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IMPACTS OF LABOUR LAW VIOLATIONS SPECIFICALLY ON THE SME SECTOR

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INTRODUCTION

By virtue of the number of small and medium-sized enterprises the SME sector plays a dominant role in the macro economy and employment in nearly all countries. Of all companies of different sizes small and medium-sized enterprises make the greatest contribution to employment; the SME sector generates more jobs than do large enterprises.[1] This role of small enterprises began to be recognised in the European Union in the mid-1980s as a consequence of the growth of the SME sector; particular attention has since then been paid to supporting SMEs in line with which SME's need for assistance to help them overcome their competitive disadvantages vis-à-vis large enterprises has been, and is being emphasised in the Community's official documents and recommendations, as well as in the various member states' policies.[2] It is since that time that a significant and growing number of references can be found to the Union's consciously taking – or at least making efforts to take – into account the needs of small enterprises in the elaboration of various economic policy and employment policy goals and strategies.

The problem stems from the fact that if the same rules apply to small enterprises and to larger, capital-intensive multinational enterprises, some of which employ thousands of people, the regulation does not take into account the employment requirements and capabilities of small enterprises. On the other hand, if small enterprises are exempted from certain obligations under the labour law, their employees will be in a least favourable position relative to those of larger enterprises. The latter solution however, might violate some of the basic employee rights of people working for small enterprises, particularly the right to equal treatment, undermining their position in comparison with that of other participants of the labour market. The domestic SME sector significantly lags behind the corresponding sectors of more developed countries. This is said because only a small proportion (according to some, hardly 30%) of SMEs operating in Hungary are capable of exporting their products, in contrast to 75-80% in Western Europe; a fact that clearly reflects the standards of work performed here along with the established labour law relations.

Moreover, it is an empirically proven fact that employees of small enterprises usually have to work in less favourable circumstances than those of larger companies, for lower wages, doing longer hours, without the rules in place to guarantee health and safety being fully observed. And if small enterprises are to be supported by being exempted from the rules of the labour law or at least from some of them, it might result in a number of disadvantages – to be discussed hereunder in more detail – for employees. If such actions are taken in the light of the fact that one of the European Union's objectives is to increase employment in the SME sector, then these points also have to be taken seriously because such a shift in the regulations might affect the situations of millions of workers.

Of course the situation is a lot more complex than this and there are multiple aspects to the "challenges" facing the SME sector, of which this paper attempts to make a critical and comprehensive analysis only and exclusively of the labour law-related concerns and issues. The purpose of this paper is to present an exploratory and comparative analysis of the special impacts of labour law violations on the SME sector, with the aim of working out recommendations. Despite aiming to explore only labour law related issues, a number of other – mostly employment policy related – matters will also be touched on and analysed, to the extent necessary.

The exemption of small enterprises from the labour law and other rules of relevance to the labour law, or simply failing to enforce compliance with such rules in practice, results in a minor apparent positive

[1] For more detail, see: de Kok, Jan – Deijl, Claudia – Veldhuis-Van Essen, Christi: Is Small Still Beautiful? Literature Review of Recent Empirical Evidence on the Contribution of SMEs to Employment Creation, International Labour Organisation (ILO) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 2013; Reinecke, Gerhard – White, Simon: *Policies for Small Enterprises: Creating the Right Environment for Good Jobs,* ILO, 2004, 22. old.; Collins, Cristopher J.: *Alternative systems of human resources practices and performance in small entrepreneurial organizations,* in: Cooper, Cary L. – Burke, Ronald J.: Human Resource Management in Small Business, Edward Elgar Publishing, Cheltenham, UK – Northampton, MA, USA, 2011, 93

[2] Jeneiné Gerő Henriett Emese – Kincses Áron – Tóth Géza: A hazai kkv-k területi jellegzetességei válságok idején (*Territorial characteristics of domestic SMEs during times of crisis*), *Statisztikai Szemle*, vol. 99. No. 12. p. 1186.

economic impact but has substantial negative impacts on the workers' legal status, working conditions and social security.

It should also be mentioned that the domestic SME sector is, almost without any exaggeration, "free of" social dialogue. Trade unions can carry out meaningful activities in relation to larger employers, and it is primarily these with whom fighting for higher wages and concluding collective agreements actually makes sense. In the SME sector their activities cannot really be effective, the reasons for which include organisational fragmentation and the lack of available (attractive) services. As to the system of sectoral collective agreements (operating with extensions), which is typically in place in a number of Western European countries, it should be noted that the evolution of a sectoral interest reconciliation system was also complicated by the dual nature of the Hungarian economy. There is no real economic interest in the sectoral structures and it is safe to say that at present neither the multinational enterprises nor the domestic SME sector – employing some 70% of the workforce – have any real interest in promoting such ideas.

1.1. The structure of this paper

This paper is made up of six larger parts, in the following logical order:

- This introduction exposes the problems, presents the paper's objectives and lays down certain aspects of methodology.
- Part 1 discusses the role played by small and medium-sized enterprises in Hungary. It contains a detailed definition of the term, and a discussion of the importance, of the "SME sector", its role in the economy as a whole and in employment in particular, along with the most typical problems and challenges small businesses are faced with in daily life. Part 2 shows that the labour legislation on small enterprises is only a small segment of the science of labour legislation, however, the role of the sector in the economy and in employment highlight the actual 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.
- Part 2 analyses labour law violations that are typical of small and medium-sized enterprises, together with their reasons and causes. The discussion of typical labour law violations covers the labour authority's annual reports on the violations during the past ten years, and presents a comparison of the labour law violations that are typical of small and medium-sized enterprises with those typical of other sectors (illustrated with statistics and figures). A sectoral (sub-sectoral) breakdown of violations and their characteristic types is also presented in Part 2. Besides violations, this part also contains an analysis of the sanctions available for the labour authority along with how labour authorities distinguish SMEs and how they facilitate their operation in applying sanctions. Part 2 of the paper also discusses the opinions and recommendations of the social partners (employers' and employees' interest organisations) as well a the economic-interest organisations (MKIK, Hungarian Chamber of Commerce and Industry (HCCI)) regarding the system of sanctions in place.
  Part 2 of the paper also discusses, among the impacts on SMEs competitiveness the matter of employment quality (job quality), along with the causes and reasons underlying certain violations that are specifically characteristic of small and medium-sized enterprises, along with the impacts of such violations on their competitiveness. Moreover, Part 2 of the paper analyses the relationship between labour law and job quality and the impacts of the state sanctioning regime for labour law violations on the competitiveness of small and medium-sized enterprises.
- Part 3 of the paper compares the domestic situation with that of Poland and Italy of the EEA countries in the context of which it analyses the system of sanctions applying to small and medium-sized enterprises in other EEA member states. Moreover, Part 3 explores the possibilities of labour legislation relating to parallel regulation and partial exemption (differentiated regulation). This is followed by an analysis of international trends and solutions aimed at prevention and their effectiveness. Finally, Part 3 presents recommendations regarding international solutions that could be effectively applied in the domestic economic environment.
- Part 4 puts forth recommendations and methods for increasing compliance propensity, i.e. to encourage the SME sector to comply with the regulations that apply to them as well as to reduce the number of labour law violations committed by small and medium-sized enterprises.

- The summary of the paper sums up its main points and thoughts.

1.2. Notes on methodology

One of the main difficulties regarding the methodology applied in this study lies in the fact that neither international nor domestic literature has been focusing on its subject. Matters of labour legislation are somewhat marginal among the issues relating to SMEs. Of course small and medium-sized enterprises are the subject of lots of studies and research projects but those tend to focus more on employment policy; consequently, the available information and statistics are, in many cases, only partly usable for the purposes of our subject. In many cases there is no systematic data collection on SMEs as a consequence of which up-to-date data are not available on the sector. No sufficient funds are allocated to the gathering of statistics on the SME sector. Nonetheless, the same findings and conclusions tend to appear again and again in both international and EU studies and surveys.

This paper is based on domestic sources as well as English language literature. Moreover, it draws on original documents produced by international organisations that are actively involved in its subject (EU, ILO, OECD, World Bank etc.). Online sources (the websites of the ETUI, the OSHA, the European Commission, the HCSO etc.) also had to be used in processing the latest data of relevance to our subject.

A scientific approach to discussing the problems facing the SME sector inevitably involves a number of disciplines; small businesses can be dealt with from aspects of economics, management science, sociology, legal science and a variety of other perspectives. Although this paper explores aspects of labour legislation but it definitely aims at presenting the various issues always in the relevant context and at illustrating the extreme complexity of the "SME issue".

2. THE ROLE OF SMALL AND MEDIUM-SIZED ENTERPRISES IN HUNGARY

The SME sectors[3] have, for quite some time, been playing an important role in national economies. Small and medium-sized enterprises have only continued to increase in number and importance during the recent decades. Despite the setbacks caused by crisis after crisis (the global economic crisis that broke out in 2008, the COVID19 pandemic, the economic consequences of the war between Russia and Ukraine) SMEs have playing an increasingly important role in the economy. The economic environment is changing permanently even apart from the various crises; the world as we used to know it has been profoundly changed by globalisation, the accelerated technological progress, tertiarisation, as well as the vertical disintegration, which is a characteristic of large enterprises.[4] In employment the SME sector has taken over the leading role from conventional large manufacturing companies. One of the reasons for this is large enterprises' outsourcing of certain activities, resulting in the appearance of network models and supplier chains (vertical disintegration) in company organisation.[5] These then pose a constantly growing pressure on economic actors to make their production more and more flexible, which in turn affects both developing and developed economies.

In the case of Hungary it is worth going back to the years following the regime change and review the changes that have taken place during the part more than thirty years. Although small businesses had existed in Hungary even before the regime change, in the state-socialist regime there were very few of them and what was truly special about them is that they operated as private employers in a regime dominated by state ownership in all respects. Therefore our analyses do not cover private employers of those years, such as small artisans, retailers, economic working communities and small cooperatives because they were regulated in a profoundly different legal system and on the basis of a starkly different logic, therefore they cannot be regarded as a point of departure for this paper.

Another important reason for the increase in the number of small enterprises is that the labour markets cannot absorb the unemployed people whose number increased in the wake of structural adjustments and economic reforms. Such programmes often result in greater poverty, increase the number of unemployed people, generate under-employment and thus contribute to the spreading and growth of the informal (grey/black) economy.[6]

Regardless of the attainment of their various positive goals the deleterious impacts of such political programmes are even more severe in the countries in which the former socialist state economy had been transformed beforehand and where the state had nearly always been the largest employer, generating acute and serious problems in the countries that are facing a wide variety of challenges anyway. In such cases the SME sector is particularly highly responsive; it responds positively to such challenges and impacts and offers lots of opportunities for employees to avoid being forced out of production or the labour market.[7]

Other however, claim that the SME sector suffers the most from the consequences of a protracted crisis because small businesses are disproportionately hard hit by the scarcity of funds and by growing interest rates. Account must also taken of any shortage in technologies and expertise (management and HR) which might also weaken their ability to survive an economic crisis, as well as their greater dependence

[3] In the Hungarian legal system the meaning of the term "SME" is defined in Act XXXIV of 2004 on Small and Medium-sized Enterprises and the Support Provided to Such Enterprises, pursuant to Article 2 of the Annex to Commission Recommendation 2003/361/EC. Accordingly, the SME sector is comprised of 3 categories: micro enterprises, small enterprises and medium-sized enterprises, collectively also referred to as small and medium-sized enterprises or SMEs for short.

[4] For more detail, see: Zoltán Cséfalvay: *Globalizáció 1.0 (Globalisation, 1.0),* Nemzeti Tankönyvkiadó Rt., 2004; Cséfalvay, Zoltán: *Globalizáció 2. 0 (Globalisation, 2.0),* Nemzeti Tankönyvkiadó Rt., 2004;

[5] Norbert Buzás: Klaszterek: Kialakulásuk, szerveződésük és lehetséges megjelenésük a Dél Alföldön (*Clusters: Their development, organisation and possible appearance*), *Tér és Társadalom,* Vol. XIV., NO. 2000/4., PP. 114–115.

[6] Decent Work and the Informal Economy, Report VI, ILC 90th session, ILO, Genf, 2002. 30

[7] Fenwick, Colin – Howe, John – Marshall, Shelley – Landau, Ingrid*:* Labour and Labour-Related Laws in Micro and Small Enterprises: Innovative Regulatory Approaches, Legal Studies Research Papers No. 322, Melbourne Law School, ILO, 2007, 2

on customers, suppliers and their markets, so it may be more difficult for them to keep going during a crisis.[8] Other studies on the other hand, express doubts about small enterprises being more seriously affected by an economic crisis than large enterprises. For instance, SMEs in South Korea enhanced their marketing activities and technological innovation during the 1997 financial crisis, as small businesses implement such changes a lot more quickly and easily than larger ones.[9] Moreover, SMEs can more effectively and quickly respond to changes in market demand, than large enterprises. Small enterprises can adapt more flexibly during an economic downturn because they are less rigid and are better at exploiting market niches, while their technological and expertise gaps can be bridged by adopting other companies' best practices. As a result, small enterprises can be more effective and efficient at offsetting the negative impacts of economic crises, thereby helping to stabilise the economy.[10] Moreover, practical examples also show that SMEs (particularly the export-oriented ones) are able to better adapt to the various crises.[11] Small businesses are strategically important for economic recovery because they help restructure the various industries and may generate competition against larger enterprises, facilitate regional trade and contribute to technology transfer and regional development.[12]

The reasons for the importance of the SME sector can be summarised as follows: they are better at adapting to change than large enterprises, they are more effective and efficient in utilising flexible forms of work, they are more flexible in changing operations, they can provide more tailor-made and differentiated services for their customers, they are more ready to take risks, more innovative and more open to the implementation of new skills and competences. They play an outstanding role in employment and they are more effective and efficient in job creation as well, than large enterprises. They also play a key role in eliminating regional productivity differences. Consequently, small enterprises are the most important sources of innovation, growth and job creation and in the non-core regions of Europe they make a major contribution to the mitigation of local and regional inequalities as well as to regional development.[13]
As discussed above, small enterprises have immense potential; they are the depositories of society's power, creativity and innovation which can be exploited with suitable economic and political support. The competitiveness of SMEs should be strengthened, together with their access to financing sources. They should also be provided with support in achieving carbon neutrality and in digital switch-over. Moreover, the Covid19 pandemic also highlighted that the resilience of SMEs also needs to be supported.

What is to be clarified primarily in Part 1 of the study is what we mean by small and medium-sized enterprises; our answer to this question is to be found in Chapter One (section 2.1). This is to be followed by a discussion of the role of the SME sector in the economy in general and in employment in particular (section 2.2), highlighting the importance of the topic, for even though the regulations applying to small

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[8] For more detail, see: Robbins, Keith D. – Pearce, John A.: Entrepreneurial retrenchment among small manufacturing firms. *Journal of Business Venturing,* Vol. 8, No. 4, 1993, pp. 301–318, Michael, Steven C. – Robbins, Keith D.: Retrenchment among small manufacturing firms during recession. *Journal of Small Business Management,* Vol. 36, No. 3, 1998, pp. 35–45 and Latham, Scott: Contrasting strategic response to economic recession in start-up versus established software firms, *Journal of Small Business Management,* Vol. 47, Issue 2, 2009, pp. 180–201. mentioned by: Bourletidis, Konstantinos - Triantafyllopoulos, Yiannis: SMEs Survival in time of Crisis: Strategies, Tactics and Commercial Success Stories; *Procedia - Social and Behavioral Sciences 148,* 2014, pp. 641

[9] Gregory, Gary – Harvie, Charles – Lee, Hyun-Hoon: Korean SMEs in the wake of the financial crisis: Strategies, constraints and performance in a global economy, Working Paper 02–12, Department of Economics, University of Wollongong, 2002, pp. 10–11 http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1057&context=commwkpapers, downloaded: 7 May 2022

[10] Bourletidis–Triantafyllopoulos op. cit., p. 641

[11] Sato, Yuri: *How did the crisis affect small and mediumsized enterprises? From a field study of the metal-working industry in Java.* Institute of the Developing Economies, 2000, p. 579 https://www.researchgate.net/publication/5141075_How_did_the_crisis_affect_small_and_medium-sized_enterprises_From_a_field_study_of_the_metal-working_industry_in_Java, downloaded: 7 may 2022, and Gregory – Harvie – Lee op. cit., pp. 10-11

[12] Bourletidis–Triantafyllopoulos op. cit., p. 641

[13] Jeneiné Gerő – Henriett Emese – Kincses Áron – Tóth Géza: A hazai kkv-k területi jellegzetességei válságok idején (*Territorial characteristics of domestic SMEs during times of crisis*), *Statisztikai Szemle*, vol. 99. No. 12. p. 1186.

enterprises make up only a small specific segment of the labour law, this sector's role in the economy and employment makes this topic all the more important. Finally, the last section (2.3) of Part 2 discusses some specific challenges facing the SME sector, such as the quality of employment (2.3.1) and the lawful operation of small enterprises (2.3.2).

