



The study was created under the priority project GINOP-5.3.7-VEKOP-17-2017-00001 titled “Development of Legal Employment”.

IMPACTS OF LABOUR LAW VIOLATIONS SPECIFICALLY ON THE SME SECTOR

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The study entitled *Impacts of labour law violations specifically on the SME sector* was prepared in the context of the priority project GINOP-5.3.7-VEKOP-17-2017-00001 titled "Development of Legal Employment" of the Ministry for Innovation and Technology. In view of the outstanding economic role of small and medium-sized enterprises, exploring and analysing labour law violations that are specific to the SME sector, together with their causes and reasons, is indispensable if job quality and competitiveness are to be improved and the rate of employment is to be raised.

In this context, the first block of the paper (*Chapter 2 "The role of small and medium-sized enterprises in Hungary"*) examined the role of SMEs in the domestic environment. Accordingly, the term itself was defined first. Accordingly, a company is an SME if it has fewer than 250 employees and its annual net sales revenue does not exceed the HUF equivalent of EUR 50 million or its balance sheet total is not more than the HUF equivalent of EUR 43 million.¹ The sub-chapter contained – *inter alia* – a detailed discussion of the calculation and interpretation elements required for the use of the concept. This was followed by an analysis of the role of the SME sector in the economy and in employment. The purpose of the presentation of data is to illustrate the importance of the SME sector and to emphasise that if this sector plays such an important role, then it is necessary to deal with all relevant particular matter and issue, including the impacts of labour law violations on the SME sector. Accordingly, as an average of the EU-27 countries as many as 99.8% of all businesses are SMEs², while the Hungarian ratio is 99.9%.³ Subsequent parts of Chapter 2 discussed specific issues facing the SME sector, including job quality (in general) and lawful operation. The paper deals with both subjects in more detail and depth subsequently, but we were of the opinion that it was important to set out and lay down the basic considerations relating to the subjects at a general level in that section too.

The next larger content unit (*Chapter 3*) explored the "*Labour law violations characteristic of SMEs, and their reasons*". As regards sanctions, in addition to the cases in which sanctions are mandatory in Hungary, the corresponding regulations of some other EU countries are highlighted. Thereafter the aim was to explore the reasons, by examining the impacts on competitiveness. In the intense competition the conditions of operation of the SMEs are deteriorated by a variety of complications. For instance nearly 21% of all SMEs have difficulties in accessing funds and this ratio is a lot higher among micro enterprises in many of the member states. Few SMEs implement successful innovation projects in comparison with large enterprises at a European level and this situation is further aggravated by structural difficulties impeding development. These include, for instance, the lack of adequate management or certain technical skills. Another hindrance for SMEs is that the member states labour markets are, for the most part, rigid and slow in adapting to changes.⁴ The violations found by labour inspections show that non-compliance is very often a result of the employer's lack of knowledge and information. Of course this applies not only to small enterprises but violations stemming from the lack of knowledge of the applicable regulations is most prevalent among them.⁵ That violations are more typical in this category of businesses is also probably a result of the fact that they cannot afford to, or will not, engage competent professionals to take care of formalities they cannot cope with, for lack of knowledge.⁶ These are made even more challenging by the complexity of the legal system of the given

¹ Section 3 of the SME Act

² 2021 SME Country Fact Sheet European Union, p. 1, <https://ec.europa.eu/docsroom/documents/46060> downloaded: 20 April 2022

³ 2021 SME Country Fact Sheet Hungary, p. 1, <https://ec.europa.eu/docsroom/documents/46078> downloaded: 20 April 2022

⁴ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "Think Small First", A "Small Business Act" for Europe, Brussels, 25.6.2008 COM(2008) 0394 final, pp. 2-3 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0394:FIN:EN:PDF>, downloaded: 10 May 2022

⁵ Ministry for National Economy, Employment Supervision Department, report on the targeted inspection of compliance with the rules on wages [21 March 2016 – 8 April 2016.], 2016, p. 13 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=515, downloaded: 5 June 2022

⁶ for more detail, see: Horváth Bianka: *Új kihívások a humánstratégiában – válság és valóság* (New challenges in human strategy – crisis and reality), „Válság közben, fellendülés előtt” (*"During crisis, before recovery"*) Scientific Conference, Széchenyi István University, Győr, 2010., <http://kgk.sze.hu/images/dokumentumok/kautzkiadvany2010/horvath%20bianka.pdf>, downloaded: 5 June 2022

state and frequent changes in the regulatory environment which raises questions regarding legal certainty as well.

