The Hungarian authorities and the government proposed that Uber should register as a transport organizing service provider in Hungary, which Uber openly resisted. On July 14th, a day after 2016 the Law no. LXXV. of 2016 was passed, setting rules for intermediary operations of transport organizing companies, Uber announced that it would move its operation out of Hungary. In sum, the Hungarian 'prohibition' of Uber was not at all related to labour law rationals. The legislator simply wanted to enforce that Uber is not evading the increasingly stringent rules on taxis in order to gain a competitive advantage over traditional taxis and taxi companies.

As platforms only do serve as 'matchmakers' (see above: officially often as a private job brokerage agency), it is up to the parties to decide about the legal form of work and one may suspect (and experience) that parties (mediated via a platform) often use informal, undeclared practices. According to estimations, in general, some 10–15% of employment (captured by the

⁸³ See also: Meszmann T. Tibor (2018) 12-13.

Wage Survey) is undeclared in Hungary.⁸⁴ However, no data is available to what extent platform work contributes to this data. One can still have the impression that many of the sectors in which undeclared work is widespread overlap with those where platform work is prevalent.

The Hungarian tax-system is ‘neutral’ towards platform work (neither supportive, nor obstructive). There are no specific provisions. In practice, some platforms try to ‘educate’ their clients about the proper, available tax-arrangements (but do not interfere with autonomy of the two parties — users and platform workers — to organize their own employment frameworks).

There are no planned policies or legal measures or developments that would specifically affect the working conditions and/or the social protection of platform workers in Hungary.⁸⁵ As long as platform work is not a common, widespread issue in practice, legislators will most probably not deal with making plans or decisions. (Note: an interview with a high-level government official from the Ministry of Finance — which is responsible for labour matters — has confirmed this total lack of policy attention on platform work in Hungary). Given the lack of a ‘critical mass’ of the phenomenon, the lack of specific attention cannot be evaluated as a big failure. The current legal regulation does not deal with platform work’s expected challenges. One can agree with Gyulavári, who states the following: “These new forms may hardly be considered as employment relationships due to the serious differences. Self-employment cannot be the solution either, since it would leave workers without any employment protection. Therefore, regulation of digital work is unavoidable, even if its details are far from clear for the moment.”⁸⁶ However, long-term, forward-looking policy-thinking is missing in the field, national-level tripartite dialogue is weak and in terms of EU-labour law (and employment policy more generally) the country is much more a “follower” than a “trend-setter”. Accordingly, in the field of platform work the legislator will most certainly wait for a future (to be created) EU-law measure to start to act.

As a detour, it is useful to recall that one of the key tools to cope with the challenges of digitalisation and new ways of work (WoW) is obviously education and life-long learning (LLL)⁸⁷, so that the employability (and adaptability) of workers can be guaranteed even under rapidly changing labour market conditions. However, the concept of LLL is very underdeveloped and immature in Hungarian labour law (or in labour market regulation, more generally).⁸⁸ For instance, the LC does not contain any specific rules, or schemes which could directly foster lifelong learning. However, several international forums, including the OECD in 2019, note that today's Hungarian labour market requires upskilling in line with skills demanded in the labour market.⁸⁹

3 Position and role of the social partners on new forms of employment

In general, one might dare to state that non-standards forms of work are largely out of the sight of unions and social partners in Hungary (of course, exceptions do exist, but one can have the impression that ‘the exceptions prove the rule’). The same opinion was confirmed by a recent empirical research dealing with precarious employment in Hungary. This research clearly

⁸⁴ Albert Fruzsina, Gal Robert I. (2017) 18.

⁸⁵ Kun Attila (2018)

⁸⁶ Gyulavári Tamás (2018b) 95.

⁸⁷ Cf. on the growing importance of life-long learning: ILO (2019) 30-32.

⁸⁸ See for further details: Kun, Attila szerk. (2017a.).

⁸⁹ OECD (2019) 13.

points out “the lack of involvement of social partners, especially trade unions, in influencing the regulation and employment policies of the government” and that “industrial relations are poorly utilized in fighting precarious employment.”⁹⁰ In this chapter, the paper aims to give some further reflections on this fact, following the structure of Chapter 2. (i.e. “the four tiers”).

As for the first tier of the Hungarian architecture of on non-standard forms of work (non-standards forms of employment in the LC: the rather ‘classical’ atypical employment relationships), the following are noteworthy.

Atypical forms of employment are not very widespread, and a union economist (quoted by Kártyás) made the following — very telling — statement in this context: “the new labour regulation makes the typical employment flexible enough that employers do not need to turn to the new forms.”⁹¹

In terms of TAW, which is the most widely used atypical form out of the LC, Meszmann and Fedyuk notes that “there is no autonomous social dialogue involving employer organizations and trade unions about this issue” and trade unions do not even appear as relevant actors capable of raising or solving worker demands in this sector.⁹² The growth of TAW is seen by Hungarian trade unions to be very problematic, as the use of such contracts is perceived to serve as replacement of standard-type jobs.⁹³ It might be worthwhile to mention that some collective agreements contain a clause to limit the use of agency workers to a certain percentage.⁹⁴ Some unions do organize agency workers to some extent, but not on a structural, really visible level.