2.1. Definition of "SME"

No single standardised, universal definition for the term "micro, small and medium-sized enterprises" exists. The number of employees is not the only but an important characteristic feature of the enterprises falling in this category; the company's headcount must not exceed a given number if it is to regarded as an SME. The typical limit is 250 persons, as is specified, for instance, in the recommendation issued by the European Commission.[14] While for small enterprises this is typically 50 persons, in the case of micro enterprises this is not more than 10. The other metrics taken into account in addition to the number of employees, are the company's financial assets and turnover.[15]

In the Hungarian legal system the meaning of the term "SME" is defined in *Act XXXIV of 2004 on Small and Medium-sized Enterprises and the Support Provided to Such Enterprises (hereinafter: SME Act), pursuant to Article 2 of the Annex to Commission Recommendation 2003/361/EC*. Accordingly, the SME sector is comprised of three categories: micro enterprises, small enterprises and medium-sized enterprises, collectively also referred to as small and medium-sized enterprises or SMEs for short. A company is an SME – as specified in Table 1 – 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. In this category a company is a small enterprise if it has fewer than 50 employees and its annual net sales revenue or balance sheet total does not exceed the HUF equivalent of EUR 10 million. In the SME category a company is a micro enterprise if it has fewer than 10 employees and its annual net sales revenue or balance sheet total does not exceed the HUF equivalent of EUR 2 million.[16] In the case of an enterprise that has partner or affiliated undertakings the above limit figures must be established on the basis of the consolidated annual report or, in lieu of that, the enterprise's records.[17] In case the given enterprise has neither partner nor affiliated undertakings, it is considered as an independent enterprise.[18] However an enterprise in which the direct or indirect shareholding of the state or a municipality, separately or together, exceeds 25% in terms of capital or voting right, does not – with certain exceptions – qualify as an SME.[19]

Another relevant stipulation is that if an enterprise exceeds, or falls short of, the above headcount or financial limits, it only loses its qualification as a medium-sized, small or micro enterprise as a result of this, if it or falls short of, the above headcount or financial limits, in two consecutive reporting periods.[20]

In summary, the headcount is the element of the definition and the financial indicators apply alternatively, just like in the definition adopted by the Union. The above micro, small and medium-sized enterprise definition was adopted by the European Union in the form of a recommendation and is in effect since 1 January 2005.

11: On the categorisation of micro, small and medium-sized enterprises

Description	Condition No. 1	and	Condition No. 2

[14] Article 2 of the Annex to Commission Recommendation 2003/361/EC.
[15] Business environment, labour law and micro- and small enterprises, ILO Governing Body GB.297/ESP/1 297th Session, Genf, 1 November 2006 p. 1
[16] Section 3 of the SME Act
[17] Section 5 (5) of the SME Act
[18] Section 4 (1) of the SME Act; and Article 3 of the Annex to Commission Recommendation 2003/361/EC
[19] Section 3 (4)–(5) of the SME Act; and Article 3 of the Annex to Commission Recommendation 2003/361/EC
[20] Section 5 (3) of the SME Act

	Total number of employees fewer than (No. of persons)		Annual net sales revenue not more than (EUR million)		Balance sheet total not more than (EUR million)
Medium-sized enterprise	250		50	or	43
Small enterprise	50		10	or	10
Micro enterprise	10		2	or	2

Source: National Employment Service: Information on the categorisation of small, medium-sized and micro enterprises (www.afsz.hu)

The reason why the European SME definition is particularly important is that actions taken in the interest of SMEs in the single market without internal borders need to be based on a common definition to improve consistency and effectiveness as well as to reduce the distortion of competition. This is also necessary because there are considerable interactions between the actions and programmes implemented by national authorities to promote SMEs as well as those implemented by the EU, so it is important that the terms used are understood in the same way. It was in 1996 that the Commission adopted the first recommendation containing a common definition of SMEs (Recommendation 96/280/EC)[21]. That definition was used in all EU Member States but in response to the significant economic development that occurred in the meantime the Commission adopted a new recommendation on 6 May 2003. The new recommendation entered into force on 1 January 2005 and must be applied to all SME related regulations, programmes and actions/measures operated by the Commission. The recommendation is, of course, not binding on the Member States[22], however, every one of them have implemented the term.[23]

The above SME definition was essentially adopted by the SME Act, therefore the Hungarian regulation is in line with the EU recommendation.

This is the most appropriate definition for the various SME categories, as it takes better account of the relationships between businesses on the basis of their nature and characteristics, since the average European business does not employ more than about 6 persons, therefore most of them would qualify as micro enterprises, the smallest category of the SME sector. The new definition however, already takes account of possible relationships with the other undertakings. In some cases the relationships of this type – particularly if they create significant financial connections with other enterprises – and may result in a situation in which the given enterprise can no longer be regarded as an SME. Accordingly, one of the main objectives of the new definition is that (EU) aids should only be provided for businesses that are actually in need of it. It was in view of these that the new recommendation introduced methods for the calculation of the relevant maximum staff headcounts and maximum amounts, making it possible to more realistically establish the economic status – independent, partner or affiliated – of the given enterprise. Accordingly, the new recommendation stipulates precautions as well, to prevent abuse of the SME status.[24]

One difference between the Hungarian and the EU rules lies in the definition of the headcount (number of people) working for a company: while the Hungarian law uses the term "number of employees" without specifically defining its meaning, the EU rule is based on the term "staff headcount", the meaning of which it precisely defines.

[21] Commission Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (Text with EEA relevance) (96/280/EC).
[22] The new SME definition, 6 https://op.europa.eu/en/publication-detail/-/publication/10abc892-251c-4d41-aa2b-7fe1ad83818c, downloaded: 7 May 2022
[23] Commision Staff Working Document on the implementation of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, Brussels, 7.10.2009, SEC(2009) 1350 final.
[24] Commision Staff Working Document op. cit. pp. 7– 8.

The staff headcount/number of employees parameter is a decisive criterion for establishing whether a given enterprise does or does not belong to the SME sector and if it does, which of its categories it belongs to. It is particularly important to avoid a mismatch between the domestic and the EU regulation in such a parameter because it makes comparisons imprecise and statistics less reliable. For example, the EU regulations do not include a single definition for the term "employee" or the persons who are covered by the labour legislation.

2.2. The SME sector's role in the economy and employment

The SME sector generates more jobs than do large enterprises.[25] One good example for this is that during the 2002–2010 period some 85% of all new jobs were created by small and medium-sized enterprises; this ratio is higher than the SMEs' 67% share in the total number of employees.[26]

At present a significant proportion of businesses belong to the SME sector and they make the highest contribution to employment among the various company categories by size. Accordingly, as an average of the EU-27 countries as many as 99.8% of all businesses are SMEs[27], while the Hungarian ratio is 99.9%.[28] Moreover, Hungarian SMEs have a 68.7% share in employment (see Diagram 1), while the corresponding ratio of the EU-27 is 65.2%,[29] indeed, in some industries, including the textile industry, construction or the furniture industry the SME sector's share in employment is as high as 80%.[30] In terms of value added, the SMEs' share is 55.1% in Hungary, while the EU-27 average is 53%.[31]

[25] For more detail, see: de Kok – Deijl – Veldhuis-Van Essen 2013; Reinecke – White 2004, p. 22; Collins 2011, p. 93

[26] Commission press release, Brussels, 16 January 2012, http://europa.eu/rapid/press-release_IP-12-20_hu.htm, downloaded: 7 May 2022

[27] 2021 SME Country Fact Sheet European Union, 1, https://ec.europa.eu/docsroom/documents/46060 downloaded: 20 april 2022

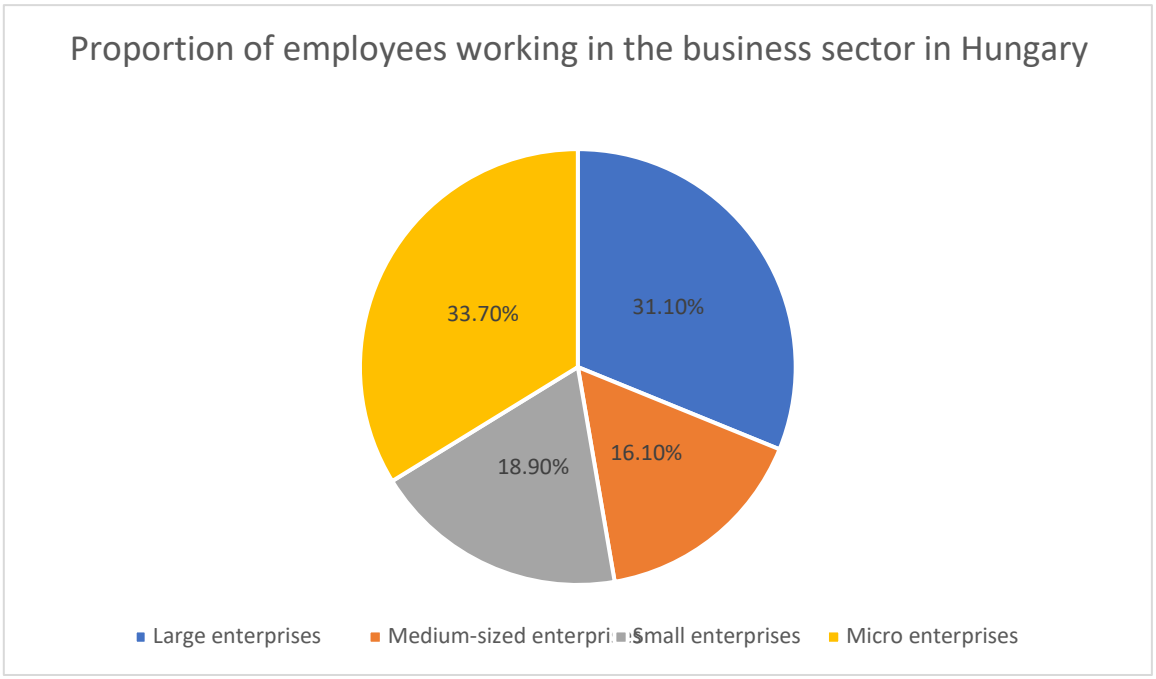
[28] 2021 SME Country Fact Sheet Hungary, 1, https://ec.europa.eu/docsroom/documents/46078 downloaded: 20 april 2022

[29] 2021 SME Country Fact Sheet European Union, op. cit., 1, 2021 SME Country Fact Sheet Hungary i. m., 1

[30] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Implementing the Community Lisbon Programme: modern SME policy for growth and employment, Brussels, 25 June 2008, COM(2005) 551 final, p. 3

[31] Hungary - SME key figures related to the fact sheet 2021., https://ec.europa.eu/growth/smes/sme-strategy/sme-performance-review_hu downloaded: 7 May 2022

Figure 1: Proportion of employees working in the business sector in Hungary



Source: Hungary - Based on SME key figures related to the fact sheet 2021, https://ec.europa.eu/growth/smes/sme-strategy/sme-performance-review_hu downloaded: 7 May 2022

Detailed breakdown in relation to the SME sector's role in employment also shows a highly similar stratification in Hungary's SME sector by size category. The number of micro enterprises with fewer than 10 employees is somewhat different: it exceeds the EU-27 average. They make up 94.5% in Hungary in contrast to the 93.3% in the EU-27, with a 33.7% share in employment in Hungary and a 29.6% share in the EU-27.[32]

Like in Hungary, the various member states and the EU-27 average, the SME sector is the dominant category of businesses in the United States of America as well, where they make up 99.9% of all businesses and 99.7% of the businesses that operate with employees.[33] The EU statistics are, however, not directly comparable with those of the U.S. because, for instance their definition of the category of small enterprises is not the same as that of the EU and they also use different calculation methods. Nonetheless, it is clear that small businesses also play a dominant role in the U.S. economy and employment, although some differences would be found even if we were to use the same calculation methods.

In addition to the SME sector creating more jobs than large enterprises, a significant proportion of all businesses fall in this category. Also, they make the highest contribution to employment among the various company categories by size. Although to different extents in different countries, employment is dominated by the SME sector.

The purpose of the presentation of data in this section 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.

[32] Hungary - SME key figures related to the fact sheet 2021., https://ec.europa.eu/growth/smes/sme-strategy/sme-performance-review_hu downloaded: 7 May 2022

[33] U.S. Small Business Administration Office of Advocacy: Frequently Asked Questions About Small Business, December 2021, p. 1, https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf downloaded: 7 May 2022

2.3. Typical problems of the SME sector

This sub-chapter discusses two categories of issues, which will be dealt with in more detail in separate sections, which are therefore only mentioned here to underpin their existence and to place them in a system to justify why it is necessary to pay particular attention to them. In general, the SME sector produces lower productivity and grow rates in the EU than in the US. The companies that manage to remain in business increase the number of their employees by 10-20% by the seventh year of their operation, while in the U.S. this ratio is as high as 60%. Moreover, 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.[34]

Moreover, illegal employment is also more characteristic of SMEs, which is a source of the informal economy. Of course this kind of activity generates difficulties in the enforcement of the labour regulations, or even makes enforcement impossible, if only because, on account of their informal nature, they are often "invisible" to the competent authorities. To some extent they are forced to resort to such practices in the fight for survival, however, it must unfortunately be recognised that in many cases businesses are not only unable but completely unwilling to comply with the rules in place.

The existing possibilities for the provision of assistance free of charge

The purpose of the personalised entrepreneur information postal called vali.hu is to provide business associations with quick, authentic and personalised information on matters businesses are most interested in. It takes just a few clicks for a company on the portal developed for businesses to access information that can help it with its development plans, on application schemes, loans with state subsidy and training programmes. Businesses can browse on the page even without having to register; personalised services however, requires registration, which does not take long. The portal is operated to provide domestic businesses with professional support, and the range of the available services is expanding continuously. More information is available here: www.vali.hu.

It should be noted here that under the EDIOP-5.3.3-18 scheme the regional and coordinated JOGpontok (*legal aid points*) projects provided free legal assistance up to 31.01.2022 in the world of work, with EU funding support. Personal legal assistance service is currently (between 1 February 2022 and 31 July 2022) available at cost price in the framework of the maintenance of the project, based on prior registration, on which detailed information can be found on the regional sub-pages. The JOGpontok projects give answers exclusively on the subjects specified in the specific legal fields covered by the Legal Aid Service (e.g. labour law, company law, social security, taxation law).

The national employer interest organisations and trade unions operating the project – – ÁFEOSZ-COOP Szövetség (Hungarian National Federation of Consumer Co-operative Societies and Trade Associations – ÁFEOSZ-COOP Federation), IPOSZ (Hungarian Association Of Craftmen's Corporations), OKISZ (Hungarian Industrial Association), KISOSZ (National Federation Traders and Caterers), Munkástanácsok Országos Szövetsége (National Federation of Workers' Councils), ÉSZT (Trade Union Association of Intellectuals), LIGA Szakszervezetek (LIGA Trade Unions) – set up a system with experienced lawyers, whose services could be used in various forms, i.e. customers were provided with assistance with their questions or problems in person, or electronically.

The project provided free assistance in the so-called convergence regions. For an employee having their permanent place of residence in the territory of Central Hungary the service could only be provided in its in-person form if they had their registered temporary place in one of Hungary's less well developed regions and the service was to be provided in that region. A company having its registered office in

[34] 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

Central Hungary was in a similar situation: if it had a branch office in any of the less well developed regions and the service was to be provided in that region, it was entitled to use the free legal aid.

A total of 24,942 companies – 16,628 of them SMEs – asked for legal assistance under the project.

It is important that companies should be provided with meaningful, substantive help through the free legal assistance. This function could also be fulfilled by either the social partners or the economic interest organisation (HCCI). Based on its registry the latter can easily reach out to businesses; this information network could greatly facilitate this task that companies are provided with actual substantive guidance regarding lawful employment, as a kind of a "package" comprising regularly updated document templates as well.[35]

Document templates can be downloaded in word format and filled out electronically. Many of the documents are complete with help for filling in, in the form explanations in footnotes to the various items, which can be deleted when the form has been filled in. In the case of SoSe document templates the information added to help filling in are shown in the form of comments, to be deleted upon completion. The parts of the text appearing in the templates in italics are information added to help filling them in and if they are not required in the given case they must be deleted. The document templates include summary information materials as well, presenting the key points relating to the given matter in an organised form with the aim of helping the user in identifying the legal issue at hand and in finding the required document template. The document template library is intended to comprise the most important employment and organisation related document types.