In Chapter 3 it was stated in regard to job quality, *inter alia*, that the quality of employment is also crucial regarding the productivity of employees, which in turn affects the success of the enterprise concerned, including its economic growth based on broader foundations. Small businesses are sometimes exempted from the labour law in quite a number of countries – sometimes by law, sometimes only in practice; however, it always has a negative impact on the quality of employment. Improving job quality however, is indispensable for the sector's employees but also for businesses themselves because it may provide them too with potential benefits. This was followed by a detailed analysis of the relationship between labour law and employment quality, on the basis of the following considerations:

- The principle of freedom to choose an occupation and the right to engage in work
- The requirement of health and safety at the workplace (labour protection),
- The requirement of equal treatment
- Remuneration for work (wage and non-wage benefits)
- Working time and rest period
- Industrial relations: the right to organise and fundamental right to collective bargaining
- Participation
- Other factors affecting job quality, such as the issue of job stability, lack of knowledge and information, human resource management and geographical factors.

In the last sub-chapter of Chapter 3 the opinions of the social partners and the economic-interest organisations were discussed.

The next large block (*Chapter 4 "International outlook"*) is an international outlook. This included a detailed discussion of the issue of *parallel regulation and partial exemption*. In our view the rules adopted in order to promote job quality and the creation of the requisites and conditions for decent employment do not necessarily have negative impacts on job creation and economic growth. Therefore we make a proposal for a method of regulation that can simultaneously encourage and promote job creation and economic growth, and drive job quality improvement and the creation of the requisites and conditions for decent employment. In relation to the role of *state regulation* it was concluded that without an adequate regulatory environment SMEs will not be able to achieve appropriate results because growth is by no means automatic and apart from some exceptional cases informal businesses tend to be short of capital, technology, know-how and organisational resources. State intervention is necessary if the informal economy is to survive; its best instrument is "whitening" the black economy, i.e. transferring informally operating businesses into the legal economy. Unfortunately, most development plans and programmes pay little attention to labour law standards, but their importance does need to be emphasised.⁷ To *facilitate compliant operation* the regulation should be worked out in view of the capacity and all relevant parameters of the subjects of the regulation, assessing at the same time likely impacts the financial and other burdens resulting from the regulation will have on them. In this regard the labour law is only a small segment of numerous relevant legal areas⁸ as well as social and economic regulations, controlling and influencing the operation of SMEs. Two separate but interrelated issues need to be taken into account from the aspect of exploring the labour law. On the one hand, the scope of the labour law does not always cover SME employers, and on the other hand, if it does, it is by no means sure that the authorities concerned actually enforce their application. The sub-chapter is closed by a discussion of the issue of *exemption* from the labour law, exploring whether compliance with regulations hinders economic growth.

The following sub-chapter of Chapter 4 ("*Comparison of the situation in certain EEA countries with the domestic situation*") analyses differences between regulations in place in some selected countries and those in Hungary. The countries concerned were selected primarily on the basis of the following considerations. Poland was chosen because of its economic similarity, which are a result of being exposed to similar economic processes, being another Central and Eastern European state. Italy, a European country of "fighters", one with highly active industrial relations, proved to be a suitable area for research because it may be well worth studying whether the advanced industrial relations can influence, and if so how, the promotion of SMEs' compliant practices and developments in the inspection system. To this end, the following is a description of the regulations and the inspection systems in place

⁷ Portes op. cit., pp. 126–128

⁸ Occupational safety, social security, tax law, competition law, administrative law etc.

in each country, followed by a presentation of best practices as a special element of this part of our paper.