In case of employment relationships with public employers (Chapter 2.1.7.1.), some scarce positive developments of social dialogue might be pointed out. Two-years of concerted work of trade unions resulted in the formation of the Public Service Enterprises Consultation Forum (In Hungarian: KVKF) on 12 February 2018. This new macro level Tripartite-like Forum, which contributes to the preparation of economic decisions concerning public services, includes many organizations: professional associations, unions and ministries (i.e. ‘owners’ of the publicly owned enterprises). This unique forum has naturally evolved from spontaneous negotiations to the creation of a formal framework for itself. Its development opens up some optimism that a natural, bottom-up expansion of social dialogue might still be a reality in Hungary.

In the field of the second tier of non-standard forms of work (unique Hungarian non-standard forms of employment ‘on the edge’, on the periphery of labour law, as tools of employment policy), social dialogue is almost non-existent. These forms of employment are — in part (SE, PW), or in full (SC, HW) — outside of the LC, thus, they are also outside of formal industrial relations / collective bargaining structures.

As for the SE sector, as Kártyás describes it, although SE workers enjoy the same collective right as standard workers, trade unions report that organising employees in short fixed-term employment is very challenging. Most unions do not devote time and resources in persuading workers who would leave the employer within a couple of months to join unions. For instance, the three sectors where SE is the most common are covered by sector-level collective agreements, but none of them explicitly mentions it.⁹⁵

⁹⁰ Meszmann T.Tibor (2016) 1.

⁹¹ Kártyás Gábor (2016b) 14.

⁹² Meszmann T. Tibor — Fedyuk, Olena (2018) 3, 7.

⁹³ Huzjak, Hana — Overmyer, Krytal (2012) 10.

⁹⁴ The information is based on an interview with representatives of AHFSZ (independent trade union of Audi Hungary workers).

⁹⁵ Kártyás Gábor (2016a) 8-9.

Sipka and Zaccaria raise the attention to the fact that the role of social partners is also questionable in the design of the unique — and as described in Chapter 2., very problematic — construction of cooperative-based forms of work (SC).⁹⁶ In short: social partners do not deal with the SC sector (despite its considerable share on the labour market). Some leaders of SCs also claim — rather surprisingly — that SCs themselves act as a kind of ‘trade union’ in workers’ life and carry out protecting functions.⁹⁷

As for the PW sector, there are some unions⁹⁸ and NGOs⁹⁹ in the sector (mostly with an over-politicised attitude, grounded by politicians of opposition parties), but real social dialogue is not present. PW is coordinated by the Ministry of Interior (and provided by municipalities), mostly by public law-rooted and administrative means which fact leaves not much room for genuine social dialogue. PW workers represent the poorest and most vulnerable category of workers, and they are often so afraid of losing their minimum subsistence level that they are not taking part in any protest action, as their union leader reports it.¹⁰⁰

Trade unions opposed the regime of household work (HW) because if an employer changes the status of its employee to household servant (for example part-time household workers), the worker falls out of the coverage of social security.¹⁰¹ Household workers are rather ‘invisible’¹⁰², which makes literally impossible to organize them.

In relation to the third tier — non-standard forms of employment ‘in the grey zone’ (sham civil law contracts; economically dependent self-employed persons) — social dialogue also suffers from elementary deficits. Trade unions do not represent the self-employed¹⁰³ and they do not specifically address the problems of the self-employed.¹⁰⁴ Some minor exceptions do exist, but it is far from being the norm. For example, the Hungarian Motion Picture Makers’ Trade Union (in Hungarian: Magyar Mozgóképzők Szakszervezete, MMKSZ, established in 2017), represents cinematographers, cutters, cameramen, camera technicians, sound engineers, sound technicians working in Hungarian televisions and film industries (who are mostly self-employed).¹⁰⁵ Another interviewee reported that a new self-organisation of sales agents (as independent contractors) is in the making.¹⁰⁶

As for the failed 2011 Proposal on the concept of employee-like persons (the so-called ‘third category’), it is remarkable that — as Gyulavári takes notes of it — “both the trade unions and the employers’ organisations rejected this legislative amendment on the basis of totally opposed grounds, with trade unions concerned about diminishing employee rights, and employers’ organisations anxious about increasing worker protection.”¹⁰⁷ Unions — most probably — had the fear that a possible decrease in the number of ‘standard’ employees might occur, reducing their traditional source of organisation. Employers’ organisations opposed the Proposal because

⁹⁶ Sipka Péter — Zaccaria Márton Leó (2017) 27.

⁹⁷ Based on an interview (Simon Balázs).

⁹⁸ In the summer of 2012, a Public Workers' Union (Közmunkások Szakszervezete) was established. Another union in the sector is KFDSZ (Democratic Trade Union of Public Workers, in Hungarian: Közfoglalkoztatottak Demokratikus Szakszervezete): <http://kfdsz.hu/kik-vagyunk/>

⁹⁹ Work, Bread, Fair Wages Association (in Hungarian: Munkát, Kenyeret, Tisztességes Béreket Egyesület).

¹⁰⁰ Interview with Komjáti Imre, the leader of Public Workers' Union https://nepszava.hu/1081911_keresztapak-es-a-csicskasaik-komjathi-imre-a-jovo-eselyeiről (Last visited: 08. 03. 2019.)

¹⁰¹ Kártyás Gábor (2016a) 6.

¹⁰² Kelemen Melinda (2013).

¹⁰³ Albert Fruzsina — Gal Robert I. (2017) 4.

¹⁰⁴ Huzjak, Hana — Overmyer, Krytal (2012) 10.