2.3.1. The quality of employment (job quality)

Employment (job) quality[36] is dealt with in detail in section 3.3 hereof, however, the topic should be raised early on in the paper because it might facilitate the processing of subsequent parts.

In addition to the issues referred to in the introduction to this Chapter, wages are typically lower, working hours are typically longer,[37] while occupational health and safety standards are poorer, opportunities for training at the workplace are scarcer in the SME sector.[38] Most labour law violations take place at small employers,[39] as a result of which they also commit the largest number of occupational safety violations, consequently, the number of accidents at work is also typically highest in the SME sector. Employees are most exposed to the risk of accident at work and occupational diseases in the SME sector. Most European employees work for SMEs but the ratio of accidents at work is significantly higher (82%) than their proportion of the total number of employees. Also: some 90% of all fatal accidents occur in the

[35] For example: https://www.jogpontok.hu/Iratmintatar

[36] The quality of employment (job quality) comprises a wide variety of norms at the place of work affecting the employee's economic, social, physical and mental welfare (forrás: Reinecke – White 2004, p, 32); this paper however, focuses only on matters of relevance to labour legislation and other closely related fields (which in turn, inevitably affect all of the other aspects). The legal facet of job quality – which might even be regarded as a narrow definition of "job quality" – covers the following rights: the job and occupational mobility, right to healthy and safe working conditions (occupational safety), the requirement of equal treatment, pay for work, working and resting time, industrial relations, social security.

[37] Faundez, Julio: A View on International Labour Standards, Labour Law and MSEs*,* Job Creation and Enterprise Development Department, Employment Sector Employment Working Paper No. 18., ILO, Genf, 2008, p. 16

[38] Smith, Mark – Zagelmayer, Stefan: Working time management and SME performance in Europe, *International Journal of Manpower,* Vol. 31 No. 4, 2010, p. 394

[39] 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. The same was found in trade and in the private security sector in 2021. Source: A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (*Lessons drawn from labour/employment supervision inspections (2021)*), p. 20 and p. 25
http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022

SME sector.[40] A total of 21,591 accidents at work were registered in Hungary in 2021, 74.4% (16,069) of which occurred in the SME sector (based on the officially reported cases).[41]

Moreover, collective labour law can also hardly be enforced in the SME sector; there is practically no social dialogue, trade union organisations or works councils present in the sector, as a consequence of which this type of "control" is not exercised over SME employers, so employees are even less well protected. From the above circumstances it can be concluded that the quality of employment is lower in the SME sector.[42]

The concept of "decent employment" – one of the most important definitions of the quality of employment was introduced by the International Labour Organisation (ILO) when in one of its reports it defined it in 1999 that it is the converging focus of four strategic goals:

1. the promotion of rights at work,
2. employment,
3. social protection, and
4. social dialogue[43]

ILO Declaration on Social Justice for a Fair Globalization stresses a holistic and integrated approach by recognising that these objectives are “inseparable, interrelated and mutually supportive”.[44]

Based on the definition adopted by the UN Economic and Social Council: *A decent employment respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of health and work safety and an income allowing workers to support themselves and their families. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.*[45]

Fenwick, Howe, Marshall and Landau co-authors identified a whole lot of employee rights and employment norms that constitute the substantive content of the concept of *decent employment* (for more detail see: section 2.3).[46]

Since *decent employment*[47] is an indispensable element of social development, focusing solely on economic growth is not enough. Economic growth itself does not necessarily bring about improvements in the circumstances of employment, reduce poverty or even increase employment.

It should be assessed whether the employees concerned have the rights associated with an industrial relationship, whether they are under social protection, whether they can participate in social dialogue to discuss the above and whether the collective labour law applies to them as well. The SME sector plays an extremely important role in increasing employment and creating jobs so it may function as the engine of economic growth, however, the quality of employment in this sector is typically way below the standards prevailing in other sectors of the economy; indeed, a significant proportion of micro and small

[40] Statistical Analysis of Socio-economic Costs of Accidents at Work in the European Union, EUROSTAT, Luxembourg: Office for Official Publications of the European Communities, 2004, https://ec.europa.eu/eurostat/documents/3888793/5832069/KS-CC-04-006-EN.PDF.pdf/1af31b4a-037e-4f60-af83-4afe5a199df4?t=1414779136000, downloaded: 21 May 2022

[41] http://www.ommf.gov.hu/index.html?akt_menu=223, downloaded: 21 May 2022

[42] "Job quality deficit" or "decent work deficit".

[43] Ghai, Dharam: Decent work: concept and indicators, *International Labour Review,* Vol. 142., No. 2., ILO, 2003, p. 113

[44] ILO Declaration on Social Justice for a Fair Globalization, ILC, 98th session, Genf, 2008, I. Scope and principles B

[45] United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights – The Right to Work, General comment No. 18, Adopted on 24 November 2005, Article 6 of the International Covenant on Economic, Social and Cultural Right, point 7.

[46] Fenwick – Howe – Marshall – Landau op. cit., p. 13

[47] Decent employment involves a whole lot of employee rights and employment norms. For more detail, see: Business environment, labour law and micro- and small enterprises, i. m., p. 5–6, And: Fenwick – Howe – Marshall – Landau op. cit., p. 13

enterprises are operating in what is referred to as informal economy, whereby the sector contributes to a considerable extent to the growth of the grey/black economy and all of its negative consequences.[48]

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. Low job quality impedes the improvement of the quality of life for employees living in poverty.[49] One consequence of these circumstances is that such enterprises have more difficulties in finding highly trained and experienced workforce, as job seekers are more attracted to larger enterprises where they are offered higher wages and better working conditions, making the position of the given small enterprise even worse. If it is to recruit high quality workforce, it has (would have) to spend more time and money on exploiting the enterprise's capacities with the available workforce. The conditionality must be emphasised in this regard as well, because further challenges stem from employee fluctuation which affects the attitude of the owner or manager of the small enterprise concerned; they not necessarily like to invest money and time into training their employees because others would benefit from it anyway. Should this be the case however, it is likely to form a vicious circle, possibly causing substantial disadvantage in the given sector to the small enterprise concerned, particularly in high technology and knowledge-intensive services. This is, of course, only a specific segment of the complications facing small enterprises, and this is not even the most challenging difficulty for them, or for the world as a whole, besides other ones such as those relating to access to funds or access to markets, which are also highly important but not analysed in this paper because of its specific focuses.

2.3.2. Legal compliance in the operation of SMEs

Matters of SMEs compliance in their operations with the applicable regulations are dealt with in detail in Section 4.1.3 hereof. The issue needs, however, to be raised at the beginning of this study because it may help the processing of subsequent chapters and sections.

In addition to as explained in the introduction to this Chapter the low level of employment quality is related, of course, to the fact that a large number of the existing micro and small enterprises are operating in the informal economy where neither employees, nor businesses, are "visible", so they are not protected by law or the regulatory system.[50]

This does not, of course, mean that all other businesses are necessarily operating in the so-called formal economy: these two terms are not simply opposites of one another. Most businesses are somewhere in the middle of the scale in terms of legal compliance, observing some rules and disregarding others. All of these show the limitations and conditions of development regarding many an SME, resulting, for the most part, from the fluctuation of demand in the market in which these employers have to operate.[51] Another reason why these circumstances have such negative impact on small enterprises because many of them are in an unstable economic condition and consider compliance with the applicable rules would be excessively cumbersome that in their particular situation. Many small enterprises are unable and also unwilling to comply with legal norms, while facing economic uncertainties on a daily basis in general.[52] Businesses tend to make strategic decisions on which rules they will and which ones they will not comply with. This reveals the extent to which a given enterprise operates lawfully.[53] In most cases this is a completely conscious approach: business managers contemplate whether the benefits from compliance outweigh the costs of compliance. In other words, businesses respond to the decisions of the legislator and of policy makers, that is, the regulatory environment created by the government. It should also be noted however, that illegal operations may be very costly, for an enterprise that does not comply with the rules may face penalties or may be forced to bribe officials to be allowed to remain in business. All of these are, again, in the conditional mode, because enforcement is rather weak in most

[48] Fenwick – Howe – Marshall – Landau op. cit., pp. 3–4
[49] Reinecke – White i. m., p. 6
[50] Decent Work and the Informal Economy, i. m., p. 3
[51] Reinecke – White i. m., p. 18
[52] Homicskó Árpád Olivér – Kun Attila: A munkáltató „méretének" relevanciája a munkajogi szabályozásban a 41/2009 (III.27.) AB Határozat fényében (*The relevance of the "size" of the employer in labour regulation in the light of Decision* 41/2009 (III.27.) AB of the Constitutional Court), *De iurisprudentia et iure publico,* Vol V., No. 2011/2. p. 97
[53] Maldonado, Carlos: The Informal sector: Legalization or laissez-faire?, *International Labour Review,* 1995, Vol. 134, No. 6., p. 708. and pp. 726-727

countries so the risk of being fined is also low.[54] All of these do not, of course, change the fact that such businesses do not comply with the regulation and they do so on the basis of deliberately adopted strategic decisions which the legislator must bear in mind when working out the rules, always taking into account the sensitiveness of those to whom the rules apply.

It should also be noted that industrial relations are a lot more informal at small businesses than at larger enterprises.[55] This informal kind of relationship is mostly due to the personal and close relations between employer and employee in the SME sector; many of these ventures are family businesses where "industrial relations" are predominantly of an intimate, family-like character.[56] The owners of small businesses, managing or directly supervising the operation of their companies, usually like to play a dominant role in the governance of their enterprises. This "hands on" way of management is also conducive to informal work organisation forms where the employer often feels to be bound less by norms and legal regulations; moreover, employees in the sector are also less aware of their rights. The personal and informal style of management may therefore lead to circumvention of the regulations.[57]

Small enterprises are facing a wide variety of issues, including, for instance, that of *accessing funds* which is even more challenging for micro enterprises Illegal employment is also more characteristic of small enterprises, which is a source of the informal economy. A variety of shortcomings in the *quality of employment* follow directly from the above. *Wages* are usually *lower* and *working hours are longer* in the SME sector than at larger companies. *Occupational health and safety standards are poorer, opportunities for education and training at the workplace are scarcer in the SME sector, where the collective labour law is also scarcely observed.* In general, the circumstances of employment in the SME sector are not up to the requirements of decent employment, which should be an indispensable element of social development. The quality of employment is also a critical factor for employee productivity. All of the above are, of course, only make up a certain segment of the complications facing small enterprises, and this is not even the most challenging difficulty for them, or for the world as a whole, besides other difficulties.

Legal compliance in the operation of a company is closely related to the quality of employment, because a large number of micro and small enterprises are operating in the informal economy. Most businesses are somewhere in the middle of the scale in terms of legal compliance, observing some rules and disregarding others. One reason for this is that small businesses often consider compliance with the applicable rules would be excessively cumbersome that in their particular situation. Many small businesses are neither able nor willing to comply with legal norms; many of them face economic uncertainties on a daily basis and tend to make strategic decisions on which rules they will and which ones they will not comply with.

The definition of the term "SME" was clarified in Part 1, along with a discussion of the appearance and spreading of small and medium-sized enterprises in the Hungarian market, as well as their position in the existing domestic economic structure. Part 1 also describes the general characteristics and employment practices of SMEs as employers, the distinction between the category of small and medium-sized enterprises and other employer categories, the identification of the general characteristics of their employment practices as well as the key differences between these and the employment practices of the other sectors. The typical problems and issues facing the SME sector were scrutinised, including the quality of employment and the standards of legal compliance in the operation of small businesses – in more detail in section 4.1.3 hereof. 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 actual significance of the subject. The SME sector plays an outstanding role in both

[54] Reinecke – White i. m., p. 53. and p. 61

[55] Cooke, Fang Lee: *HRM, Work and Employment in China,* Routledge, London – New York, 2005, pp. 31–32

[56] Biagi, Marco: Labour Law in Small and Medium-Sized Enterprises: Flexibility or Adjustment?, *Comparative Labour Law Journal,* Vol. 16., 1995, p. 454

[57] Copland, Paul – Ter Haar, Beryl: How EU Employment Rights are Experienced in Different-Sized Enterprises and Why it Matters, in: *industrial relations and Transformation of the Enterprise in the Global Economy* (eds.: Ales, Edoardo – Basenghi, Francesco – Bromwich, William – Senatori, Iacopo), Torino, Collana fondazione Marco Biagi, 2016, pp. 203-224, and Kovács Szabolcs: Az alternatív vitarendezés a kkv szektorban (*Alternative dispute settlement in the SME sector*), Hungarian Industrial Association, 2017, pp. 23-26

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.

3. LABOUR LAW VIOLATIONS THAT ARE TYPICAL OF SMALL AND MEDIUM-SIZED ENTERPRISES, TOGETHER WITH THEIR REASONS AND CAUSES

3.1. Sanctions

The following part contains a comparative discussion of the most typical *labour law violations*, starting with the Hungarian regulations. As has already been highlighted, without detailed and precise data it is not easy to identify the types of the registered violations that have been committed in the SME sector and their relative proportions.

As has already been noted above, it is not easy to derive data on labour law violations committed specifically by the SME sector from the annual reports. Accordingly, no comparison with large corporate systems can be presented in this paper in this regard. The annual reports of the labour authority and employment supervisory authority are discussed in detail in the relevant chapter[58] of the study entitled "The impact of labour law infringements on the subsystems of public finances in Hungary".

In discussing the prevailing domestic system mention should be made – as a historical introduction – of the rules repealed as of 1 January 2020. Before that date, Section 12/A of the SME Act contained favourable rules for SME employers, so they had to meet strict requirements during labour inspections.[59] Accordingly:

- "The authorities carrying out the regulatory inspection of small and medium-sized enterprises shall, with the exception of tax and customs proceedings and the proceedings for the supervision of adult education institutions, issue a warning instead of imposing a fine, and check whether it is possible to apply the procedure regulated in Section 94 (1) a) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services.
- The applicable fine shall be imposed if human life, bodily integrity or health was directly endangered, environmental damage was caused or legal regulations protecting persons below the age of eighteen were breached by the violation concerned."

Administrative-labour law uniformity decision No. 2/20213 was adopted concerning the application of the above section, precisely identifying the procedure where this less strict principle most or can be applied.[60] Since judicial practice was not uniform, the Curia determined that "Section 12/A of the SME Act may be applied – with the exception of tax and customs proceedings and the proceedings for the supervision of adult education institutions – during any administrative proceeding involving small and medium-sized enterprises in case the violation found to have been committed, provided no human life, bodily integrity or health was directly endangered, environmental damage was caused or legal regulations protecting persons below the age of eighteen were breached by the violation concerned."

The prevailing grounds for sanctioning on a mandatory basis in the case of labour law violations are specified in Government Decree 115/2021. (III. 10.) on the Activity of the Employment Supervision Authority. Accordingly, the employment supervisory authority imposes a labour fine if the employer:

a) failed to comply with the obligation to declare the establishment of the employment-related relationship,
b) has breached age requirements – including the provisions prohibiting child labour – in connection with the establishment of the employment-related relationship,

[58] Chapter 2 Labour law infringements
[59] Antalóczy Adrienn: Munkaügyi ellenőrzés: nincs kesztyűs kéz KKV! (*Labour inspection: kid gloves SME!)* https://antaloczy-legal.hu/munkajog/munkaugyi-ellenorzes-nincs-kesztyus-kez-kkv/, downloaded: 20.07.2020
[60] administrative-labour law uniformity decision on the application of Section 12/A of Act XXXIV of 2004 on Small and Medium-sized Enterprises and the Support Provided to Such Enterprises.

c) violated regulations on the remuneration of work, except for employers under a liquidation or involuntary deregistration proceedings at the time of the commencement of the authority's inspection,
d) performed temporary work agency activities without being registered in the official register,
e) concluded a simulated contract by breach of the formalities of representations relating to the establishment of a legal relationship involving employment, or
f) as a qualified lender it failed to fulfil
    a. during its employment of third country citizens, its statutory obligation to provide information for third country citizens, or
    b. its obligations under the rules on its registration.[61]

By contrast, grounds for mandatory sanctioning are as follows in the V4 countries, Romania, Austria, Germany:[62]

a) Poland

- there is duty to act if during the audit an imminent threat to the life or physical integrity of employees in the course of performance of work, or a deliberate infringement is identified
- illegal employment, and certain cases thereof – e.g., disguised employment, failure to put the employment contract in writing or failure to meet the obligation to declare to the authority the establishment of a fixed-term industrial relationship – qualify as infringements and imposing a penalty is mandatory; the employee must also be sanctioned
- the employment act imposes an obligation of declaration and data disclosure on employers employing foreign workers, which means that the employer is obliged to notify the district labour office of the employment of foreign persons. The infringement of the relevant obligation and the case of false data disclosure

Slovakia

A fine is imposed by the labour inspectorates in the event of:

- infringement of the prohibition of illegal employment

In establishing the amount of the penalty, the following are considered a serious infringement:

- non-compliance with the legal conditions relating to working time and rest time;
- exceeding the extent of working time provided in the records of working time kept by the employer by 10% but at least by 30 minutes during the time worked;
- non-compliance of the labour rules relating to pregnant women, mothers until the end of the ninth month after giving birth, breastfeeding mothers, minor workers and workers with disabilities;
- non-provision of the protective or safety equipment necessary for ensuring occupational safety and health, or failure to ensure the functionality of such protective or safety equipment;
- non-provision of the necessary effective personal protective equipment or failure to keep such equipment in an operational condition.