In the discussion of "*international trends and solutions*" it was concluded that education / information may play a major role in the prevention of violations. It is clearly concluded from the Polish example that auditing / advisory type inspections actually promote compliance with labour regulations. Education may be considerably facilitated by collaboration and knowledge sharing between SMEs; as is indicated by the Italian example of its organisation of SME employers. Moreover, it was also concluded that the rules adopted to promote the development and creation of the requisites and conditions for higher job quality and decent employment do not necessarily have negative impacts on job creation and economic growth, and on the other hand, there are methods of regulation that can simultaneously encourage and promote job creation and economic growth, and drive job quality improvement and the creation of the requisites and conditions for decent employment. The diversity of SMEs enterprises (in terms of size, ownership background, sector etc.) poses particularly tough challenges regarding both the elaboration of legal regulations and the ensuring of compliance with the rules, constituting two separate tasks in their specific contexts.

In the last part of Chapter 4 ("*Recommendations*") a proposal was made for a method of regulation that can simultaneously encourage and promote job creation and economic growth, and drive job quality improvement and the creation of the requisites and conditions for decent employment. The solution we proposed is responsive regulation.

Finally, in the chapter "*Recommendations, methods*" we presented proposals, in the way of an evaluation of the findings of the research.

Labour legislation on small enterprises is only a small segment of the labour law, however, the role of the sector in the economy and in employment highlight the significance of the subject. The SME sector plays an outstanding role in both economy and employment, however, the quality of employment is very low at many of the existing SMEs where the requirements of decent employment are not met either. As we have seen, the term SME is well defined and harmonised across the European Union, however, for the purposes of this study it may be questionable whether treating the employers belonging to this sector in a uniform way is justified because, for instance, a SME with 249 employees is considered as a fairly large one in Hungary. Accordingly, there might be a case for setting a smaller headcount for the purposes of employment policy in order to make sure that the various programmes and aids actually reach their targets. It might be argued however, against a deviation from the uniform concept or the general SME programmes, that the straightforwardness and transparency of the regulation is a crucial requirement and it should not be made more complex without good reason. Indeed, the above terms/concepts and headcount are applied in a uniform way across the Union.

Recommendation No. 1: In differentiation for the purposes of labour law and employment policy it might be appropriate to focus only on micro and small enterprises in which case the currently used terms need not be further complicated; focusing only on small enterprises will do. In accordance with the earlier claim that there is no reason for using a differentiated labour legislation reducing employees' fundamental rights, the above recommendation applies primarily to issues, labour law and employment policy programmes outside the scope of labour legislation.

It is clear from international examples that the labour law is generally applied only with limitations in the SME sector – based on exemptions prescribed by legal regulations or by simply not enforcing some of the general rules.

Illegitimate employment occurs primarily among small enterprises but also in nearly all segments of the economy; moreover, certain countries often (partly) exempt SMEs from the scope of the labour law. The various countries apply a wide variety of different forms of the scopes of labour law and labour norms in a broader sense. The financial and other burdens entailed by regulations are typically recognised, therefore SMEs are often exempted from the scope or the application of – at least some of the – (labour) law rules. One of the greatest challenges is, on the one hand, to create rules for small enterprises that can be applied in practice too; enforcing these rules on the other hand, that is, ensuring compliance with the norms, is at least as great a challenge.

The policy of exemption or the application of exceptions – so that small enterprises are not obliged to comply with various (labour) law rules – is based on the assumption that SMEs are essentially unable to bear the burdens entailed by the regulation. The costs of compliance are, indeed, considerable. This is likely to be particularly true for small enterprises, but their exemption from certain rules is neither without specific risks, nor without specific costs. One – and perhaps the greatest – risk entailed by exemptions or exceptions is that it might create a kind of a *growth trap* which might negatively impact not only specific businesses or enterprises but may potentially endanger the national economy as a whole. Such a growth trap reduces SMEs' productivity and revenues, and thereby the tax revenues of the national economy. In the countries where there is a predominance of small enterprises this might have very serious repercussions on the total income of the national economy.