¹⁰⁵ <http://mmksz.hu/>

¹⁰⁶ Based on interview (Erzsébet Buzásné-Putz, President of the Trade Union of Engineers and Technicians — MTSZSZSZ).

¹⁰⁷ Gyulavári Tamás (2014) 102.

they saw it as potentially putting extra burden on employers by granting new, costly labour rights to a wide range of workers, who, before, had fallen within the scope of civil law. The government was obviously not really insisting on this reform, and capitulated rather quickly and easily at the first sign of resistance by the social partners.

As for the fourth tier (non-standard forms of employment of the ‘future’: employment forms of the gig economy), there are also not much collective labour law / industrial relations-related developments to report about. Workers’ organization in the platform economy in Hungary is currently non-existent (no data reported and trade unions also do not report any activity in this respect). There is one (relatively new) association of platforms: Sharing Economy Association (In Hungarian: Sharing Economy Szövetség, SESZ). The Sharing Economy Association was established in March 2017 to promote the development of the sharing economy in Hungary. Main goals: interest-representation of platforms, training, regulation etc. According to its website, not much activity is reported.¹⁰⁸ According to interviews, the above-mentioned SESZ prepared a specific tax-law proposal in relation to platform work. However, this proposal is not fully worked out, it has never been openly, widely discussed and promoted and it is far from being implemented.

IVSZ (the ICT association of Hungary) might also be mentioned here, which is the largest and most significant leading interest group of the Information and Communication Technologies industry in Hungary. The association operates as a joint platform for the information technology, telecommunications and electronics sectors ever since it was founded in 1991. IVSZ has a serious role in the Digital Transformation of Hungary. IVSZ aspires to effectively represent the sectorial and social interests and strategic goals of the Hungarian information society and the ICT sector. As the association has approximately 450 precious member companies, representing their interests is also critical. IVSZ has defined three important strategic objectives: industry development, market expansion and the development of IT education. In practice, IVSZ deals with the sharing economy to some extent, only marginally.¹⁰⁹

It is interesting to note that taxi-drivers — not really as employees, but as micro-entrepreneurs — protested against Uber heavily in 2016, which activity might be considered as a unique, but rather faint ‘industrial action’.

On the workers’ side, “Freelancerblog” can be mentioned, which is an informal community which aims to assemble and build the Hungarian freelancers’ community. The group was set up for freelancers in Hungary to share information and knowledge, to offer the experience of a good community and collegiality, which as a freelancer is not easy to live with but can be very missed. The group produces texts, videos, and podcast materials for everything that can be interesting, exciting for a freelancer, and has a series of professional and community events to learn, network, gather ideas, and have fun. The membership program is available on a monthly or discounted annual subscription basis.¹¹⁰ “Freelancerblog” seems to be a creative, inspirational new initiative, but it has no specific focus on platform workers.

Considering new forms of employment in general, Meszmann notes the following: although some “trade unions are aware of some emerging issues¹¹¹, they have much different priorities and limited capacities to organize individual workers.”¹¹² Alternative forms of workers’ organizations are not typical in Hungary. Many unionists confirm (in interviews etc.) that

¹⁰⁸ <https://www.sharingeconomy.hu/>

¹⁰⁹ <https://ivsz.hu/en/>

¹¹⁰ <https://freelancerblog.hu/>

¹¹¹ Recently, many awareness raising conferences, trainings have been organized by unions on the topics of digitalisation, automation etc., but these have had not much practical effect.

¹¹² Meszmann T. Tibor (2018) 0.

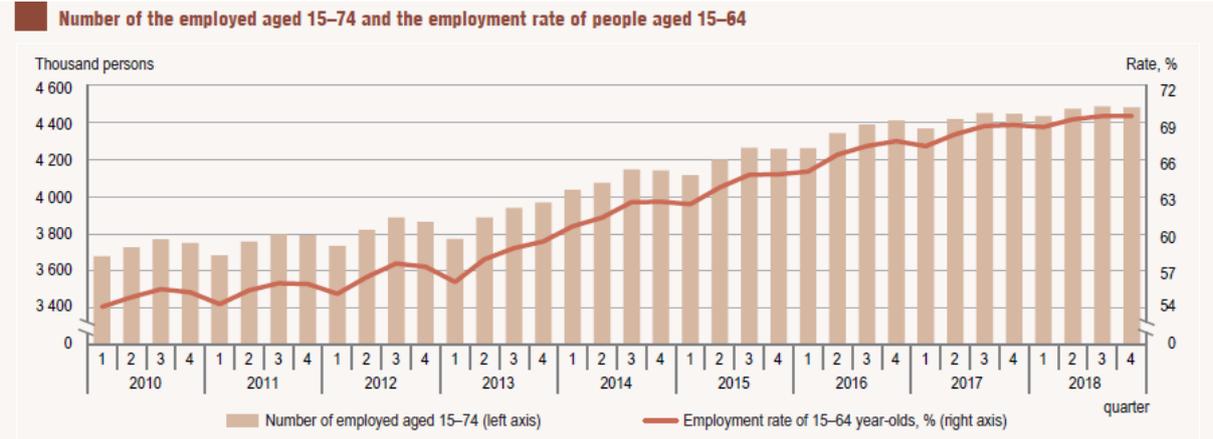
Hungarian unions typically stay on a rather traditional, rigid way of organising. Furthermore, the number of non-standard workers in Hungary is relatively modest, which fact does not make them truly relevant for unions, who generally suffer from capacity problems.