Czech Republic

- sanctioning is mandatory due to illegal employment; the person carrying out illegal work can also be penalised

Romania

- employment without an employment contract, failure to enter the data of the employment contract into the general register of employees at the latest until the day preceding the commencement of work
- employment during the suspension of the employment contract

[61] Section 18 (4) of Government Decree 115/2021. (III. 10.) on the Activity of the Employment Supervision Authority

[62] Based on the data requested by the 3 December 2020 session of the permanent consultation forum of the business sector and the government (Hungarian acronym: VKF) (National Federation of Workers' Councils). The source for the various countries originates from the Ministry for Innovation and Technology. Source: research summary "Labour Sanctioning Systems" prepared by the Ferenc Mádl Institute of Comparative Law

- requiring a part-time employee to work outside the work programme specified in the employment contract

The labour authority imposes an administrative penalty in the following cases:

- the principle of equal opportunities for women and men and equal treatment has been violated,
- if it can be established during the inspection that the mothers' right were infringed in the area of work
- if the public authorities or employers restrict or prevent the exercise of rights conferred on trade unions;
- if the employer refuses to commence negotiations on the collective agreement;
- if the signatory parties fail to file the collective labour agreement for disclosure (the parties' liability is joint and several);
- if the employer does not receive and file the written claims of the employees' representatives, or their proposed solutions to a collective work dispute;
- if during a strike, the management of the plant/unit is impeded by the employees on strike or the organisers of the strike in their duties, or during the strike the labour inspector's work to detect any potential infringement is obstructed in any way.

Austria

The Worker Protection Act (ASchG) lists the punishable cases in 31 points.

- failure to comply with the obligation to carry out a risk assessment, failure to use the signals relating to safety and health, failure to comply with obligations relating to the quality, operation, checking and maintenance of work equipment, etc.
- factual situations relating to undeclared employment; for example failure to comply with the obligation to declare temporary agency work,
- obstruction of wage control.

Germany

In the enforcement practice the imposition of requirements and the adoption of decisions on actions to take are priorities, and the penalties are imposed on a discretionary basis in the event of non-compliance.[63] In addition, there is a major emphasis on prevention. If the infringement reaches the level of being sanctioned, in addition to financial penalties there are also consequences under criminal law.

Table 2: The fines of Hungary, V4 countries, Romania, Austria, Germany and the EU average

Country	LIMITS OF SANCTIONS IMPOSED FOR LABOUR LAW VIOLATIONS (min – max €)
Slovakia	n.a - 100,000[64]
Czech Republic	n.a - 73,000
Germany	5 – 25,000[65]
Hungary	139 – 13,900
Romania	5 – 10,300
Poland	230 – 10,000
Austria	166 – 8,300
EU average	452 – 20,730[66]

[63] Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work (Arbeitsschutzgesetz, ArbSchG), Art. 25.

[64] Executive employees may also be fined for up to for times the monthly average wage; up to 4,400 €

[65] Employees may also be fined for up to 5,000 €

[66] Based on amounts imposed for typically posting related infringements; no other data available

Source: Based on the data requested by the 3 December 2020 session of the permanent consultation forum of the business sector and the government (Hungarian acronym: VKF) (National Federation of Workers' Councils). The source for the various countries originates from the Ministry for Innovation and Technology.

3.2. Impacts on competitiveness

As noted above, the *SME sector produces*, in general, *lower productivity and growth rates* in the EU than in the US. The companies that manage to remain in business increase the number of their employees by 10-20% by the seventh year of their operation, while in the U.S. this ratio is as high as 60%. Moreover, 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.[67]

3.2.1. The quality of employment (job quality) in the SME sector

The quality of work and employment (job quality) comprises a wide variety of norms at the place of work affecting the employee's economic, social, physical and mental welfare,[68] this paper however, focuses only on matters of relevance to labour legislation, which in turn, however, inevitably affect all of the other aspects. The legal facet of job quality – which might even be regarded as a narrow definition of "job quality" – covers the following rights: the job and occupational mobility, right to healthy and safe working conditions (occupational safety), the requirement of equal treatment, pay for work, working and resting time, industrial relations, social security.[69]

In addition to the issues referred to above, wages are typically lower, working hours are typically longer,[70] while occupational health and safety standards are poorer, opportunities for education and training at the workplace are scarcer in the SME sector.[71] Most labour law violations take place at small employers,[72] as a result of which they also commit the largest number of occupational safety violations, consequently, the number of accidents at work is also typically highest in the SME sector.

[67] 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, 2-3 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0394:FIN:EN:PDF, downloaded: 10 May 2022

[68] Reinecke – White i. m., p. 32

[69] Cf.: *Job Quality and Small Enterprise Development,* IFP/SEED Working Paper No. 4, ILO, Genf, 1999, pp. 2–3; valamint Reinecke – White op. cit., pp. 32–33, továbbá Fenwick – Howe – Marshall – Landau i. m., pp. 48–64

[70] Faundez, Julio: A View on International Labour Standards, Labour Law and MSEs, Job Creation and Enterprise Development Department, Employment Sector Employment Working Paper No. 18., ILO, Genf, 2008, p. 16

[71] Smith, Mark – Zagelmayer, Stefan: Working time management and SME performance in Europe, *International Journal of Manpower,* Vol. 31 No. 4, 2010, p. 394

[72] 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. The same was found in trade and in the private security sector in 2021. Source: A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (Lessons drawn from labour/employment supervision inspections (2021)), p. 20 and p. 25, http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022

Most European employees work for SMEs but the ratio of accidents at work is significantly higher (82%) than their proportion of the total number of employees. Also: some 90% of all fatal accidents occur in the SME sector.[73] A total of 21,591 accidents at work were registered in Hungary in 2021, 74.4% (16,069) of which occurred in the SME sector (based on the officially reported cases).[74] According to the EUROSTAT report "*Statistical analysis of socio-economic costs of accidents at work in the European Union*" the risk of the costs of certain accidents at work far exceed the costs of prevention.[75]The reduction of accidents, damage and less healthy circumstances may also result in cost reductions and higher availability rates. Moreover, collective labour law can also hardly be enforced in the SME sector, so employees are even less well protected.

3.2.2. Uncovering the reasons underlying certain violations specifically characteristic of small and medium-sized enterprises

As has already been mentioned more than once, most labour law violations take place at small employers. Moreover, *black employment* is also more characteristic of SMEs, which is one of the sources of the informal economy. Of course this kind of violation generates difficulties in the enforcement of the labour regulations, or even makes enforcement impossible, if only because, on account of their informal operation, such small enterprises are often "invisible" to the competent authorities.

Non-declaration is the most prevalent form of irregularity in relation to black employment. Black employment is mostly motivated by the drive for cost effectiveness, a consciously applied practice among employers; undeclared employment is a serious competitive advantage towards making increased profits. In many cases employers wait awhile before making the declaration, hoping that no inspection will take place, while having everything prepared, because soon after the commencement of the inspection they declare the employee concerned as being employed on the day of the inspection, thereby quasi admitting the infringement.[76]

As regards wages, employees are often paid even less than the minimum wage, and on the other hand, they should even feel lucky if they are paid regularly and on time; in many cases employees working full-time are declared as part-time staff.[77]

Labour inspections conducted in Hungary at undertakings providing security guard services found a variety of infringements regarding working hours, for example. All too often, employees are worked in stand-by type jobs for no reason at all because they have to spend the whole working time actually working but, the job being categorised as "stand-by", the daily working time is increased to 12 hours for which no specific compensation is paid in their wages. Another typical solution is employing people under part-time work contracts who then have to actually work full-time. Also typical is that such micro- or small enterprises engage subcontractors in order to circumvent the protective rules of the labour law.[78]

Declaration of part-time employee working full time is another frequent infringement but it is difficult to prove in most cases because employees, fearing for their jobs, are too afraid to speak against their employers. Investigations of this kind of violation are in most cases only successful in relation to jobs already terminated when former employees are already willing to talk about the real circumstances of

[73] Statistical Analysis of Socio-economic Costs of Accidents at Work in the European Union, op. cit.
[74] http://www.ommf.gov.hu/index.html?akt_menu=223, downloaded: 21 May 2022
[75] Statistical Analysis of Socio-economic Costs of Accidents at Work in the European Union, op. cit.
[76] A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (Lessons drawn from labour/employment supervision inspections (2021)), p. 7 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022
[77] 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. The same was found in trade and in the private security sector in 2021. Source: A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (Lessons drawn from labour/employment supervision inspections (2021)), p. 20 and p. 25,http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022
[78] OMMF Hírlevél (Hungarian Labour Inspectorate Newsletter), 2011/4., pp. 6–7

their former employment. The untaxed income is also an incentive for the employee in most cases to maintain the infringing situation.[79]

To some extent they are forced to resort to such practices in the fight for survival, however, it must unfortunately be recognised that in many cases businesses are not only unable but completely unwilling to comply with the rules in place.[80]

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.[81] 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.[82] These are made even more challenging by the complexity of the legal system of the given state and frequent changes in the regulatory environment which raises questions regarding legal certainty as well.

3.2.3. The impacts of poor job quality and of infringements on the competitiveness of businesses

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. Low employment quality impedes the improvement of the quality of life for employees living in poverty.[83] One consequence of these circumstances is that such enterprises have more difficulties in finding highly trained and experienced workforce, as job seekers are more attracted to larger enterprises where they are offered higher wages and better working conditions, making the position of the given small enterprise even worse. If it is to recruit high quality workforce, it has (would have) to spend more time and money on exploiting the enterprise's capacities with the available workforce. The conditionality must be emphasised in this regard as well, because further challenges stem from employee fluctuation which affects the attitude of the owner or manager of the small enterprise concerned; they not necessarily like to invest money and time into training their employees because others would benefit from it anyway. Should this be the case however, it is likely to form a vicious circle, possibly causing substantial disadvantage in the given sector to the small enterprise concerned, particularly in high technology and knowledge-intensive services. This is, of course, only a specific segment of the complications facing small enterprises, and this is not even the most challenging difficulty for them, or for the world as a whole, besides other ones such as those relating to access to funds or access to markets, which are also highly important but not analysed in this paper because of its specific focuses.

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. Job quality may play a key role in improving employees' and their families financial position as well, thereby helping to reduce poverty. Poverty is a constant risk factor in the case of the employees of small enterprises anyway,

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[79] A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (Lessons drawn from labour/employment supervision inspections (2021)), p. 9 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022

[80] Homicskó Árpád Olivér – Kun Attila: A munkáltató „méretének" relevanciája a munkajogi szabályozásban a 41/2009 (III.27.) AB Határozat fényében (*The relevance of the "size" of the employer in labour regulation in the light of Decision* 41/2009 (III.27.) AB of the Constitutional Court), *De iurisprudentia et iure publico,* Vol V., No. 2011/2. p. 97

[81] 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

[82] 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

where the conditions of work often fail to guarantee safety and social protection systems are not or not properly functioning.

However, *there is a direct connection between job quality and the company's productivity and competitiveness, which in turn may drive its economic growth and enable it to create jobs.*[84] Accordingly, employees are more satisfied, perform better and are more productive in better working conditions.[85]

Nonetheless, *short, medium and long term benefits must be separated by the creation of an adequate regulatory environment* facilitating better working conditions. The practices of countries exempting small businesses from the labour law generate problems regarding employment quality as well as from the aspect that by doing so they do not at all encourage SMEs to perform their operations lawfully. Various countries typically exempt small enterprises from the labour law norms either formally, by way of specific legal regulations or in practice (e.g. by not carrying out labour inspections).[86] And they do so in spite of the fact that the quality of employment is lowest in the SME sector. Since labour law is a key element of the toolkit for encouraging the provision of decent working conditions, this sort of established practice does not serve the interests of the employees. Exempting small enterprises from the labour law is not likely to contribute to their adoption of lawful operational practices because it does not encourage them to operate in the economy in a formalised way. The results however, indicate that the "exemption policy" is contrary to the requirement of ensuring decent employment. There is very little proof of exemption, as a policy instrument, stimulating the growth of small enterprises and/or their integration in the formal economy. It would be difficult to precisely identify positive impacts facilitating growth. Besides the few positive impacts however, they deprive small enterprises of long term benefits because they think that by doing so they promote growth. Moreover, they do not protect the basic (employee) rights either, in stark contrast to the requirement of decent employment. Any improvement in the quality of employment requires a law-based approach, that is, the application of the labour law.[87]

3.2.4. Relationship between labour law and job quality

The quality of work and employment (job quality) comprises a wide variety of norms at the place of work affecting the employee's economic, social, physical and mental welfare,[88] at this point however, we only analyse issues relating to labour law and other closely related fields, which in turn, however, inevitably affect all of the other aspects. As to the legal facet of job quality, the different sources of law need to be scrutinised to identify the ways they prescribe requirements regarding the conditions of employment, which might be regarded as the definition of job quality in a narrow sense.

From a legal aspect the definition of the *right to adequate working conditions* should be explored; although there is a wide variety of definitions of the term, with varying content in many cases, it may still be an important starting point for the definition of the quality of employment. Article 2 of the European Social Charter[89] uses the wording "right to just conditions of work" but the content of the article refers only to certain aspects of working time and rest period. The EU Charter of Fundamental Rights discusses a wider variety of factors under the headings of employment and remuneration, the improvement of the living and working conditions, nonetheless, the legal nature of those rules is not precisely defined. It is

[84] Decent Employment through Small Enterprises: A Progress Report on SEED activities, ILO, Genf, 2003, pp. 16–17, and Reinecke – White i. m., pp. 32–33

[85] 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; for more detail, see: Arends, Iris – Prinz, Christopher – Abma, Femke: Job quality, health and at-work productivity, OECD Social, Employment and Migration Working Papers, No. 195, OECD Publishing, Paris, 2017., https://doi.org/10.1787/43ff6bdc-en, downloaded: 5 June 2022; and European Agency for Safety and Health at Work: Quality of the Working Environment and Productivity, Research Findings and Case Studies, Working Paper, Luxembourg, 2004.

[86] A survey of the 47 states, conducted by the International Organization of Employer, found that some 60% of them applied some form of special labour law regulation to small businesses, differentiated by headcounts. Source: International Organization of Employers: Labour Law & Micro and Small Enterprises (MSEs), Survey, 2006, p. 4 Cited by: Homicskó – Kun i. m., p. 100

[87] Fenwick – Howe – Marshall – Landau i. m., p. 48

[88] Reinecke – White i. m., p. 32

[89] European Social Charter, Turin, 18 October 1961, promulgated in Hungary in Act C of 1999

in article 31 under Title IV – Solidarity[90] – that the Charter of Fundamental Rights of the European Union provides for "*fair and just working conditions"*. Accordingly, every worker has the right to working conditions which respect his or her health, safety and dignity and every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.Employers shall employ their employees in accordance with the rules and regulations pertaining to contracts of employment, employment regulations and the provisions of other relevant legislation, and – unless otherwise agreed by the parties – provide the necessary working conditions.[91] The employer shall guarantee the requisites for occupational safety and health.[92] The content of the basic principle of right to adequate working conditions is, however, significantly broader. It is concluded from international labour law documents[93] that the basic principle of ensuring adequate working conditions comprises a variety of institutions ranging from the establishment of an industrial relationship to its implementation and termination.[94]

Clearly, the requirement of guaranteeing the right to adequate working conditions essentially lays down the minimum requirements which are typically contained in the relevant international and national laws. In fact this can be regarded as a narrow – specifically legal – definition of the quality of employment (job quality), meaning whether the mandatory regulations and recommendations are complied with during employment. At the same time, despite the fact that most of the requirements are parts of the private labour law which is a basic principle regulated as an employer obligation, yet the legal consequences of non-compliance with it are more of a public law nature[95] – with the exception of the liability to pay compensation – which may be enforced for instance by the labour authority.