Exempting SMEs from the scope of labour rules may only be a solution for reducing the given small enterprise's operating costs in the short term. This however, carries a risk of generating significant costs for the national economy as a whole, in a longer run, because small businesses do not grow or become more productive and do not create more (high quality) jobs. Consequently, *short term costs should be distinguished from long term ones*. Exemption, or the application of exceptions, might distort competition in the free market, whereby large numbers of SME owners and entrepreneurs might be provided with an *unfair competitive advantage* because those below a threshold can operate with artificially generated lower labour costs. This form of applying exceptions or exemptions may even bring about more serious problems, since it might contribute a more widespread discontent (or "shrinking back", or playing tricks) among those who have only just crossed this statutory threshold but must remain competitive in the same market as their smaller and less efficient competitors which are, nonetheless, more successful because they need not comply with the fundamental labour law norms. Another harmful side effect of the application of such thresholds is that it *may increase propensity to corruption*, because some employers or entrepreneurs may be inclined to bribe officials if they have failed to fulfilled their obligations, therefore they rather sacrifice some money on bribery than comply with the rules.

Another important question is to what extent are able to, and to what extent they actually do, comply with the applicable rules and norms. Lots of businesses fail to comply with the – labour or other – regulations applying to them. On the one hand, exemption from the scope of certain regulations might only add to an already existing culture of non-compliance. On the other hand, it is not possible to simply alter the scope of a regulation adopted by the state and then expect that this will then change the already established compliance culture. Things would probably remain unchanged, because such a transformation takes a lot of time and of course a wide variety of other factors.

In relation to compliance with the statutory requirements mention must of course be made of the *lack of knowledge and the importance of information*. Practical experience shows that simplifying (labour) law rules is not enough in itself to increase compliance. Reducing the burdens entailed by the regulation does not necessarily mean that employers will comply with its provisions because the managers of the businesses concerned do not, in many cases, even know what rules apply to them. It is very likely that the same applies also to benefits, allowances and other incentives and programmes in place to help small enterprises.

The advantages of both exemption and parallel regulation are dwarfed by the potential disadvantages, therefore *there is no good reason for applying differentiated labour legislation that reduces the fundamental rights of employees, because it negatively affects employees and entails a number of other risks*.

It should also be noted on the other hand, that the legal norms regulating employment are observed more or less fully by medium-sized enterprises, large enterprises and budgetary institutions, i.e. the smaller an organisation the less likely that it does not comply with certain rules; indeed, among micro enterprises there is a considerable uncertainty about compliance with the norms relating to employment.⁹ Accordingly, it is medium-sized enterprises that could really benefit from differentiated labour regulation or from exemption from the labour law, while it would not really have any meaningful impact on job creation by, or on the labour law or social situation of the employees of, micro and small enterprises.

The application of the labour law is just an important a question as its scope; authorities are continuously seeking for ways to promote compliance with the rules of the (labour) law in the SME sector because

⁹ Gyulavári op. cit., p. 101

the continuous monitoring and enforcement of compliance with the labour standards is an extremely difficult task. The enforcement and controlling of compliance with the labour law is, in many cases, particularly difficult for the authorities, for a variety of possible reasons; SMEs are very large in number, they are small, they come in a variety of forms, they are geographically dispersed, often operating in the grey/black economy, with a strong propensity to operate informally. Moreover, the lack of enforcement may even be a result of deliberate policy decisions. Indeed, in some cases the labour authority itself abuses its discretionary power, but corruption and the shortage of funds also affect enforcement negatively. To this end, the government can cooperate with the stakeholders to promote compliance with, and the enforcement of, the labour law norms in the wider sense of the term. Closer cooperation with trade unions might offer a solution to these problems. Trade unions might play an important role in educating employees about their rights, in informing them about rights and the applicable regulations, and may – *inter alia* – be more cost effective in occupational safety and labour inspections than direct action on the part of the state.

Accordingly, trade unions may play an important role in the field of compliance with, and enforcement of, the labour rules in the wider sense of the term; in the SME sector however, their role is rather limited, primarily because of the low trade union penetration in the sector. (The number of trade union members usually reflect the union's influence and power, because a stronger trade union representation can exercise greater pressure for example on the labour inspectorate concerning inspections, while a weaker trade union presence may contribute to the failure of the enforcement of norms.) Accordingly, the monitoring of small enterprises' compliance with the labour rules is rather limited.¹⁰ Moreover, the proportion of union membership is lowest among SMEs, indeed, even this meagre result is weakened by the dominance of the company-level union model in Hungary.