It is important to note that the Hungarian collective bargaining structures are generally weak, sectorial bargaining is especially weak; bargaining structures are decentralised, fragmented and uncoordinated; coverage is low (less than one third of workers are covered by collective agreements).¹¹³ If this is the case in general, it is not surprising that it is even more so in the case of non-standard forms of work. In total, no steady, relevant, weighty social pressure exists in Hungary for the regulation and / or ‘humanization’ of the platform economy.

4 Labour market effects

The most prominent recent feature of the Hungarian labour market is the dynamic improvement of the employment rate. Between the 1st quarter of 2010 and the 4th quarter of 2018, the number of the employed increased by more than 800 thousand. The number of employed people continued to increase in 2018 as well, their annual average number was 4,469 thousand, 1.1% or nearly 50 thousand more than in the previous year. However, the growth rate of employment was lower in 2018 than in recent years, due to the fact that the mobilizable labour force reserve decreased to a minimum, partly because of demographic reasons and partly due to the labour absorption resulting from the favourable economic processes in the previous years. In 2018, the employment rate of the 15–64 year-old population was 69.2%, 1.1 percentage points higher than a year earlier. In the 3rd quarter of 2018, the employment rate of the 15–64 year-olds was 69.5% in Hungary, 0.5 percentage point higher than the EU-28 average.¹¹⁴

Table 1. Number of the employed aged 15-74 and the employment rate of people aged 15-64.



Source: HUNGARIAN CENTRAL STATISTICAL OFFICE (2019), Labour market trends, Quarters 1–4 2018, Statistical Reflections May 2019, 2.

¹¹³ For further details: Kun, Attila (2017b).
¹¹⁴ HUNGARIAN CENTRAL STATISTICAL OFFICE (2019).

Another characteristic and increasingly crucial issue of the labour market is the higher and higher volume of unmet labour demand, which can be observed in the labour market from the second half of 2016. The number of job vacancies to be filled has risen steadily ever since. In the 4th quarter of 2018, the number of job vacancies according to the EU definition was 83.3 thousand, almost double the value in the same quarter of 2015.¹¹⁵

Table 2. Number of job vacancies at enterprises employing at least five persons.



Source: HUNGARIAN CENTRAL STATISTICAL OFFICE (2019), Labour market trends, Quarters 1–4 2018, Statistical Reflections May 2019, 4.

According to the National Reform Programme 2018 of Hungary¹¹⁶ the main challenges of employment policy currently include labour shortage and imbalances between supply and demand, which are partly due to the discrepancies between qualifications required by the labour market and those possessed by jobseekers, and partly due to territorial imbalances. “The Government wishes to address these challenges by strengthening active labour market instruments, promoting employment in the open labour market, promoting transition from public works to the private sector, transforming the system of public works, improving mobility of employees and increasing the job-creation ability of businesses.” In response, the European Commission recommends that Hungary shall take action to “unlock labour reserves through improving the quality of active labour market policies. Improve education outcomes and increase the participation of disadvantaged groups, in particular Roma, in quality and inclusive mainstream education. Improve the adequacy and coverage of social assistance and unemployment benefits.”¹¹⁷

The two above described — relatively stable — tendencies (growing employment rates, mounting shortage of labour) increasingly turn the focus on standard employment. There seems to be a shift in policy focus: instead of job creation (via flexibilization and non-standard forms), the supply side intervention comes into the forefront. Companies aim to hire permanent workers

¹¹⁵ HUNGARIAN CENTRAL STATISTICAL OFFICE (2019).

¹¹⁶ The Government of Hungary (2018): National Reform Programme 2018 of Hungary, https://ec.europa.eu/info/sites/info/files/2018-european-semester-national-reform-programme-hungary-en_0.pdf (Last visited: 01. 08. 2018.).

¹¹⁷ European Commission (2018).

instead of temporary ones, ready to increase the wages and improve the working conditions, but often demand excessive overtime and enhanced work intensification. The government tends to accept the wage hike and tries to compensate it by cuts in social security contributions / taxes, it decreases the PW budget and aims to train workers for the ‘open’, primary’ labour market. The above described new overtime law (Chapter 2.1.9.) and the new rules on pensioners’ cooperative (KNYSZ) all fit into these tendencies (by aiming to create additional supply on the labour market).

The four — above described (Chapter 2.) — tiers of Hungarian non-standard forms of employment show a rather interesting picture from the point of view statistical dynamics.

The first tier — non-standards forms of employment in the LC (the rather ‘classical’ atypical employment relationships) — shows relatively modest incidences. For instance, part-time employment rate is only 3,6 % (2017) of total employment¹¹⁸, temporary employment is only 8,8 % (2017) of dependent employment.¹¹⁹ These data are well below the OECD and / or EU average. It is also often noted that, for example, part-time work frequently masks full-time jobs.¹²⁰ Some new forms of atypical employment are hardly measurable (e.g. job-sharing, on-call, employee sharing). For example, as Kártyás notes it, “employee sharing is almost invisible in the Hungarian labour market.”¹²¹ These data confirm that labour law (in itself) cannot create employment and atypical forms of employment won’t be popular just because of their regulation (though one of the main aims of the 2012 LC has been to create employment via the enactment of flexible provisions and new atypical forms of employment). Hungary seems to have relatively flexible labour laws, but relatively rigid labour markets. It is also obvious, that ‘standard’ employment continues to be the leading form of employment in Hungary (similarly to other Central and Eastern European countries).¹²² On a general level, analyzing flexible working arrangements in Hungary, the OECD states that “only a fraction of workers has such entitlements.”¹²³