In a broader sense however, job quality means a lot more. László Román also used this concept when he wrote about the provision of optimum working conditions.[96] Quite interestingly, he interpreted this basic principle at the time of the socialist labour law not as a kind of a "worker protection" law but as a definition of the requirement that the employer is obliged to run the business as well as possible whereby it can create a harmony for a higher level employment of the employee.[97] This approach may even be regarded as a broader definition of job quality, stemming from the private law nature of the industrial relationship.

Accordingly, the following rights may be regarded as key elements determining job quality.[98]

- 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,

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[90] EU Charter of Fundamental Rights, Title IV: Solidarity (Workers' right to information and consultation within the undertaking, Right of collective bargaining and action, Right of access to placement services, Protection in the event of unjustified dismissal, Fair and just working conditions, Prohibition of child labour and protection of young people at work, Family and professional life, Social security and social assistance, Health care, Access to services of general economic interest, Environmental protection, Consumer protection)

[91] Section 51 (1) of the Labour Code

[92] Section 51 (4) of the Labour Code

[93] For example: Hours of Work (Industry) Convention, 1919 (No. 1), C014 - Weekly Rest (Industry) Convention, 1921 (No. 14), C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Forty-Hour Week Convention, 1935 (No. 47), Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), Termination of Employment Convention, 1982 (No. 158), Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)

[94] Bankó – Berke – Dudás – Kajtár – Kiss – Kovács: *Magyarázat a magyar és az európai munkajogi szabályozásról (*Explanation to the Hungarian and the European labour law regulation*),* Első rész (*Part One*), Negyedik fejezet (*Chapter Four*) – A munkajog alapelvei, A megfelelő munkafeltételekhez való jog (*Basic principles of the labour law. Right to adequate working conditions*), http://uj.jogtar.hu/#doc/db/198/id/A12M0001.WMM/ts/20150101/ downloaded: 27 July 2016

[95] Bankó – Berke – Dudás – Kajtár – Kiss – Kovács i. m.

[96] Román László: *Munkajog (*Labour law*) (Elméleti alapvetés) (*Theoretical foundations*),* Tankönyvkiadó, Budapest, 1989, pp. 70–74

[97] Bankó–Berke–Dudás–Kajtár–Kiss–Kovács i. m.

[98] Cf.: Job Quality and Small Enterprise Development, IFP/SEED Working Paper No. 4, ILO, Genf, 1999, pp. 2–3; and Reinecke – White i. m., pp. 32–33, and Fenwick – Howe – Marshall – Landau i. m., pp. 48–64

- remuneration for work (wage and non-wage benefits),
- working time and rest period,
- industrial relations,
    - the freedom of organisation,
    - fundamental right to collective bargaining,
- social security;
- other factors affecting job quality (the issue of job stability, lack of knowledge and information, human resource management, geographical factors etc.).

A) The principle of freedom to choose an occupation and the right to engage in work

Article 23 (1) of the UN Universal Declaration of Human Rights stipulates that everyone has the right to work, to free choice of employment. On the other hand, for instance, the fundamental right of the freedom of choice of employment was not guaranteed in the Hungarian legal system before 1989. Working then was not only a right but also an obligation, enforced even by sanctions under the criminal law. Indeed, the state restricted the freedom of individual decision and choice not only regarding whether one did or did not want to work but also in terms of the nature and subject of work as well as the employer for which one had to work. After this period the Constitutional Court (CC) construed the right to work as one type of the freedom to contract, as a freedom of choice of occupation in its Decision 1178/B/1991. AB, under which the individual is entitled to freely decide whether:

- they do or do not wish to work. If they do, whether they wish to work part-time or full-time;
- what nature or content of work they wish to perform;
- for which organisation/company they wish to work.[99]

The freedom of choice of occupation is also stipulated in Hungary's Fundamental Law,[100] but the right to work is not.

Both forced labour and child labour are completely incompatible with this basic principle. The freedom to choose an occupation and the right to engage in work as an indicator of the quality of employment may be surprising in Europe and in Hungary because – apart for a few exceptions – forced labour and child labour do not typically take place here. At the same time it should be noted regarding the practices in Europe and Hungary that the employer's *termination of employment without justification* is a violation of the right to work – *inter alia* – that is, the freedom of choice and exercise of work, occupation and business undertaking.[101] Moreover, termination of employment without justification may also violate Article 30 of the EU Charter of Fundamental Rights, stipulating that every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices. The act prohibiting the termination of employment (Kündigungsschutzgesetz-KSchG) does not apply on a mandatory basis to employers of 5 or fewer employees and it applies only in part to those employing not more than 10 employees in Germany. Moreover, initiatives were made in Hungary as well to integrate a similar provision in the Labour Code; however it was not even worked out as a Bill because a provision of the same content had previously been annulled by the Constitutional Court in relation to

[99] Hajdú József – Kun Attila (ed.): *Munkajog I. (*Labour law I*),* Patrocinium Kft., Budapest, 2012, p. 82
[100] Section XII (1) of the Fundamental Law
[101] In Hungary Constitutional Court Decision 8/2011 (II. 18.) declared that the termination of a civil servant relationship without specifying its cause violates the right to work. The right to work is a constitutional right with a dual purpose which has a social right element and a basic individual public-law right element. The right to work as a social right sets out obligations for the state in that the state must create the conditions and requisites for the exercise of the right (e.g. by way of the necessary employment policy, job creation etc.). In the CC's interpretation the individual public-law right to work means the right of choice and exercise of work, occupation and business undertaking. The right to work is under protection similar to the liberties, against state interventions and restrictions. In its practice the CC set up a differentiated standard for use in judging whether any restriction breaches the constitution: distinction is based on the freedom of choice of work and the conditionality of the exercise of work. The CC found that the constitutional guarantees for the exercise of the fundamental rights are not limited to the state's obligation to refrain from violating them. The state is also obliged to provide the conditions and requisites for their exercise, that is, the state has an institution protection obligation in relation to the fundamental rights. Work generates the financial resources for the individual's existence and human autonomy. The legal relationships established in relation to work are, however, asymmetric, where the employee's exposure is mitigated by the guarantees provided by legal regulation.

the termination of a civil servant relationship. Accordingly, there definitely is a case for emphasising the principle of the freedom to choose an occupation and the right to engage in work.

B) The requirement of health and safety at the workplace (labour protection),

The rapid development of natural sciences and technologies has been making work more and more complicated which results in more and more risks and hazards as a consequence of the use of machines and up-to-date technologies. All of these developments demand carefully designed organisation of various work processes, along with effective protection mechanisms. Since technical development itself does not change employers' and employees' ways of thinking or attitude, therefore from the aspect of the employer it must be achieved that the rules on occupational safety are observed and enforced.[102]

Sadly, most labour law violations take place at small employers,[103] as a result of which they also commit the largest number of occupational safety violations, consequently, the number of accidents at work is also typically highest in the SME sector. Employees are most exposed to the risk of accident at work and occupational diseases in the SME sector. Most European employees work for SMEs but the ratio of accidents at work is significantly higher (82%) than their proportion of the total number of employees. Also: some 90% of all fatal accidents occur in the SME sector.[104] A total of 21,591 accidents at work were registered in Hungary in 2021, 74.4% (16,069) of which occurred in the SME sector (based on the officially reported cases).[105] This ratio is, in general, significantly lower among larger companies.[106]

A significant proportion of small and medium-sized enterprises have difficulties in complying with the rules on health and safety at work.[107] Consequently, they comply with the rules on labour protection to a lesser extent and are more likely to breach rules on health and safety than do their larger counterparts.[108] This can be attributed to the scarcities of their financial resources and their lack of awareness of the higher risks of non-compliance.[109]

Health and safety at the workplace is also of particular in the case of the SME sector because the overwhelming majority of occupational accidents occur in that very sector. According to the EUROSTAT report "*Statistical analysis of socio-economic costs of accidents at work in the European Union*" the risk of the costs of certain accidents at work far exceed the costs of prevention.[110]

A working paper prepared by the European Agency for Safety and Health at Work (OHSA) claims that the primary reason for the unfavourable conditions and circumstances is that small and medium-sized enterprises have neither the knowledge, nor the financial resources for adequately taking care of the issue of safety at work. While small and medium-sized enterprises – as employers – find it costly to guarantee safety at work, they are far less aware of the fact that less safe circumstances may turn out to be just as costly. Reducing the occurrence of accidents and damage, and improving unhealthy

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[102] Hajdú József – Kun Attila (ed.): *Munkajog II. (*Labour law II*),* Patrocinium Kft., Budapest, 2012, p. 215

[103] 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. The same was found in trade and in the private security sector in 2021. Source: A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (Lessons drawn from labour/employment supervision inspections (2021)), p. 20 and p. 25,http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022

[104] Statistical Analysis of Socio-economic Costs of Accidents at Work in the European Union, op. cit.

[105] http://www.ommf.gov.hu/index.html?akt_menu=223, downloaded: 21 May 2022

[106] Reinecke – White i. m., p. 34

[107] Hajdú – Kun 2012a, p. 146

[108] Zhu, Ying: Economic reform and labour market regulation in China, in: Cooney, Sean – Lindsey, Tim - Mitchell, Richard – Zhu, Ying (ed.): *Law and Labour Market Regulation in East Asia,* Routledge, London -New York, 2002, p. 175

[109] Marencsák Zsolt: Néhány gondolat a KKV szektor újraszabályozása elé (*A few thoughts before the adoption of new regulations on the SME sector*), in: Szabó Béla – Szemesi Sándor (ed.): *Profectus in litteris III.* (conference volume), Lícium Art Kft., 2011, p. 179

[110] Statistical Analysis of Socio-economic Costs of Accidents at Work in the European Union, op. cit.

working conditions may also result in cost reductions and will increase the availability of both the workers and the plant facilities, which in turn may improve efficiency.[111]

All in all, the safety of workers is particularly important at both small and larger businesses. Guaranteeing a safe and healthy working environment must be paramount, as an indispensable element of decent employment.

C) The requirement of equal treatment

Equal treatment is an important element of the labour law as well, as is clearly indicated by the structure interests in an industrial relationship. Since an industrial relationship is a relationship for a certain period of time therefore the parties' opposite interests are bound to surface over time. The employer wishes to employ workforce that is the most suitable for its purposes while the employee wishes to maintain the security of their livelihood in the context of dependent work, for as long as possible. In other words, the parties are motivated by different interests. Each of sex, age, health status, marital status, pregnancy, maternity or even paternity may be a factor that may be an advantage, but in most cases, rather a disadvantage, for an employee. Other protected characteristics – e.g. disability, racial origin, religious or philosophical belief, political or other opinions – may also negatively influence the employer in regard to the employment of a given person.[112]

The *principle of equal treatment* prohibits negative discrimination resulting in a person or a group being treated less favourably than others in a comparable situation, are, have been or would be, treated on account of their actual or perceived protected characteristic. Accordingly, negative discrimination comprises three conceptual elements:

- the discrimination results in a disadvantage or disadvantages for the person concerned,
- the cause of or reason for discrimination is an actual or perceived protected characteristic,
- the unreasonable and arbitrary nature of the discrimination[113]

Negative discrimination occurs at small businesses as well, where working conditions are less favourable than in other segments of the labour market, which is, of course, not in line with the requirement of decent employment; indeed, in addition to requirements of the labour law it may also violate fundamental human rights and their exercise. Women in particular, tend to face negative discrimination at small enterprises, which is further aggravated by the fact that women are over-represented in the SME sector.[114]

It should also be emphasised that discriminative practices are typically prevalent in the SME sector in both developed and developing economies, confirming the conclusion that the quality of employment is lower among small enterprises.[115]

Elimination of discrimination at the workplace is one of the most important elements of decent employment and job quality, since it is indispensable that every single employee's fundamental rights are guaranteed.

D) Remuneration for work (wage and non-wage benefits)

The definition of remuneration for work may be viewed from two aspects: on the basis of economic and on the basis of legal fundamentals. From an economic aspect, wage is determined in the various countries by the structure and performance of the economy, as well as the traditions and customs of the

[111] Occupational Safety and Health and Economic Performance in Small and Medium-sized Enterprises: a Review, EU-OSHA - European Agency for Safety and Health at Work, 2009, p. 11, https://osha.europa.eu/en/publications/report-occupational-safety-and-health-and-economic-performance-small-and-medium-sized downloaded: 4 June 2022

[112] Berke Gyula – Kiss György (ed.): Kommentár a munka törvénykönyvéhez (*Comments on the labour code*) , Wolters Kluwer, Budapest, 2014, p. 66 or Bankó – Berke – Dudás – Kajtár – Kiss – Kovács i. m.

[113] Dudás Katalin – Gyulavári Tamás – Horváth István – Hős Nikolett – Kártyás Gábor – Kulisity Mária – Kun Attila – Petrovics Zoltán: Munkajog (*Labour law*) (ed.: Gyulavári Tamás), ELTE Eötvös Kiadó, 2014, p. 88

[114] Reinecke – White i. m., p. 5

[115] Faundez i. m., pp. 23–24

given society. The most important market economies fall into two groups in terms of wage setting. In one group of countries wage is determined essentially on the basis of market performance (demand and supply) (e.g. USA., Germany, France, perhaps Hungary etc.), while in the countries of the other group wages are significantly influenced by other factors as well, such as – traditions, social structure, seniority – (e.g. Japan). Wages are determined by different factors in the business sector and in the public sector: the above apply primarily to the business sector, while in the public sector wages tend to be determined primarily by qualifications, years of service, language proficiency etc. In addition to economic considerations, the legal approach to wages is based on contractual foundations, where the evaluation of the performance underlying the wage is the central element.[116]

Labour legislation generally stipulates the employers' obligation to pay wages and contains provisions protecting wages. The labour code even specifically prohibits negative discrimination because wages are one of the most frequently encountered source of discrimination issues. The law also stipulates the mandatory minimum wage, which is important not only from the aspect of industrial relationships but also in relation to the regulations and legal relationships of relevance to social security and personal income taxation.[117] On the other hand, adequate wages play a social role as well, because workers of SMEs are more frequently exposed to impoverishment,[118] making ends meet month after month, building up no or insufficient reserves.

It can be concluded form the available data that the average wage is lower in the SME sector, i.e. it is usually lower at smaller businesses than at larger ones.[119] This applies in the same way to more developed states; smaller businesses provide their workers with lower incomes than do larger ones.[120] It is a fact empirically proven by ILO that wages are usually lower and hours are longer in the SME sector.[121] The average earnings of workers in the SME sector in Europe equal about 70-80% of the national average earnings of the various countries and it has also been found that the larger the company, the more its employees earn.[122] Another factor that probably drives wages down is that many small businesses are operating in complex subcontractor structures, at the ends of the supplier chains so their wages are affected by the supplier chains' downwards pressure.[123]

The situation is not better in Hungary either as regards wages: employees are often paid even less than the minimum wage, and on the other hand, they should even feel lucky if they are paid regularly and on time; in many cases employees working full-time are declared as part-time staff,[124] a problem that leads us to our next item, that is, to working time.

As of 1 January 2022 the gross minimum wage and the guaranteed wage minimum increased to HUF 200,000 and HUF 260,000, respectively. As a consequence of the continuous increase in earnings during recent years the number of people working for the minimum wage or the guaranteed wage minimum decreased significantly in the SME sector as well – 13 percent of their employees in December,

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[116] Hajdú – Kun 2012a, p. 205

[117] Bankó – Berke –Dudás – Kajtár – Kiss – Kovács i. m.: Második rész, Tizenkettedik fejezet (*Part Two, Chapter Twelve*) – A munka díjazása, A kötelező legkisebb munkabér és a garantált bérminimum (*Remuneration for work, The mandatory minimum wage and the guaranteed wage minimum*).