Recommendation No. 2: The legislator should – to the extent possible – focus on reducing barriers and obstacles as regards the establishment and operation of trade unions, and contemplate the encouraging of innovative methods, including for instance, how trade unions could – besides representing employees – be involved for instance in labour inspections. This would – in our view – require that the various states should provide employees with the necessary information, with the active involvement of the labour authorities as well as the trade unions.

Provision of adequate legal protection is not enough for making sure that employees are not afraid to join trade unions because such protection is not always sufficiently effective; *employers should be provided with incentives to promote their employees join trade unions. In this context, primarily programmes relieving employees from the costs should be put in place (e.g. the trade union would provide its members with technical further trainings or relieve the employer from other costly obligations, or indeed, even tax-free allowances, or tax and contribution allowances, could be introduced to this end).* The point is that the employer's financial benefit from its employees' joining unions should outweigh any disadvantage stemming from it.

In this regard the provision of short term financial advantages is key, for both the employer and the employee, which is why the legislator should provide financial support as well for both employers and trade unions. Union membership fees should also be low enough not to dissuade employees contemplating to join. In exchange for its expenditures the state could involve trade unions in the performance of a number of tasks whereby it could save costs, including in this case the performance of occupational safety and labour inspections, like, for instance, occupational safety representatives in Sweden. This might even result in savings for the state and result in improvements in the deficiencies in the enforcement of the labour law as well as in job quality.

Improving job quality is indispensable for the sector's employees but also for businesses themselves because it may provide them too with potential benefits, because of a direct relationship between job quality and the company's productivity and competitiveness. Accordingly, higher job quality may contribute to the company's economic growth which, in turn, may generate jobs.¹¹ Employees working

¹⁰ Fenwick – Howe – Marshall – Landau op. cit., p. 41

¹¹ Decent Employment through Small Enterprises: A Progress Report on SEED activities, ILO, Genf, 2003, pp. 16–17, and Reinecke – White op. cit., pp. 32–33, and European Economic and Social Committee opinion – Subject: „Quality of working life, productivity and employment in the context of globalisation and demographic challenges” (2006/C 318/27), sections 1.2–1.3 and 2.5.1; and European Economic and Social Committee opinion – Subject: „Quality of working life, productivity and employment

in the SME sector are usually in a less favourable situation than those working for larger enterprises, regardless of whether they comply with the labour regulations applying to them. SMEs are thus exempted by the legislator in many countries from at least some of the labour rules; in some cases they are subject to softer rules, or else, the applicable rules are not actually enforced in the SME sector. On the other hand, it is difficult to establish whether there is a causal relationship between exemption from the labour law and the shortcomings in job quality. There is a significant relationship between the two and it is clear even without this that the labour law may greatly facilitate better job quality. In all, proper job quality can only be ensured in the long run under adequate legal regulation and it cannot be achieved without providing employees with fundamental rights at work.

Exemption of SME employers from the labour law has a negative impact on the quality of employment.

At present we have limited data for analysing the impacts of labour law and its costs on SMEs in isolation; empirical evidence however, prove that businesses do not look upon the labour law as an obstacle that would substantially affect their growth potentials. This indicates that it is possible to work out labour legislation without negatively affecting SMEs' chances for growth, indeed, it is necessary for ensuring job quality and decent employment, so that the given company's competitiveness can be maintained.

According to the neo-liberal view inadequate regulation impedes economic efficiency, restricts productivity, makes the operation of businesses more expensive through extremely high costs and unreasonably complex requirements which ultimately force economic actors to adopt informal practices. Accordingly, the various states should minimise state regulation.

The question is whether deregulation can lead to increased flexibility in work organisation and industry structure, i.e. whether reducing the scope of the labour law can enable such development of the operation and the form of business of enterprises which was not possible beforehand. So far there is little evidence to prove that all of this would be supported by deregulation, and moreover, all deregulation initiatives have failed in Europe as well so far.