TAW seems to be the most popular atypical form of work. As of December 31, 2017, 585 of the temporary work agencies operated as headquarters in Hungary and 259 of them were based in the country, and their total number was 844. This latter figure represents a decrease of 28.4% compared to 31 December 2016. The decline in the number of agencies did not result in a decrease in net sales. In 2017, the agencies that fulfilled the reporting obligation realized net sales of more than 256 billion HUF, which is 15.7% higher than in 2016. In 2017, a total of 5.9 thousand employers contracted with the temporary work agencies. The number of user employers again shows a significant decline. In 2017, 159,969 employees had a labour law relationship with temporary work agencies, which is 31.2% more than the 2016 figure. Examining the data of previous years, it can be concluded that the number of temporary agency workers in 2009 was significantly reduced as a result of the economic crisis. Compared to the data of this year, the number of agency-employees increased significantly in 2010, but in both years after 2010 it was decreasing. The data for 2013 was exceptionally high compared to the

¹¹⁸ OECD 2019, <https://data.oecd.org/emp/part-time-employment-rate.htm#indicator-chart> (Last visited: 05. 05. 2019.).

¹¹⁹ OECD 2019, <https://data.oecd.org/emp/temporary-employment.htm#indicator-chart> Last visited: 05. 05. 2019.).

¹²⁰ This research also notes that since 2008, and during the global economic crisis, part-time contracts were kind of reinvented as an employment form preventing job losses, that is, instead of job cuts, many full-time employment contracts became part time contracts (reaching a peak in 2011). Meszmann T.Tibor (2016) 6, 8.

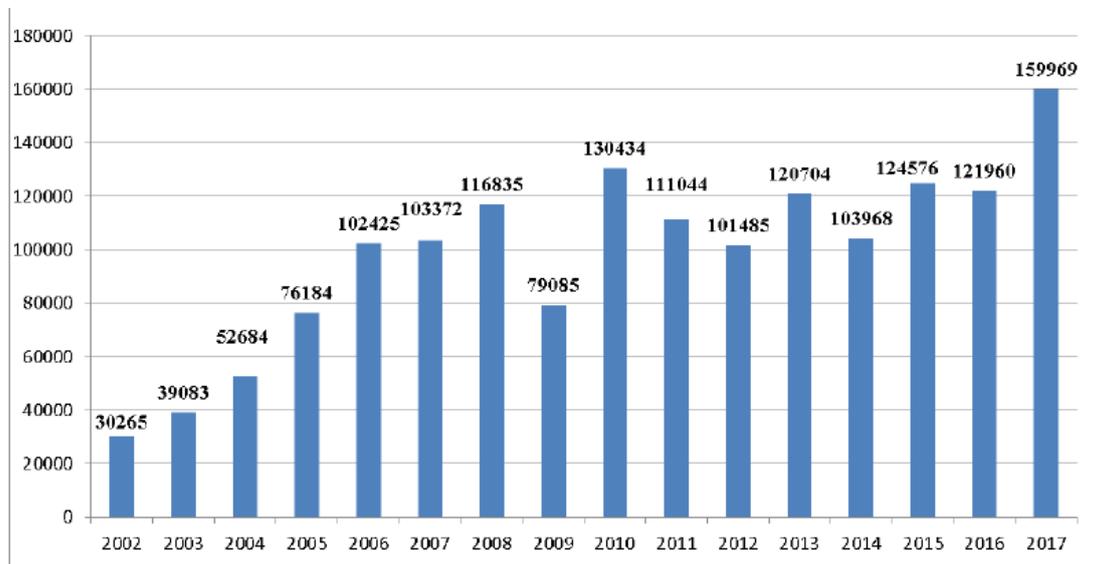
¹²¹ Kártyás Gábor (2016b) 12.

¹²² Gyulavári Tamás (2014) 103.

¹²³ OECD (2019) 55.

previous year, while in 2014 the declining trend experienced earlier was back. In 2015-2016, the number of agency-workers ranged from 121 to 125 thousand, compared with an exceptionally high number of nearly 160 thousand in 2017.¹²⁴

Table 3. The number of employees of temporary work agencies (2002-2017).



Source: Ministry of Finance (2018): Összefoglaló a munkaerő-kölcsönzők 2017. évi tevékenységéről. 12.

https://nfsz.munka.hu/Lapok/full_afsz_kozos_statiztika/stat_osszefogl_munkaero-kolcson_tevekeny/content/stat_osszefogl_munkaero-kolcson_tevekeny_2017.pdf