[118] Fenwick – Howe – Marshall – Landau i. m., p. 59

[119] Reinecke – White op. cit., p. 34

[120] Job Quality and Small Enterprise Development*,* IFP/SEED Working Paper No. 4, ILO, Genf, 1999, p. 2, http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_seed/documents/publication/wcms_117730.pdf, downloaded: 11 May 2022

[121] Faundez i. m., p. 11

[122] Faundez i. m., p. 16

[123] Homicskó – Kun i. m., p. 98

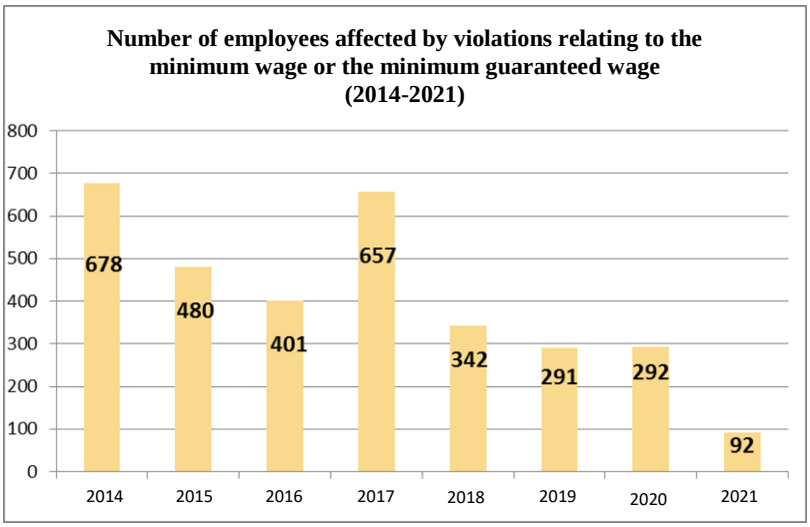
[124] Ministry for National Economy, Employment Supervision Department, report on the targeted inspection of compliance with the rules on wages [21 March 2016 – 8 April 2016.], 2016, p. 13 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=515, downloaded: 5 June 2022. The same was found in trade and in the private security sector in 2021. Source: A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (*Lessons drawn from labour/employment supervision inspections* (2021)), p. 9 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022

approx. 200-250 thousand people in the category of SMEs employing more than 4 persons.[125] The economic research company GKI estimates that this ratio is probably higher in the category of businesses employing less than 5 persons and of sole proprietorships. The analysis however, points out that as a consequence of the unusually large (19.5%) increase from January as many as 1 million workers may fall in this category. In the category of businesses having such employees, an average of 11 percent cost increase is expected as a result of the minimum wage increase. This increases the costs of the entire domestic SME sector by an average of 7 percent, even with the impacts of the tax reliefs factored in.[126]

The report prepared by the Employment Supervision Division of the Occupational Safety Department of the Ministry of Innovation and Technology highlights in relation to the implementation of the mandatory wage increases, the findings of inspections and minimum wage increase evasion techniques, that the amount of the minimum wage and the guaranteed wage minimum continued to increase from 2021 pursuant to Government Decree 20/2021. (I. 28.), therefore the labour and employment supervision authority paid particular attention to the supervision of compliance with the relevant statutory regulations. Employees affected by violations of this kind continued to decrease (in 2020: 292 persons, in 2021: 92 persons), confirming the findings of recent years that violations involving the minimum wage or the minimum guaranteed wage continue to be small in number.

125 https://www.vg.hu/vilaggazdasag-magyar-gazdasag/2021/12/vesztesei-is-vannak-a-minimalber-emelesnek, downloaded: 5 June 2022
126 Ibid.

Figure 2: Number of employees affected by violations relating to the minimum wage or the minimum guaranteed wage (2014-2021)



Source: Report of the Department of Employment Supervision Management of the MIT, 2021, p. 11.[127]

As regards minimum wage increase evasion techniques the MIT emphasises that it was concluded from statistics that variable wages were not typically reduced as a consequence of the increase of the minimum wage/minimum guaranteed wage. In the national economy as a whole the amounts paid in the way of variable wages increased by another 14.5% in 2020 (after the increases of 14% in 2017, 11.7% in 2018 and 21.9% in 2019), which preceded a 9.3% increase in the amounts paid as regular monthly wages. The increase in variable wages slowed down somewhat in 2021: variable wages increased by an average of 6.7% and amounted to a monthly amount of HUF 34,800 as an annual average. Statistics from two sources are available on the numbers of part-time workers.

According to statistics supplier earlier by employers and by the NTCA and the HST from 2019 – which continue to be published by the CSO and does not include data of businesses employing not more than 4 persons – the total number of other than full-time employees changed in the various quarters of 2020 in accordance with the changes in the pandemic situation: it was highest in the second quarter and decreased during the third and fourth quarters. In this regard a workforce survey conducted among the population (WFS) also showed a similar trend, although there were some different values as regards the rates of increase or decrease.

The above sets of two data are not directly comparable (as they apply to different groups of employers). The direction of the part-time headcount data of the institutional statistics differed from that of the WFS statistics primarily from 2015 Q3 to 2017 Q4, nonetheless this process should also be monitored in connection with the increases in the minimum wage and the minimum guaranteed wage. The dramatic increase in mid-2020 is attributable to the pandemic.[128]

E) Working time and rest period

The primary aim of the adoption of the regulation on working time was to *protect the health* of employees as well as to *improve safety at work*, with a view to the employer's competitiveness. Long working time has a negative impact on both workers' health and safety at work. Fatigue increases, attention weakens and the risk of accidents at work increases, with longer working time. (The regulation/limitation and organisation of the working time has an employment policy aspect as well, because it may contribute to

[127] http://www.ommf.gov.hu/letoltes.php?d_id=8211, downloaded: 5 June 2022
[128] Based on the information sent to the social partners participating in the permanent consultation forum between the business sector and the government (Hungarian acronym: VKF).

the creation of new jobs.[129]) Employment policy may not only be expected to facilitate job creation and promote employment but also to produce labour legislation ensuring employees' physical and mental regeneration, preventing them from burnout.[130]

Working time regulation serves two main purposes: it comprises rules limiting working time in the interest of the public along with practical rules on various aspects of the working time and the resting period. The restrictive rules:

- determine the maximum permitted working time;
- regulate matters of relevance to the resting period,
- specify maximum working times within a working day or within the working time limit,

they specify limitations on working/availability in addition to the contractual working time or during times other than the working time schedule.[131]

Working hours tend to be longer at small businesses than at larger ones,[132] however it would be difficult to declare with certainty that employees typically have to work a lot more hours in the SME sector, as employers do not even keep proper working time registries in most cases (they either do not register working yours or only enter the lawful number of hours).[133]

Labour inspections conducted in Hungary at undertakings providing security guard services found a variety of infringements regarding working hours, for example. All too often, employees are worked in stand-by type jobs for no reason at all because they have to spend the whole working time actually working but, the job being categorised as "stand-by", the daily working time is increased to 12 hours for which no specific compensation is paid in their wages. Another typical solution is employing people under part-time work contracts who then have to actually work full-time. Also typical is that such micro- or small enterprises engage subcontractors in order to circumvent the protective rules of the labour law.[134]

F) Industrial relations

Collective labour law can also hardly be enforced in the SME sector; there is practically no social dialogue, trade union organisations or works councils present in the sector in general, as a consequence of which this type of "control" is not exercised over SME employers, so employees are even more scantily protected. There have been some initiatives towards the creation of "umbrella organisations": they organise employees on a territorial basis, typically in counties, or regions (the LIGA Trade Unions, the Hungarian Trade Union Confederation and the National Federation of Workers' Councils have such organisations) but little meaningful information is available on these.

It should be noted that the Social Renewal Operational Programme (acronym: SROP) launched a specific application scheme (A Munkáért! (For Work!) - TÁMOP-2.5.3.C-13/1-2013-0001) to encourage such organisation strategies. The aim of the project was to *strengthen the capacities* of the organisations participating in social dialogue and consultation and to facilitate their cooperation in order to enable them to effectively and competently represent the interests of employees and employers and to successfully

[129] Dudás – Gyulavári – Horváth – Hős – Kártyás – Kulisity – Kun – Petrovics op. cit., p. 259

[130] Prugberger Tamás: Az új Munkatörvénykönyv az uniós normák és a tagállami szabályozások tükrében (*The new Labour Code in the light of the EU norms and member states' regulations*), in: Kun Attila (ed.): *Az új Munka Törvénykönyve dilemmái* (*Dilemmas of the new Labour Code*) (ex-post conference publication), Károli Gáspár Reformed University, Faculty of Law and Political Science, 2013, p. 64

[131] Radnay József: *Munkajog (*Labour law*)*, Budapest, Szent István Társulat, 2009, p. 118

[132] Faundez i. m., p. 17

[133] 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. 15 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=515, downloaded: 5 June 2022. The same was found in trade and in the private security sector in 2021. Source: A munkaügyi / foglalkoztatás-felügyeleti ellenőrzések tapasztalatai (2021. év) (Lessons drawn from labour/employment supervision inspections (2021)), p. 20 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=836, downloaded: 5 June 2022

[134] Hungarian Labour Inspectorate Newsletter, 2011/4., 6–p. 7

channel their opinions and recommendations into labour policy and other policy making processes and into decision making.
In the context of the project trade union representatives gave advice to the elaboration of collective agreements as well, to SME employees, helping them to enhance their rights. The LIGA visitors also aim at organising trade unions at SMEs, because there is practically no such organisation in this sector.[135] The LIGA Trade Unions called it a an innovation that they wished to organise trade unions in the SME sector to provide services for entrepreneurs and employees alike instead of a "combat organisation", because they are sectoral trade unions.[136]

In his study Szabolcs Kovács emphasises that although in a considerable number of SMEs the employer is indubitably spared of a lot of consultations and disputes over interests by the lack of social dialogue in the short run, yet in a longer run this may even result in competitive disadvantages, particularly in competition against larger employers whose workforce is better organised. "The lack of dialogue deprives the employer of valuable feedback which may, particularly in today's labour market, characterised by a scarcity of workforce, result in a serious disadvantage as regards appearing as an employer that is attractive to employees."[137]

It should be noted on the part of the unions – regardless of the SME sector – that at present the only way for remedying violations of trade unions' statutory rights is before the court. These problems are not substantially addressed by the prevailing statutory regulation, nor did the one in force earlier, i.e. the authority's power does not cover such cases. Although the text of the previous act on labour inspections stipulated that the act was adopted to counter non-compliant employment and work, to protect the rights of employees and their interest organisations, but the reason for that was that back in 1996 they had specific rights in this field.[138]Labour inspections thus covered employers' obligations relating to rules in place to ensure the organisation of trade unions in order to protect employees' economic and social interests, the checking of compliance with the rules on the protection under the labour law of employees holding elected trade union offices, members of the works council or the public servants' council, and the health and safety representatives, as well as the preferential terms and conditions applying to them, as well as compliance with the rules on the enforcement of employer obligations relating to actions objected to by trade unions. Pursuant to[139] it is also a conceivable regulation concept that the inspection of the adequate observance and exercise of certain rights of the trade unions, specified in Chapter XXI of the Labour Code (which can also be proven by administrative instruments) should be transferred back into the scope of labour inspections and violations should carry sanctions (e.g. in the form of labour fines). These could include, for instance, the right of informing employees and of conducting trade union propaganda, the right to being provided with information (the employer's obligation to provide information), or for example the right of access[140]. Quite a number of similar cases were widely discussed in the media in recent years (e.g Suzuki,[141] Hankook,[142] Dunaferr[143]), which may have largely contributed to Hungary's (highly problematic) Rating 3 in the International Trade Union Confederation's

[135] https://hirado.hu/2013/04/09/gasko-istvan-liga-kopogtatok-a-kis-es-kozepes-vall/ (downloaded: 27.07.2022)
[136] https://hirado.hu/2013/04/09/gasko-istvan-liga-kopogtatok-a-kis-es-kozepes-vall/ (downloaded: 27.07.2022)
[137] Kovács Szabolcs: Az alternatív vitarendezés a kkv szektorban. (*Alternative dispute settlement in the SME sector.*) HVG-ORAC Lap- és Könyvkiadó Kft., Hungarian Industrial Association, OKISZ, 2017. 21
[138] The legislator terminated this power in 2012.
[139] Sections 3 (1) h), i) and j) of the act on labour inspections
[140] Section 275. The person acting as the union's representative, not employed by the employer, may access the employer's premises if the union has a member or members employed by the employer. During entry and stay at the workplace, rules relating to the operation of the employer must be observed.
[141] Even a documentary film was produced about the case. PartizánDOKU | Egy magyar szakszervezet eltiprásának története (*The story of the crushing of a Hungarian trade union*): https://www.youtube.com/watch?time_continue=1&v=OKtRFTDUwoc&feature=emb_logo downloaded: 1 May 2022
[142] http://nol.hu/belfold/szokatlan-szakszervezeti-osszefogas-a-hankook-ellen-1478097 Downloaded: 1 May 2022
[143] https://nepszava.hu/3102437_nem-engedik-be-a-szakszervezeti-vezetoket-a-dunaferr-gyaraba downloaded: 2 January 2022

trade union rights violations index[144]. At any rate, it should be noted in regard to the operational conditions (framework) of trade unions the relevant practical factors are "measure" (scope) and "mode" (the way of exercise), constituting a kind of a dispute of interests between employer and union, while the issue of the legal basis may form the subject of a legal dispute.

The freedom of organisation

Trade unions are crucial instruments of employee interest representation and of improving their working conditions however, as has already been mentioned, they have very limited presence in the SME sector. It is also true on the other hand, that *small businesses' informal operation is more effective and efficient in conflict management* than the practices of larger enterprises, however, *equal representation of the parties is necessary for achieving equality of opportunities* and *adequate representation is also necessary for participation in social dialogue.* It should also be noted that *collective bargaining is presumably more effective than individual advocacy.*

One of the most fundamental problems is that employees do not, in many cases, have adequate information on the activities and role of the trade unions, through which they could substantially improve the quality of their employment. Even where workers are aware of the existence of trade unions in the SME sector, their perception is, in many cases, that membership does not give them much. Moreover, workers are often unwilling, or even afraid, to join unions because of their employers' hostile attitude. Inadequate protection (whether in legal or practical terms) against discrimination on the grounds of union activity also contributes to the employees' reluctance to join a union because they are afraid of losing their jobs. This kind of "reluctance" is probably stronger at employers where jobs are less secure, where they are not stable, which is the case at many a small enterprise.[145]

The type and nature of industrial relations also impedes the establishment of, or membership in, trade unions in the SME sector. A lot of small businesses are run by families, where industrial relations are also dominated by a family atmosphere, which is very likely to make employees to be unwilling to turn to the employee representative at the company or the local trade union for assistance.[146]

Fundamental right to collective bargaining

Collective bargain is one of the key elements of industrial relations. This was introduced as an instrument for settling and peacefully closing labour disputes.[147]

One of the main characteristics of the system of collective agreements in Hungary is that the company-level is dominant, therefore collective bargaining are decentralised and relatively weakly coordinated; the so-called extension practice is not characteristically applied and the coverage rate is lower than average. A decrease in the trade union organisation level is also typical, as is the lack of certain employers motivation regarding collective bargaining.[148]

According to Marco Biagi the possibility of collective bargaining in the SME sector is rather limited also from perspectives other than noted above. Smaller businesses are typically less covered by collective agreements.[149]The absence of collective agreements is essentially characteristic of the sector as a whole and it is clear that employees of larger enterprises have a significantly better chance of being covered by collective agreements. Where collective bargain would be possible, or is encouraged by law, compliance with the rules and implementation is not adequate.[150]
It is clear from the data that trade unions are better organised in sectors dominated by larger employers. The breakdown by company size shows that where fewer than 50 persons work at a given place of

[144] Regular violations of right. ITUC Global Rights Index. The world's worst countries for workers: https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index- 2019-report-en-2.pdf downloaded: 1 May 2022
[145] Fenwick – Howe – Marshall – Landau op. cit., pp. 49–50
[146] Biagi i. m., p. 454
[147] Hajdú – Kun 2012b, p. 159
[148] Hajdú – Kun 2012b, p. 160
[149] Biagi i. m., p. 456
[150] Biagi i. m., p. 457

business[151], the ratio of employees belonging to trade unions is below average; in the case of places of business with fewer than 10 workers, less than 4% of the workers are union members. By contrast, the ratio of union members grow proportionally at places of business with more than 50 employees. At sites with 50-299 workers and at sites with at least 300 workers, 13.2% and 16.6% of the employees said they belonged to unions, respectively.[152] These statistics are not surprising at all. Trade unions can carry out meaningful activities in relation to larger employers, and it is primarily these with whom fighting for higher wages and concluding collective agreements actually makes sense. In the SME sector their activities cannot really be effective, the reasons for which include organisational fragmentation and the lack of available (attractive) services. This relationship is also observed when union membership is scrutinised in a breakdown by the employer's form of ownership. The proportion of trade union members is extremely low at private companies (4.7%), it is slightly higher at employers owned by municipalities (8.5%) and it is still relatively high at fully state-owned employers (19.5%) where the culture of industrial relations is considered to be traditionally the most highly developed.[153]

Collective agreements at SMEs

In the light of the above (low proportion of union membership) it would be apparently easy to give a negative answer to the question of whether it is possible to conclude collective agreements in the SME sector; however, the domestic legal regulations actually make it possible for an SME to be the subject of a collective agreement. In the case of collective agreements concluded with the involvement of multiple employers the employers concerned conclude collective agreements, of the same contents, on their own, with the trade union or unions that are capable of concluding collective agreements with them. The Labour Code makes it possible for trade unions to conclude collective agreements with employers' interest organisations. Such organisations (usually) operate in the legal form of the federation specified in Section 4 (3) of Act CLXXV of 2011 on the Freedom of Association, Non-profit Status and the Operation and Support of Civil Organizations.[154] Their goal is, in accordance with the provisions of the Fundamental Law, to promote and protect the social and economic interests of their members. According to Section 276 (1) a) of the Labour Code in addition to being established and operating in accordance with the applicable statutory regulations an employer interest representing organisation must also be authorised by its members to concluded collective agreements in order to be able to do so. The legal form of such authorisation is typically a provision to this effect in the statutes of the organisation.