Accordingly, in our view, state regulation is necessary because no market can operate properly without it. The state must equally ensure basic labour law protection and rights for employees, and control and limit the negative impacts of market competition (e.g. low wages). Accordingly, in our view the state's role as a regulator is essential in ensuring fundamental labour regulations for employees and the requisites and conditions for high job quality, which may, in the long term, contribute to the sustainability of economic performance and help ensure small enterprises' viable operation, because the quality of employment has a direct impact on productivity and thereby on economic performance and growth. On the other hand, the diversity of SME enterprises (in terms of size, ownership background, sector etc.) poses particularly tough challenges regarding both the elaboration of legal regulations and the ensuring of compliance with the rules, constituting two separate tasks in their specific contexts. The legislator is faced with numerous challenges when it comes to developing labour regulations for SMEs. Job creation must be promoted on the one hand, but attention must also be paid to job quality and decent employment, because of the wide-spread shortcomings in these aspects in the SME sector. Therefore the legislator needs to find a balance between these two policy goals: on the one hand, employees' rights and interests need to be promoted by adopting suitable labour regulations, and on the other hand, such rules must be such that they form an ideal regulatory environment for SMEs in which the law does not place unreasonably heavy and unjustified burdens on businesses, does not impede their development or thwart their economic growth potentials.

The legislator should find innovative ways for developing responsive regulations meeting the needs and requirements of both employees and employers. The improvement of job quality is interrelated with the company's productivity and with reducing poverty among workers, i.e. with the two main objectives of economic development.

Moreover, it should also be emphasised that economic development and job quality improvement are compatible policy goals, mutually reinforcing each other. The job quality is a key element of economic

in the context of globalisation and demographic challenges" (2006/C 318/27), sections 1.2–1.3 and 2.5.1; for more detail, see: Arends – Prinz – Abma 2017; and European Agency for Safety and Health at Work: *Quality of the Working Environment and Productivity* 2004.

development, which can only be regarded as successfully taking place if it is accompanied by the promotion of decent employment. State regulation is indispensable in regulating the market – in which small enterprises are also operating – for creating a regulatory environment in which labour standards and social rights are recognised and respected.

An innovative approach to labour legislation, however, requires a broader interpretation of the concept of regulation.

Accordingly, a wide variety of regulatory techniques should be applied in working out labour rules if the desired policy goals are to be attained. The effectiveness of the techniques used should also be regularly reviewed and evaluated. Three different techniques have proven particularly effective to this end:

- education and information,
- financial support and other incentives,
- involving their subjects in the development of regulations.

These different regulatory instruments and strategies can be used in parallel, supplementing and supporting each other, towards developing responsive regulation.

In our view the legislator not only has the possibility but is also obliged to create adequate regulation whereby it is possible to tackle closely related challenges such as job quality issues and the informal operation of small enterprises. Responsive regulation – based on the following three basic principles – may be an effective tool for creating adequate regulation making it possible to tackle closely related challenges such as job quality issues and the informal operation of small enterprises:

- When working out (labour) legislation, attention must also be paid to the question of how the various rules can be complied with and enforced.
- A participatory system needs to be created in both the elaboration of the normative content and in its application and enforcement.
- Both the development, and the instruments of application and enforcement, of the normative content must be targeted, i.e. in addition to the SMEs' needs and problems, the need for improved employment quality must be taken into account.

Accordingly, aspects of application, controlling, implementation and enforcement should be factored in already in the very first phase of the drafting of the rules.

The following categories can be distinguished when discussing the two basic types of the enforcement of the rules adopted by the state and identifying them purely in terms of their objectives:

- strategies and legal consequences aimed at dissuasion,
- strategies aimed at providing advice and at convincing.¹²

Since the application of either one of the above strategies alone would severely restrict the efficiency of enforcement, therefore they need to be used in combination for the best result. The question is what the ideal combination of these two methods should be in order to use cooperation and penalties in the most effective way towards the goal to be achieved,¹³ because it is necessary to simultaneously deter those who refuse to follow the rules and encourage voluntarily compliant ones. One of the most widely accepted solution to this is the "enforcement pyramid" theory, which applies an advisory and persuasive strategy at the bottom level of enforcement, with administrative sanctions in the middle of the pyramid and penalties, as the ultimate tool, at its top.¹⁴

The "enforcement pyramid" theory is a suitable tool also in working out responsive labour rules. The "*labour regulation pyramid*" theory is a reconsideration of the "enforcement pyramid"¹⁵ whose basic tenet is that regulation can be more effectively enforced if regulators have a variety of tools for enforcing compliance. The most effective way to achieve changes in behaviour is, however, when the subjects of the regulation opt for compliance on a voluntary basis, without sanctions.

