



NEW EMPLOYMENT FORMS AND CHALLENGES TO INDUSTRIAL RELATIONS – NEWEFIN

Policy brief Hungary

*Attila Kun **

Amsterdam, June 2020

This report was written for the NEW EMPLOYMENT FORMS AND CHALLENGES TO INDUSTRIAL RELATIONS - NEWEFIN project, financed by the European Commission, (DG Employment, Social Affairs and Inclusion, Employment and Social Governance - Social Dialogue - Agreement number VS/2018/0046)

This paper reflects only the author's view. The Commission is not responsible for any use that may be made of the information it contains.



* Professor, Head of Department (Department of Labour Law and Social Security), Károli Gáspár University, (KRE) Faculty of Law, Budapest; Associate Professor, National University of Public Service (NKE), Faculty of Public Governance and International Studies, Department of Human Resources, Budapest, Hungary. MTA [Hungarian Academy of Sciences]-PTE Research Group of Comparative and European Employment Policy and Labour Law

1. Introduction and background

The study was prepared in the context 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 (hereafter the "LC") came 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 specific forms of work performance and employment have emerged even within atypical forms of employment. Therefore, the LC emphasises that an employment relationship is not a homogeneous concept and 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 an employee has a relatively clear traditional definition (see above), Hungarian labour law has no clear, established definition of self-employment per se. In practice, self-employed persons are independent contractors who work under a civil law contract (regulated by the Civil Code, hereafter the "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 analyses 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: SE; school (and other) cooperatives: SC; public works: PW and household work). Even if these forms are very different, they have some basic common characteristics, as it is pointed out throughout the paper;
3. non-standard forms of employment ‘in the grey zone’ (sham civil law contracts; economically dependent self-employed persons); and
4. non-standard forms of employment of the ‘future’ (employment forms in the gig economy).

As regards the last of these, 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.¹ 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 major failure. The current legal regulation does not deal with platform work’s expected challenges.

2. General conclusion

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 in labour market policies. It is also remarkable that while the number of employed people in 2018 was 4,469,000 (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 include 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. First, they are relatively new forms of non-standard work (created in the last 10 years in their current forms). Second, all three forms are partly ‘outsourced’ from the scope

¹ See for further details: Meszmann T. Tibor (2018): Industrial Relations and Social Dialogue in the Age of Collaborative Economy (IRSDACE), National Report Hungary, CELSI Research report 27, 2018. https://celsi.sk/media/research_reports/RR_27.pdf

of the LC; they represent a kind of ‘second class’ sphere of employment. It should 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’. Third, 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). Fourth, 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). Fifth, even if they originally follow positive labour market policy-oriented goals (fight against undeclared work, support for disadvantaged groups in the labour market etc.), their misuse in practice is extensive (replacement of standard jobs, PW: poverty trap). Sixth, they can have a kind of monopolistic and ‘supplanter’ effect on the labour market compared to 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’). Seventh, there are no institutionalised, noteworthy social dialogue developments in any of these spheres of employment. In sum, one may gain the impression that these non-standard forms of work can really flourish in Hungary, as they 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 this summary, it seems logical to infer some more general conclusions below.

The Labour Code’s statutory definition of 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 (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 — ‘outsourced’ from the scope of labour law (as described above), even though they could easily fit into the broad statutory definition (if it were 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 potentially harmful effect on the truly free exercise of the ‘right to work’, the free choice of employment (and its form), as the players in 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 forms of work² — both standard and non-standard — in order to counteract various bogus, artificial

² Gyulavári formulates a similar (but narrower) argument for the context of the employment relationship and all other working relationships. Gyulavári Tamás (2014): Civil Law Contracts in Hungary, Keynote Paper, In:

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 equalisation of the financial burden of various non-standard forms of work could contribute to more transparent and fairer 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 a schizophrenic attitude in this context. Firstly, it does not recognise many new, market-driven, factually existing new forms of work (such as crowd-work, platform work, or the ‘fourth tier’). Secondly, it recognises (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 that 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 legislature 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 in the labour market), and, to a great extent, have become spheres of “second class” employment (partly ‘outsourced’ from labour law) and a ‘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. Subsidised, top down, non-standard forms employment might also have a kind of harmful ‘supplanter’ effect on the labour market, especially in respect of other new forms of work.

If the platform economy sector is to grow, it will be surely necessary to clarify the status of ‘workers’ mediated via platforms in Hungary as well. The issue does not necessarily require targeted policy responses (yet), but it definitely entails the need for 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 and this study has shown that non-standards forms of work are largely out of the sight of unions and social partners in Hungary (there are, of course, exceptions, but one can gain 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 obvious in the case of non-standard forms of work.

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

3. Some policy pointers and recommendations

- The Labour Code's broad and vague statutory definition of the employment relationship calls for fundamental rethinking and an 'update' and / or consistent application.
- This research has thrown up many questions in need of further investigation. In sum, it seems that mostly the non-standard forms of work can really flourish in Hungary (like SE, SC, PW), as they 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. It is advisable to bring to an end the rather artificial — full or partial — 'outsourcing' of certain non-standard forms of work from the protective scope of labour law.
- The most obvious finding to emerge from this study is that the imbalanced financial regulation and varied state-based promotion of the diverse forms of non-standard work can have a harmful effect in the long term and can artificially distort the 'competition' among various forms of non-standard work. Hence, it seems to be a logical demand to equalise the financial (tax etc.) burden of various — both standard and non-standard — forms of work in order to counteract various bogus, artificial contractual practices and make the 'competition' among various non-standard, flexible forms of work truly 'fair'.
- The matter of the extensive "grey zone" of the labour market (including the economically dependent self-employed, bogus self-employed etc.) should be treated more systematically. Targeted and effective policy measures are needed in this respect (either by reconsidering and updating the 2011 Proposal on a "third" category, or, preferably, by fresh, innovative proposals, also with specific attention being paid to platform work).
- It was also shown that the platform economy is still relatively immature in Hungary, platform work, as such, is neither really conceptualised nor regulated. However, in the longer run, a more targeted, more coherent, more systematic, more socially sensitive and more dedicated policy focus is undoubtedly needed in this respect.
- The most 'evergreen' finding to emerge from this study is that industrial relations and social dialogues structures are weak and rather inefficient in Hungary, both in general and (especially) in relation to new and non-standard forms of work. In general, therefore, it seems that a strengthening of social dialogue and the promotion of

collective bargaining should be overriding policy goals (both in the traditional and in a more open, innovative sense).

- As has been pointed out, there seems to be a shift in policy focus: instead of job creation (via increasing flexibility and non-standard forms), which was the mantra of the last decade, the supply side intervention appears to be increasingly important. However, increasing participation in lifelong learning and improving access would be important (supported by both legal and policy measures).
- It must be noted that besides the non-standard, new forms of employment that have been analysed, the default, 'standard' Hungarian labour law itself offers plenty of possibilities for altering the structure and content of a seemingly standard employment relationship in a way that includes a huge array of flexibility and atypicality. Thus, the formally 'typical' can easily be turned into materially 'atypical' via more flexible contractual arrangements and work organisation. This overriding, ongoing tendency of increasing flexibility and contractualisation of labour law and the dismantling of its protective function should be overturned and balanced.