In the case of a (sectoral/subsectoral) collective bargain concluded by the employer's interest representing organisation[155] ten percent of the employees employed by the employers to be covered by the agreement need to be union members for the trade union to have the right to conclude a collective agreement.
The question is, whether when the collective agreement is concluded by an employers' interest representing organisation, the right is to be "assessed" in aggregate or separately at the various employees on the employees' (trade union's) side, or if the assessment of the right differs if the collective agreement covering multiple employees is concluded not by an employer's interest representing organisation but by employers themselves, without the involvement of an interest representing organisation. In the case of a collective agreement concluded by an employer interest representing organisation it follows from the law that the right is to be assessed on the whole (which is referred to by the term "covered by" in Section 276 (2) b) of the Labour Code); i.e. it is not necessary that 10% of all employees of every employer that is a member of the given employer interest representing organisation be a member of a trade union; the collective agreement so concluded applies to the members "*ex lege*". On the contrary, if the collective agreement covering multiple employers is concluded not by an employer interest representing organisation, the condition which applies to so-called single employee collective

[151] This expression is used by the CSO but it should be noted that this concept makes no sense for statistics; moreover, the concepts of "place of business" and "independent place of business" have their own specific interpretations under the labour law. For more detail, see: Kiss György: Munkajog (*Labour law*), Osiris, 2005, pp. 106-107 o.
[152] https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_szerv9_01_28.html
[153] https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_szerv9_01_26.html
[154] Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations must be applied to the establishment and operation of employer interest representing organisations, besides the rules of the Civil Code.
[155] Section 276 (1) of the Labour Code

agreements, i.e. that there must be a trade union (trade unions) with a right to conclude collective agreements 'vis-à-vis' every single employer, must be met. In this way collective agreements with a wide variety of different subjects can be concluded; for practical reasons (to prevent subsequent disputes) particular attention should be paid right at the time of the conclusion of the contracts, to identifying the person(s) whom any subsequent modification requirement will create obligations to negotiate with. This is not a relevant matter on the part of the employer side, since a collective agreement concluded by multiple employers is not different in any way from a collective agreement concluded by a single employer from the aspect of the ability to conclude collective agreements. In summary: even an SME can (even with a very low level of trade union presence) join an employer interest representing organisation and be the subject of a collective agreement.

Another fact to be emphasised is that depending on the prevailing economic and social conditions and circumstances trade unions experiment with varying organisational forms,[156] which appear markedly in the SME sector as well, all over the world. Trade unions undertake to promote in practice the interests of all economically dependent employees, and self-employers as well, in which organisation efforts new challenges are posed by newly appearing forms of employment as well.[157] This involves organisations of persons of legal statuses similar to those of employees[158] who conclude collective agreements with the persons ordering the performance of work. On the other hand, the "freedom of organisation (and even more the right to collective bargaining) of self-employers may be restricted by the competition law to some extent, as appropriate".[159] It may seem anachronistic where this quasi "sector" actually belongs technically (from the aspect of the "interest position" of micro enterprises and self-employed persons).

Such agreements are in place in Austria, Germany and elsewhere.[160] Section 12a ("*Arbeitnehmerähnliche Personen*") of the German tariff contract law (*Tarifvertragsgesetz*, TVG), may be considered as traditional in this regard.[161] This provision stipulates that the tariff contract law must

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[156] Today "*on the one hand* trade unions representing an innovative, open and networking type organisation logic, and other flexible interest representing structures of an alternative nature, appear." "*On the other hand* , the initial forms of collective bargaining appear in the platform economy as well." and "*Thirdly*, novel forms of strikes and collective actions also break to the surface ... " These phenomena are frequently referred to in technical literature as "alternative" trade union activities ("Alt Labour"). Kun Attila: Munkajogviszony és digitalizáció: rendszerszintű kihívások és a kezdetleges európai uniós reakciók. (*Labour relation and digitalisation: systemic challenges and initial EU responses*) In: Pál Lajos; Petrovics, Zoltán (ed.) Visegrád 15.0: A XV. Magyar Munkajogi Konferencia szerkesztett előadásai (*Edited presentations of the 15th Hungarian labour law conference)*. Budapest, Hungary: Wolters Kluwer (Budapest), 2018. p. 408 See also: Rácz Ildikó: A munkaügyi kapcsolatok, a munkát végző személyek kollektív jogainak érvényesülése a digitalizáció korszakában (*Industrial relations, exercise of the rights of working persons in the age of digitalisation*). Budapest, 2019 Available at: https://drive.google.com/open?id=19SuVbnnXv1BZBEvQMuU3fHpIIQzTbhFl

[157] „'Employees', 'workers', the 'self-employed' ('bogus' or otherwise) do not exist in rerum natura". Countouris, Nicola – De Stefano, Valerio: New trade union strategies for new forms of employment. ETUC. Brussels. 2019. pp. 19

[158] For more on the challenges facing the domestic regulation: Kiss György: A munkavállalóhoz hasonló jogállású személy problematikája az Európai Unióban és e jogállás szabályozásának hiánya a Munka Törvénykönyvében. (*Problems relating to the 'person of a status similar to that of the employee in the European Union and the absence of the regulation of this legal status in the Labour Code*) *Jogtudományi Közlöny* 2013, Vol. LXVIII., No. 1, pp. 1-14; Gyulavári Tamás: A gazdaságilag függő munkavégzés szabályozása: Kényszer vagy lehetőség? (*Regulation of economically dependent work: necessity or opportunity?*) *Magyar Munkajog E-folyóirat*, 1. pp. 1-25

[159] Kun Attila: A digitalizáció kihívásai a munkajogban (*Challenges of digitalisation in the labour law*) In: Homicskó Árpád Olivér (ed.*): Egyes modern technológiák etikai, jogi és szabályozási kihívásai. (*Challenge of ethics, legislation and regulation of certain modern technologies*)* Károli Gáspár University, Faculty of Law and Political Sciences, Budapest, 2018. p. 134. Cf.: 4 December 2014 FNV Kunsten Informatie en Media judgement, C-413/13, ECLI:EU: C:2014:2411. Rácz Ildikó: A kollektív jogok érvényesülésének lehetőségei a platform-munkavégzés esetében. (*Possibilities of the exercise of collective rights in platform work*) *Miskolci Jogi Szemle*, Vol. 13., No. 2. Book 1. 2018. pp. 143-158

[160] Kiss op. cit.383

[161] The regulation dates back to the early 1900s and was encoded in the TVG in 1974 after several statutory antecedents. See in: Brecht-Heitzmann, Holger – Kempen, Otto Ernst – Schubert, Jens Martin – Seifert, Achim (Hrsg.): Tarifvertragsgesetz. Frankfurt am Main, 2014. Bund Verlag, 1694

be applied in the case of persons of the "similar to employees" legal status. The essence of the – rather complicated – statutory definition of this category of persons is that these are persons in an economically dependent situation, in need of social protection similarly to employees, performing their activities under assignment contracts or service contracts, perform in person and work for the most part for a specific person or at least half of their income from work on average comes from such single person.[162]

Accordingly, the TVG makes it possible for the such persons' interest organisations[163] to conclude collective agreements with those of the principal or client side.[164]

The above topic (the changing of the traditional membership of trade unions) is closely related to trade unions' – globally observed[165] – loss of membership during the past two decades, primarily in the SME sectors. Understanding this however, requires an analysis of the unions' motivations as well, which are focused primarily on increasing their membership (raising the proportion of union member employees) and on achieving adequate influence on (power in) employers, which can evidently become more "palpable" at larger employers. This is closely associated with the fact that trade unions' operations are financed (primarily) by membership fees. Persons who are not in an industrial relationship, self-employers and those working in the informal economy (in non-classifiable frameworks) are outside the scope of this traditional logic.

Trade unions' activities are thus (for the most part) limited to the provision of information (primarily through extended free legal aid networks), facilitate adequate flows of information and carry out organising activities in social media (often forming online "groups" themselves). It is not a mere coincidence that the issue of various alternative organisation possibilities have become a central subject element of international trade union trainings.[166] From the perspective of trade unions at present the primary goal is to reach out to such persons and so keep in touch with them (the technical term for which is "subscription").

Distinguishing the employee status from other similar ones[167] is of practical relevance because under the industrial relationship an employee is provided with social protection of a kind which does not exist in the legal relationships of a person working independently (running their own business, working as a contractor).[168] The draft of the Labour Code did contain a regulatory concept for this,[169] which would have introduced the concept of 'person of legal status similar to that of the employee'[170] (according to the justification these are persons engaged under civil law contracts, whose regular and permanent work for the same person does not conceal employment contracts), for which persons the provisions regarding holiday, notice period, severance pay, liability for damages and mandatory minimum wage would have been applicable under the law as long as their regular monthly income did not exceed five times the minimum wage. This concept, however, enjoyed no political support eventually and was even

[162] TVG Section 12a. (1). In the case of certain activities (e.g. journalism) the lower income itself may also justify that the persons performing them are covered by the act.
[163] György Kiss argues that the limitation of employee interest representing organisations to trade unions and the granting of the right to conclude collective agreements only for trade unions is becoming more and more outdated in today's labour law. Kiss György: A jogalkotó felelőssége a munkajog állapotáért. (*The legislator's responsibility for the condition of the labour law*) In: *Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére*. (Convivial studies in honour of the 70th birthday of György Lőrincz). HVG-Orac, Budapest, 2019. p. 222
[164] The practical importance of this provision lies today primarily in the media industry. See in: Brecht-Heitzmann, Holger–Kempen, Otto Ernst–Schubert, Jens Martin–Seifert, Achim (Hrsg.) i. m. p. 1696
[165] The data series of the Organisation for Economic Co-operation and Development is available here: https://stats.oecd.org/Index.aspx?DataSetCode=TUD downloaded: 24 May 2022
[166] See for example: https://www.eza.org/en/publications/project-reports downloaded: 25 May 2022
[167] In this regard see, in particular: Gyulavári Tamás: *A szürke állomány– Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán,* (*The grey staff – Economically dependent work on the borderline between industrial relationship and self-employment*) Pázmány Press, 2014.
[168] Bankó – Berke – Kiss: op. cit. p. 175.
[169] Section 3 of the Draft
[170] Kiss György: The Problem of Persons having Similar Legal Status as Employees (worker) and The Absence of Regulation of this Legal Status in the Hungarian Labour Code. In: György, Kiss (ed.): Recent Developments in Labour Law, Budapest, Akadémiai Kiadó, 2013. p. 259-279

severely criticised by the trade unions because in their opinions the proposal was not aimed at "whitening" employment and would have caused practical issues by mingling branches of law (civil law with labour law) and legal relationships (service contract with industrial relationship). Accordingly, it is not clear whether agreements of such contents can validly concluded at all in Hungary and only rather rudimentary attempts have been made at such organising activities, so this is a question primarily of theoretical relevance. The trade union of Hungarian motion picture makers (Magyar Mozgóképkészítők Szakszervezete) was established in 2018. Their charter stipulates that "its members are *persons* engaged in television-related activities or film making, or motion picture making in other areas or in its supplementary functions, who agree with, and support the aims and values of the organisation".[171] The field of motion picture, film, video and television programme production is fraught with violations involving black employment, including, in particular, employment under sham contracts; the union set itself the objective of changing this unlawful "practice". Similar challenges are facing the activities[172] of the Hungarian Trade Union for Taxi Drivers[173] which was established in 2015 and is fighting for changes to the legal regulations on passenger transport by car. The organisation's objective is to promote the interests of "*individual entrepreneurs, business associations* and employees (members), organising itself on a professional basis associated with their *business undertaking and service provision* (working) conditions". Albeit the domestic legal regulation – typically – does not regard taxi drivers as employees, yet the taxi drivers' community (as a kind of an interest community) does, from time to time, organise major pressurising, so-called 'direct labour actions' with the aim of asserting their interests, placing even the government under definite pressure. One such example was the recent Uber dispute at the end of which the passenger transport service provider gave up its position and left Hungary.[174]

G) Participation

In the Hungarian labour law in place after the regime change the interest protection rights (rights to influence, rights to voice opinions on matters) constituting the content of the representation relationship are – following Western European patterns (under German influence, for the most part) – are shared between trade unions and works councils. About one in five employees encounter works councils at their employers in Hungary, primarily at large employer organisations.[175] Despite the fact that the Labour Code regulates the conditions for the election of works councils, for lack of sanctions they are not established in many cases. Employee awareness is key in this regard. Works councils are elected by employees at all employers – and at the employers' independent place of business by the employees working there – where the number of employees is at least 50 (in the case of a headcount of 15 a shop stewards can be elected). A place of business shall qualify as an independent one if its head is vested with powers in respect of the works council's certain rights of participation. In Hungary the presence of works councils at employers decreases also by company size. According to the results of the 2020 Q1 query of the CSO (employees aged 15-64 by the existence of works council/public servants' council shop steward elected by the employees. operating at the workplace) workplaces in Hungary are characterised by the following coverage data (by size).

Table 3: Works council coverage (CSO)

	Operates	Does not operate	Does not know (thousand people)
1-10 workers	14.5	457.3	43.9
11-49 workers	78.5	829.3	147.2

[171] http://mmksz.hu/wp-content/uploads/2018/04/alapszably.pdf downloaded: 25 May 2022

[172] http://kamaraonline.hu/cikk/uj-taxisrendeletet-kovetel-a-magyar-taxisok-szakszervezete downloaded: 25 May 2022

[173] Also operating in this field is the Independent Trade Union of Taxi Drivers (Taxis Gépkocsivezetők Független Szakszervezete).

[174] Fodor T. Gábor – Nádas György – Szabó Imre Szilárd: *Kollektív munkaügyi viták és az alternatív vitarendezés lehetőségei a közúti közlekedés területén*. (Collective labour disputes and alternative dispute settlement possibilities in road transport.) Budapest, HVG-ORAC Lap- és Könyvkiadó Kft., 2018. p. 18-20

[175] https://www.ksh.hu/stadat_evkozi_9_1 downloaded: 25 May 2022

50-499 workers	185.9	617.0	225.7
More than 500 workers	281.8	266.4	154.1
Doesn't know but more than 10 workers	54.6	258.6	126.7

H) Social security

Social security is one of the topics regarding which even the relevant ILO convention (C102)[176] allows regulation to be differentiated by the size of the employer, whereby the convention takes into account the capacities of the developing countries as well.

The explicit and direct cost of the social security contribution and other "social insurance" paid for employees are borne by all businesses regardless of their sizes and economic strength. Accordingly, some states[177] exempt their SMEs from the social security contribution payment obligation to reduce their burdens.

In the developed countries there are no substantial differences between employees of the SME sector and those of larger companies, and any existing difference is largely compensated by the state providing social services for employees.[178]

A very large proportion of the employees of small enterprises in developing countries do not have social security coverage, or they only have some form of social protection including coverage for health, disability or unemployment, along with pension, maternity and child care leave.[179] Even where some protection is provided for employees, it is rather rudimentary.