¹² Ayres – Braithwaite op. cit., pp. 20–21

¹³ For more detail, see: Kun op. cit. 2014, p. 28; Gunningham op. cit., p. 125; Ayres – Braithwaite op. cit., pp. 20–21

¹⁴ Ayres – Braithwaite op. cit., p. 35

¹⁵ Fenwick – Howe – Marshall – Landau op. cit., p. 106

Flexibility is one of the crucially important advantages of the regulation pyramid, as it needs not appear the same in every country. This is, therefore, not a concept for the optimum labour legislation which can be applied in any social, economic, cultural or political context.

The second key principle of responsive regulation is that the stakeholders must be enabled to participate in both the development and the application of the regulation. The involvement of the subjects of the regulation is one of the most important elements of responsive regulation.

Finally, the third main principle is that the regulation must be targeted, i.e. focused on the quality of employment at small enterprises; it is not enough for the regulation to target the legality of the operation of small enterprises without improving job quality.

One of the most important considerations regarding the above is that the legislator does not have to sacrifice other policy goals such as job creation, economic growth etc. while striving to promote decent employment and job quality. The real challenge facing the legislator is the need to develop innovative regulation, adapted to the needs of the country concerned, which is based on the existing institutional system and can involve interest organisations in the development of the regulation. The involvement of interest organisations increases the likelihood of developing labour legislation that does not impose disproportionate burdens on small businesses yet protect employees' rights, while promoting job quality and decent employment, since *rules adopted in order to improve job quality and ensure decent employment do not necessarily have a negative impact on job creation and economic growth*.

The issue of differentiated labour legislation on the SME sector has been brought up in Hungary as well. In spite of the fact that as a consequence of Decision No 41/2009 (III. 9.) the Constitutional Court differentiated labour legislation on small enterprises is only possible in a very limited scope in Hungary, there are numerous examples for differentiation by headcount, in the domestic legal system. Although the Constitutional Court decision does not preclude the application of differentiated regulation to help small employers, it must not prejudice employees' right to equal dignity. Moreover, in the case of different regulations the reasonable justification of the regulation must be examined particularly carefully because it inevitably results in differences in the employment relationships which in turn affect the situation of the employees concerned.

*In case differentiated regulation is introduced, at least two basic criteria must be taken into account: on the one hand, in terms of content, the regulation must not result in negative discrimination of SME employees, i.e. no regulation resulting in a definite reduction in the level of labour law protection of the employees may be adopted. On the other hand, the indicators of differentiation must be technically very clearly specified; the headcount may only be one such factor, and the possible areas of regulation must also be clearly specified (only administrative and financial type rules may be eased).*¹⁶

Despite all of these difficulties it is considered to be necessary that such a labour law of a general nature should be developed which is in line with SMEs' employment requirement without reducing their employees' legal protection. At least as important as the rules comprised in the labour law is the extent to which employers comply with the rules so adopted. As has been discussed in detail, SME employees do not, or not fully, comply with the (labour) law rules. In other words, it is not enough to focus on working out regulations that are in line with the SMEs' employment needs and provide employees with adequate protection, there is also a need for a concept for the way the regulations are to be enforced.

The protection of employee rights and the ensuring of decent employment is not only a kind of an objective that should be ensured by the state, but an "economic interest" because it is a lot more important for the state that both safety and fair conditions are guaranteed for its citizens in the world of work. Legal protection of employees means protection of the state's revenues as well, and when we discuss the conditions of decent employment, including decent wages – which should be as high as possible but justified by productivity – we discuss something that is also in the interest of the state. Productivity and high wages are not possible in poor working conditions and in the absence of (employee) rights. It is no mere coincidence that the EU employment policy also lays emphasis on the knowledge-based economy and considers the training of employees as crucially important, because adequately trained and motivated workforce is indispensable for productivity and competitiveness, and an employer cannot even dream of achieving these if they are operating an enterprise where job quality

¹⁶ Homicskó–Kun op. cit., pp. 104–105

is poor and their employees have no rights. And this goes beyond the topic of this paper in its narrow sense but it supports the conclusion that in a knowledge-based and competitive economy there is a need for adequate labour law protection and for ensuring the decent working conditions.