As for the second tier of the above analysed non-standard forms of employment — the unique Hungarian non-standard forms of employment ‘on the edge’, on the periphery of labour law, as tools of employment policy (SE, SC, PW and household work) — it seems that most of them represent a considerable weight on the labour market. SE, SC and PW seem to be the three most prominent and notable forms of non-standard work in Hungary. In the case of SE and SC the explanation for this fact can be rather simple: both forms can be pretty ‘cheap’ for employers (SE entails lower minimum wages; SC is supported by preferential common charges) and both are partly ‘outsourced’ from the standard protective scope of labour law. As for PW, even though its significance and volume is now decreasing and it represents a specific “enclave” on the labour market (focusing on public employment of disadvantaged groups of the labour market, kind of a sheltered employment for the less effective workforce), it is still an essential and unique part of the world of work (as described above). In general, it is remarkable and exceptional that in Hungary, if one considers ‘non-standard’ forms of work, not the genuine, modern, digitalisation-oriented, market-driven, bottom-up forms are mostly in the forefront (such as platform-work, various forms of telework and part-time work etc.), but those forms, which are heavily backed by government-driven, top-down labour market policies (PW) and / or financial advantages (such as SE, SC) and — to some extent — fall beyond the traditional scope of labour law. One may have the impression that mostly those non-standard forms of work can really flourish in Hungary, which fulfil three practical criteria: considerably ‘cheaper’

¹²⁴ Ministry of Finance (2018).

than standard employment, ‘outsourced’ from the scope of labour law (at least partly) and backed by some form of top-down policy support. It seems to be obvious that — without these backing factors — the ‘simple’ regulatory flexibility within the boundaries of labour law is not enough (this fact is exemplified by the relatively low incidence of the more ‘traditional’, more labour law-related — first tier — atypical forms of employment).

The volume of SE shows a dynamically growing trend. While in 2010 the monthly average number of SE workers was 92 156, by 2015 it went above 200 000 (214 180 in 2015) and it was 270 676 in 2018.¹²⁵ These data shows that employers — in times of increasing labour shortage and steadily growing wages — are increasingly looking for the cheapest and most flexible forms of employment. This data also makes the observer wonder whether SE is really only used for its original purpose (occasional work), or it is also used for the substitution (and disguise) of standard employment. According to Gyulavári, the volume of SE is becoming simply too big.¹²⁶

As for SCs, according to estimations, in 2016 about 186 293, in 2017 about 165 885 students worked via school cooperatives, and about 10,000 ‘users’ (companies) made use of the services of SCs.¹²⁷ These figures are very substantial and show the extraordinary popularity of students’ employment via SCs. One may assume that this form of employment is one of the cheapest and most flexible pools of workforce for companies. SCs have practically monopolized students’ employment.

PW still involves a large number of disadvantaged workers, but it is becoming less and less important on the labour market. In about 2 years, the number of public workers fell by about half. The number of public employees was the highest in 2015 and 2016, with about 230,000 people participating in the program. According to the data of the Ministry of the Interior, in February 2019 only 117 831 people were employed in the scheme. About 118,000 people account for about 2.6 percent of all Hungarian workers. Many of the public workers are now finding employment on the primary labour market due to the ever-increasing labour demand of the economy.¹²⁸ The monthly average statistical number of people registered as public workers was 135.6 thousand in 2018, which meant a decrease of 24.4% compared to the previous year.¹²⁹

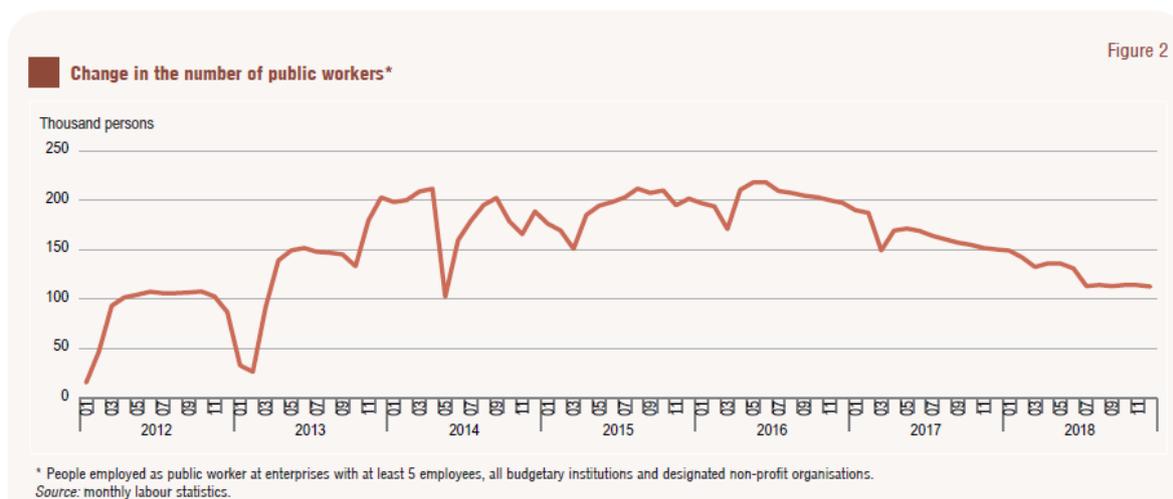
¹²⁵ Data of the Ministry of Finance, based on interviews.

¹²⁶ Gyulavári Tamás (2018a) 127.

¹²⁷ Data (estimation) of DiákÉSZ, based on interviews.

¹²⁸ <https://kozfoglalkoztataskormany.hu/statisztika> (Last visited: 05. 05. 2019.).

¹²⁹ HUNGARIAN CENTRAL STATISTICAL OFFICE (2019).



Source: HUNGARIAN CENTRAL STATISTICAL OFFICE (2019), Labour market trends, Quarters 1–4 2018, Statistical Reflections May 2019, 4.

In light of the EU’s employment policy, the Hungarian system of Active Labour Market Policies (ALMPs) continues to “leave significant room for improvement, as public works (PW) – the least effective activation type according to empirical evaluations – continues to be the dominant measure funded by the government. Therefore, complementing PW with training elements is regarded as an important and valuable step, though requires significant scaling-up and a strengthening of its quality assurance in order to have a significant positive impact. Cutting back expenditures on PW and increasing the weight of other, more effective activation measures (e.g.: training, counselling, mentoring, etc.) – as recommended by the CSRs¹³⁰ as well - would be highly advisable.”¹³¹

The number of legal relationships related to household work is very low (for example, less than 1000 in 2018 and it was only slightly more than 1000 in the previous years too¹³²). It seems that the obligation of registration (and the payment of the — otherwise very low, HUF 1000 — registration fee) is manifested as overly onerous and bureaucratic in the particular world of domestic, household work and people tend to choose informality. Thus, the legislator’s aim to fight against undeclared work via this scheme is not successfully realised so far.

The extent of the third tier — non-standard forms of employment ‘in the grey zone’ (sham civil law contracts; economically dependent self-employed persons) — is evidently hardly measurable. The formal self-employment rate of Hungary (as a percentage of total employment) is relatively low (10, 4% in 2018)¹³³, which data implies the high probability of informality. According to estimations, some 10–15% of employment (captured by the Wage Survey) is undeclared in Hungary.¹³⁴ However, no exact data is available. A highly widespread type of undeclared work in Hungary is also the case when the employers officially pay an employee minimum wage – but they also pay an “undeclared” amount above minimum wage “under the table.”¹³⁵ Bogus employment is suspected to be frequent, but no reliable statistical data are

¹³⁰ Country-specific recommendations (EU).

¹³¹ Scharle, Agota (2017) 11.

¹³² Data of the Ministry of Finance and the Tax Authority, based on interviews.

¹³³ OECD 2019, <https://data.oecd.org/emp/self-employment-rate.htm#indicator-chart> (Last visited: 05. 05. 2019.)

¹³⁴ Albert Fruzsina — Gal Robert I. (2017) 18.

¹³⁵ Huzjak, Hana — Overmyer, Krytal (2012) 11.

available on the issue at the moment.¹³⁶ According to the statistics of the Department of Labour Inspections of the Ministry for National Economy (2015), detected bogus self-employment infringements comprised 2.52% of all employee-related detected infringements in 2015. This is slightly higher than the number in 2014 (1.79%), but — as Albert and Gal observe it — most probably it significantly underestimates the real prevalence of the problem; it also indicates the difficulties the authorities face in trying to detect it.¹³⁷

As it was mentioned before, the fourth tier — non-standard forms of employment of the ‘future’ (employment forms of the gig economy) — is still insignificant in Hungary. The 2017 COLLEEM survey contains initial estimate on the percentage of platform workers in Europe. The data for Hungary is rather low (and it is only a rough estimate).

	%	Unweighted Cases	Unweighted N
United Kingdom	12.6%	268	2,320
Spain	15.1%	388	2,331
Germany	11.8%	247	2,319
Netherlands	10.6%	217	2,314
Portugal	15.7%	405	2,305
Italy	13.5%	375	2,317
Lithuania	13.5%	296	2,308
Romania	14.2%	311	2,307
France	8.8%	170	2,315
Croatia	12.1%	274	2,300
Sweden	7.8%	164	2,321
Hungary	8.9%	200	2,309
Slovakia	8.5%	183	2,313
Finland	6.9%	121	2,310
Total	11.9%	3,619	32,389

Source: Pesole, A., Urzì Brancati, M.C, Fernández-Macías, E., Biagi, F., González Vázquez, I., Platform Workers in Europe, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, 15.

5 General conclusions

It is in itself remarkable that while the global, contemporary discussion on non-standard forms of work is mostly about platform work, and other modern, basically digitalisation-driven forms of work, the Hungarian landscape of non-standard forms of work is totally different, being dominated by some ‘top-down’ forms, strongly embedded into labour market policies. It is also remarkable that while the number of employed people in 2018 was 4,469 thousand in 2018 (see Chapter 4. for more detailed statistics), the three (apart from TAW) most prominent — and most unique — Hungarian non-standard forms of work (SE, SC, PW) altogether involve more than half million workers on a yearly basis. This proportion seems to be striking, if we take into account the common specific features of these three distinct, but, to some extent, in the same way unique non-standard forms of work. In sum, they share the following peculiar characteristics. Firstly, they are relatively new forms of non-standard work (created in the last 10 years in their current forms). Secondly, all three forms are partly ‘outsourced’ from the scope of the LC; they represent kind of a ‘second class’ sphere of employment. It is to be noted that their partial exclusion from labour law seems rather artificial, as these contractual relations could easily fit into the seemingly broad statutory concept of the ‘employment relationship’.

¹³⁶ Albert Fruzsina — Gal Robert I. (2017) 4.

¹³⁷ Albert Fruzsina — Gal Robert I. (2017) 7.

Thirdly, they are ‘cheap’, as they are supported by various forms of preferential financial regulation (SE and PW: lower statutory wages compared to the minimum wage, SC: tax advantage). Fourthly, they have more like a ‘top-down’ character instead of a spontaneous, ‘bottom up’, market-driven dynamic (the latter being normal for atypical forms of work in general). Fifthly, even if they originally follow positive labour market policy-oriented goals (fight against undeclared work, support for disadvantaged groups of the labour market etc.), their misuse in practice is extensive (replacement of standard jobs, PW: poverty trap). Sixthly, they can have a kind of monopolistic and ‘supplanter’ effect on the labour market towards other non-standard forms of work (by distortion of the free choice of the form of work, at the end of the day, ‘the right to work’). Seventhly, there are no institutionalized, noteworthy social dialogue developments in any of these spheres of employment. In sum, one may have the impression that mostly those non-standard forms of work can really flourish in Hungary, which fulfil three practical criteria: considerably ‘cheaper’ than standard employment, ‘outsourced’ from the scope of labour law (at least partly) and backed by some form of top-down policy support. On the basis of these wrapping up, it seems logical to deduct some more general conclusions below.

The Labour Code’s statutory definition on the employment relationship (cited above) is broad and vague. However, the seemingly broad, all-encompassing definition is rather misleading, as the scope of employment relationships falling within its material scope is relatively narrow (see: only the first tier in our analysis, the so-called atypical employment relationships). Furthermore, the most popular non-standard forms of work (like SE, SC, PW) are all — at least partially, to some extent — ‘outsourced’ from the scope of labour law (as described above), even though they could easily fit into the broad statutory definition (if it would be taken seriously). In general, it seems that broad, all-encompassing definitions of the employment relationship can easily become non-operational. Clearly, the Hungarian definition calls for fundamental rethinking and / or consistent application.

The unusual Hungarian examples of the most popular non-standards forms of work (like SE, SC, PW) all enjoy some kind of intense financial incentives (such as: lower minimum wage in case of SE and PW; lower, preferential common charges in case of SE and SC). This imbalanced financial regulation can have a harmful effect in the long term and can artificially distort the ‘competition’ among various forms of non-standard work. More radically speaking: this imbalanced financial regulation can have a potential harmful effect on the truly free exercise of the ‘right to work’, the free choice of employment (and its form), as players on the labour market — especially employers — are unsurprisingly inclined to choose the ‘cheapest’ form of legal work available. In other words: various forms of labour law-based regulatory flexibility can be easily overruled by financial deflector mechanisms. Hence, it seems to be a logical demand to equalise the financial (tax etc.) burden of various — both standard and non-standard — forms of work¹³⁸ in order to fight against various bogus, artificial contractual practices and to make the ‘competition’ among various non-standard, flexible forms of work truly ‘fair’. In sum, it seems that the intense fragmentation of contractual options and the variability of different tax measures can have the potential to distort labour-law rationales. Therefore, it can be perceived that the potential equalization of the financial burden of various non-standard forms of work would be able to contribute to more transparent and fair employment practices (both in general and in the field of platform work).

Non-standards forms of employment are usually not born in theory, from research, or on the ‘designer’s table’, but are products of the labour market. Hungarian labour law seems to have

¹³⁸ Gyulavári formulates a similar (but narrower) argument for the context of the employment relationship and all other working relationships. Gyulavári Tamás (2014) 95.

a schizophrenic attitude in this context. Firstly, it does not recognize many new, market-driven, factually existing new forms of work (such as crowd-work, platform work; the ‘fourth tier’ in brief). Secondly, it recognizes (since 2012) some modern, non-standard forms of work (for example: job-sharing, employee sharing, on call) which — according to the statistics — are not (or not yet) really relevant for the Hungarian labour market (or at least not in the form as the LC briefly and vaguely regulates them). Thirdly, the LC makes the standard, default rules of employment flexible enough that employers do not really need to rely on non-standard, new forms. Fourthly, and most importantly, the legislator created some unique non-standard forms of work (such as SE, SC, PW) with a rather straightforward top-down approach, backed by financial and other incentives, which have “spilled over” their original, legitimate, employment-policy related aims (i.e. to fight against undeclared work and to support some disadvantaged groups on the labour market), and, to a great extent, have become spheres of “second class” employment (partly ‘outsourced’ from labour law) and ‘playground’ for misuse. Consequently, on a more general level, it can be presumed that the too harsh intervention by the state into the world of non-standard work can have dysfunctional spill over effects, even if the intervention itself is motivated by positive labour market policy-oriented aims. Subsidized, top down non-standard forms employment might also have a kind of harmful ‘supplanter’ effect on the labour market, especially towards other new forms of work.

If the sector of platform economy will grow, it will be necessary to clarify the status of ‘workers’ mediated via platforms. The issue does not necessarily require targeted policy responses (yet), but it will surely entail the need of clarification (whether platform workers are to be considered employees, or not, or what kind of labour rights they are entitled to).

In general, one might dare to state that non-standards forms of work are largely out of the sight of unions and social partners in Hungary (of course, exceptions do exist, but one can have the impression that ‘the exceptions prove the rule’). It is important to note that the Hungarian collective bargaining structures are generally weak, decentralised, fragmented and uncoordinated; coverage is low. If this is the case in general, it is not surprising that it is even more so in the case of non-standard forms of work.

The two dominant, above described — relatively stable — labour market tendencies (growing employment rates, mounting shortage of labour) increasingly re-direct focus on standard employment. There seems to be a shift in policy focus: instead of job creation (via flexibilization and non-standard forms), which was the mantra of the last decade, the supply side intervention appears to be increasingly important.

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