In many cases the social safety net does not cover employees because they are being employed illegally, so they have no declared industrial relationship, or they are excluded from the system merely on account of working for employees that are not – by virtue of their size – obliged to contribute to the revenues of the social security system.

The provision of social protection is, however, one of the most fundamental obligations of the state, and one of the key elements of employment (job) quality and decent employment; consequently, this practice only deepens poverty among the workers concerned, therefore it is not acceptable, regardless of whether it caused by exemption by law or by illegal employment.

I) Other factors affecting job quality

This part of the paper analyses only the legal aspects of employment quality, however it needs to be noted that employment quality is affected and determined by numerous other factors as well. Such factors include, including, in particular, but not exclusively, the issue of job stability, the lack of knowledge and information, human resource management, geographical factors or even the economic sector in which the given SME is operating.

The issue of job stability

Although a significant proportion of new jobs are generated in it, the SME sector is the one in which the largest number of already existing jobs are terminated. Small and medium-sized enterprises have a rather weak survivability. In terms of the survivability, the following can be concluded on the basis of an

[176] C102 - Social Security (Minimum Standards) Convention, 1952
[177] Less than 10% of the ILO member states use the instrument of exemption – of businesses employing not more than 5, 10 or 20 persons – from the social security rules. For example: in Liberia, Niger, Sudan, Bahrain, India, Indonesia, Pakistan or Vietnam, Source: Daza, José Luis: Informal Economy, Undeclared Work and Labour Administration, Dialogue Paper 9, ILO, Genf, 2005, p. 24
[178] Faundez i. m., p. 11
[179] Job Quality and Small Enterprise Development, i. m. p. 2.

analysis of five years of operation of businesses established in 2007 (up to 2012): A total of 60,968 businesses were launched in Hungary in 2007. In terms of headcounts, all but five of them were small and medium-sized enterprises. The number of operating enterprises decreased during the four years following their establishment continuously, although at a decreasing rate. Only 38% of the businesses newly launched in 2007 were still in business in the fifth hear following their establishment. As to territorial distribution, undertakings in the Central Hungarian and in the West Transdanubian regions appeared to be the most survivable: 40% and 39% were in business half a decade after their establishment, respectively.[180]

The survival rates of newly established micro enterprises, small enterprises and medium-sized enterprises were 38%, 45% and 35%, respectively. 51% of the SMEs established in 2007 were registered as sole proprietorships, 49% as partnerships. Businesses registered in the form of partnerships however, stand a better chance of survival in the long run, probably as a result of their larger initial capital and more stable organisation form, as only 29% of the sole proprietorships, but 47% of the partnerships, were still in business in 2012.[181] A comparison of the 39–40% survival rate of the SME sector with the two-thirds rate of large enterprises, shows how SMEs in Hungary are a lot more vulnerable. It should also be noted though, that only 3 and 5 enterprises employing at least 250 workers, were launched in 2006 and 2007, respectively.[182] Accordingly, it can be concluded that job stability is weaker at SMEs than at larger enterprises.

Lack of knowledge and information

The violations found by labour inspections show that non-compliance is very often a result of the employer's lack of knowledge of the rules and the absence of the provision of 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.[183] 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. These are made even more challenging by the complexity of the legal system of the given state and frequent changes in the regulatory environment which raises questions regarding legal certainty as well.

Education and the provision of information may improve this situation considerably; this might play a key role in the improvement of the quality of employment in the SME sector. *Education, various training programmes and the provision of information* may be crucially important elements of a comprehensive labour and employment policy programme. Unfortunately however, employers at small businesses are not, in many cases, aware of the existence of training possibilities, or have serious difficulties in accessing them. Larger enterprises typically benefit more from the available training programmes than smaller ones.[184]

Mention should be made in this context of the programme entitled "Adaptation and development of NAPO programmes" under the EDIOP 5.3.7 project.[185] This involved a pilot programme developed for two age groups (lower and upper primary school students), covering two topics, intended to raise occupational safety awareness among teachers and transfer knowledge to students.[186] This is of particular importance also because in this way future employees / employers of the labour market learn about the basics of occupational safety as early as during their primary school studies.

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[180] CSO: A kis- és középvállalkozások jellemzői, 2014. November (*Characteristics of small and medium-sized enterprises November 2014*), p. 23

[181] CSO: A kis- és középvállalkozások jellemzői, 2014. November (*Characteristics of small and medium-sized enterprises November 2014*), pp. 23-24 o.

[182] CSO: A vállalkozások túlélési arányai, 2013. október (*Survival rates of enterprises, October 2013*), http://www.piackutatasok.hu/2013/10/ksh-vallalkozasok-tulelesi-aranyai-2013.html, downloaded: 31 May 2022

[183] 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. 15 http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=515, downloaded: 5 June 2022

[184] Flores, Carolina: Creating a Conducive Policy Environment for Employment Creation in MSEs in Chile, SEED Working Paper No. 61, ILO, Genf, 2003 2003, p. 17

[185] http://www.ommf.gov.hu/index.html?akt_menu=583, downloaded: 20.07.2022

[186] https://www.napofilm.net/hu/learning-with-napo/napo-for-teachers, downloaded: 20.07.2022

Of the domestic practices mention should be made of the "Tájékoztatás – Felvilágosítás" ("*Information"*) menu item at ommf.gov.hu.[187] Citizens can put their questions regarding employment here to experts directly. The answers are published – in an anonymised form – so users can browse among previously asked questions and answers. Thematic searches on the answers is also possible (e.g. on equal treatment, wage, working time, temporary agency work etc.).
Education, a variety of training programmes and the provision of information are, in our view, crucially important. It should also be pointed out however, that the dissemination of knowledge does not always accomplish its intended purpose. Those committing violations deliberately do so not because of any lack of information so on their part "there is no demand" for education. Consequently, the knowledge that should be transferred does not reach the intended target audience (the violators).

Human resource management

The owners of small businesses, managing the operation of their companies, usually like to play a dominant role in the governance of their enterprises, in the organisation of the work of their employees and in creating the working conditions; small businesses differ from larger ones in these aspects as well.[188]

SMEs have some special HR practices, because certain theories and elements of corporate human strategies cannot fully be applied by small enterprises. They typically have no HR specialists – matters of human resources are dealt with by the owner or the manager of the company. Most small enterprise managers actively participate in the performance of HR tasks and rarely employ specialists to support them in this function, while the majority of medium-sized enterprises do employ HR generalists or use external expertise. In many cases SMEs have no well thought-out, appropriate human strategies either. They do not have formalised systems either and in most cases they handle their business in an ad hoc manner as things become urgent; decisions on selection and wage increases are typically made by a single person. In general, small enterprises consider HR activities as an administrative burden. The operation of formalised systems are, however, indispensable for medium-sized enterprises yet the systems they actually have are typically misaligned to their corporate strategies and are usually not integrated. Due to their size, small businesses have, in many cases, limited possibilities for job enrichment, professional development and trainings – in certain cases this applies to medium-sized enterprises as well. SMEs are often facing labour shortages, in most cases because their wages and other benefit packages are not competitive against those offered by large enterprises, and small businesses do not use the appropriate recruitment channels for lack of expertise and funds. Besides a family atmosphere a sense of uncertainty, a feeling of exposure and a tension can be characteristic primarily of micro and small enterprises.[189]

In addition to the above, the shortage of highly trained workers also causes major problems in the domestic SME sector, where succession is not provided for either.[190]

Geographical factors

In addition to the factors scrutinised so far, wages and working conditions may also be affected by geographical circumstances. In Hungary for instance, statistics show that in the whole of 2021 the gross average earnings amounted to HUF 540,865 while, at the bottom of the list, in Szabolcs-Szatmár-Bereg county it was only HUF 303,334[191], which is a material difference.

Moreover, the survivability of small enterprises is also influenced by their geographical location. To mention a domestic example, in terms of territorial distribution, undertakings in the Central Hungarian

[187] http://www.ommf.gov.hu/index.html?akt_menu=499, downloaded: 20.07.2022
[188] Cooke, Fang Lee: Industrial relations in small commercial businesses in China, *Industrial Relations Journal,* Vol. 36., 2005, pp. 31–32
[189] Horváth i. m., for more detail, see: Cooper, – Burke, i. m.
[190] Horváth i. m., for more detail, see: Cooper, – Burke, i. m.
[191] Gross average earnings of full-time employees according to the location of the employer's registered office, in a breakdown by county and region, quarterly accummulated; https://www.ksh.hu/stadat_files/mun/hu/mun0175.html downloaded: 22 May 2022

and in the West Transdanubian regions were the most survivable.[192] Of course these circumstances also affect the social security of the employee and their family, through job stability.

Consequently, job quality is very likely to be poorer than the average – and particularly than in larger town – at SMEs operating in rural Hungary, which is a fact that should be taken into account in formulating various targeted programmes. As a result, the resources of labour administration should, for instance, not be focused exclusively on larger towns because labour inspections play an important role in promoting legal compliance and in enforcing the conditions of decent employment.

Job quality may, of course, be influenced by a whole lot of other factors as well (such as the general management of the enterprise concerned, relevant cultural factors, the economic sector in which the enterprise is operating etc.); however the most important thing to point out from the aspect of the subject at hand that no decent employment is possible without the rights analysed above.

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.[193] Employees working 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 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. Although it would be difficult to clearly establish whether there is a causal relationship between exemption from the labour law and the shortcomings in job quality but 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. The quality of work and employment (job quality) comprises a wide variety of norms at the place of work affecting the employee's economic, social, physical and mental welfare, this section however only analyses issues relating to labour law and other closely related fields. The above arguments bear out the paper's hypothesis: *exemption of SME employers from the labour law has a negative impact on the quality of employment.*

3.3. Opinions of the social partners and the economic-interest organisations

The Permanent Consultation Forum of Business Sector and the Government (Hungarian acronym: VKF) was established on 22 February 2012 to fill the gap left by the termination of the previous National Interest Reconciliation Council (Hungarian acronym: OÉT), with the participation of the Government and three interest organisations of the employer side (Hungarian National Federation of Consumer Co-operative Societies and Trade Associations, the Confederation of Hungarian Employers and Industrialists and the National Association of Entrepreneurs and Employers) and of the employee side (Democratic League of Independent Trade Unions, Hungarian Trade Union Confederation, National Federation of Workers' Councils) invited by the Government. At present this is the only forum in the business sector which offers an institutional framework for a tripartite dialogue regarding matters of relevance to the world of work. If the three sides come to an agreement on an issue, they can adopt recommendations by consensus; moreover, the forum is empowered to conclude agreements (conducting negotiations in this forum regarding the minimum wage and the guaranteed wage minimum is of particular importance). This however, does not impose concrete obligations on the Government.

There are only minute differences between the opinions of the various employee interest organisations regarding the system of employment supervision. The LIGA Trade Unions suggest that frequent labour

[192] CSO: A kis- és középvállalkozások jellemzői, 2014. November (*Characteristics of small and medium-sized enterprises November 2014*), p. 23

[193] Decent Employment through Small Enterprises: A Progress Report on SEED activities, ILO, Genf, 2003, pp. 16–17, and Reinecke – White i. m., 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; 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.

and tax inspections should be conducted in the sectors most heavily involved in black employment (construction industry, agriculture, catering, protection of property and persons etc.). The headcount of the authority carrying out labour and occupational safety inspections should be increased significantly. They suggest that a single authority should be set up with the involvement of the social partners for the performance of occupational health and safety and labour inspections and services. They also suggest that orderly industrial relations be integrated as a basic criterion in the invitations for applications under the various operational programmes and for applications for other development funds.

The Hungarian Trade Union Confederation (Hungarian acronym: MASZSZ) *finds that*[194] the dissuasive effect of the authority's inspections is, nevertheless, growing weaker and weaker, as a result of a change in legislation which has a profound impact on the authority's attitude. Upon the detection of the first violation a gradual approach is applied to small and medium-sized enterprises; it is only upon the detection of another/repeated irregularity that the authority applies the relevant sanction(s) in full.[195] In its ruling the authority first orders the customer to terminate the violation and restore compliance within a specific deadline. Where wages have failed to be paid, the primary interest is that they be paid. In case the employer fails to fulfil its obligation to pay wages within the prescribed time limit, the fine must be imposed on a mandatory basis. The question is, according to the confederation, whether this practice can be maintained and if it can, what other instruments can be used to enforce compliance. The MASZSZ notes that the requirement of maintaining so-called orderly industrial relations used to be a secondary tool encouraging voluntary compliance with the labour rules. Requirements relating to the regularity of employment, interest reconciliation at the workplace and employee participation were integrated in 2008 in the mechanism of the allocation of public moneys. An employee that committed specific violations and was charged labour fine, was not allowed to apply for budget support, or participate in public procurement procedures, for a specific period of time. According to the confederation's summary conclusions the still existing legal institution has been weakened to an extent where it has hardly any dissuasive effect.[196] In its summary the MASZSZ also emphasises that the term "black employment" should be defined and a significant part of the labour authority's resources should be dedicated to investigations focusing on it. The number, and practice (partnership/warning/labour fine), of inspections carried out by the authority should be revised in order to enable the state employment supervision to take adequately effective actions against employers violating occupational safety and labour rules.

The comments made by the employee side of the National ILO Council (which includes the opinion of the National Federation of Workers' Councils as well) on the national report on the application of the ILO Labour Inspection Convention, 1947 (No. 81) (Period under review: 1 June 2017 – 31 May 2021) emphasises among the general remarks that from the presentation of the pieces of legislation modified during the period under review did not clarify the directions and purposes of the changes, including, in particular, the new system and structure of labour inspection in place since 1 March 2021 (Act CXXXV of 2021). The report uses, without explanation, the term employment supervision appearing in the new legislation instead of the former single uniform term of labour inspection, along with the term labour inspection, just like the terms employment supervisory authority and authority for occupational health and safety, or say, the term labour inspector.

A lengthy and thorough review of the applicable pieces of legislation reveals the state's inspection tasks, scopes of power and the organisation system in relation to occupational safety and other working conditions, for the ILO however, the new system will not likely to be clear and understandable without precise knowledge of those pieces of legislation. Such clarification is also necessary because the title

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[194] Which they published in the so-called "*White Paper*": http://www.szakszervezet.net/uploads/files/egyeb/Feher_konyv.pdf, downloaded: 5 May 2022

[195] Of course this applies to the regulation in place before 1 January 2020. Moreover, Bill No. T/8013 contained other recommendations for amendments to the act on labour inspections (Met.) https://www.parlament.hu/irom41/08013/08013.pdf, downloaded: 20.07.2022 On the proposal see also: Kiss Gergely: Drasztikus változás a munkaügyi ellenőrzéseknél - hadüzenet a zsebbe fizetőknek, (*Drastic change in labour inspections – declaration of war on payers of undeclared wages*) https://www.napi.hu/magyar-vallalatok/munkaugy-munkaeropiac-ellenorzes-feketemunka-feketefoglalkozatas-hr-kasler-miklos.695971.html, downloaded: 20.07.2022

[196] After 10 March 2021, however (when Act CXXXV of 2020 on Employment Promoting Services and Subsidies and on Employment Supervision entered into force), the number of employers listed in the authority's registry, excluded from state aids, increased considerably.

of the new act does not at all refer in an unambiguous way to tasks of the state that fall in the scope of labour inspection – a term used in an uniform way in international law – but that are not aimed at ensuring occupational safety, which might in practice restrict the rights of employees seeking justice and thereby the achievement of the purpose of the convention. The employee side therefore suggests that the new structure and the related activities be described and presented in a clear, unambiguous and brief form, with references to the most important changes, and that the title of the new act be changed so that it contains a clear reference to what was previously called 'labour inspection'.

Among their substantive notes, their expert opinion highlights, *inter alia*, that

- the new act on employment supervisory inspections further reduces the list of employer violations to be investigated by the supervision in that Section 7 (1) of the act prescribes the checking of "compliance with the minimum requirements of the legal regulations regulating the employment-related relationship". The previous labour inspection law did not restrict protection to compliance with the minimum requirements (the meaning of which is defined by the implementing government decree) but extended it to the protection of the stipulations of collective agreements as regard the regulation of remuneration, working time and resting period alike. This new legislative solution is not in line with the provisions of ILO Labour Inspection Convention, 1947 (No. 81) either, because Article 3(1/a) of the Convention provides for no such restriction when it mentions enforcement of the "legal provisions". A provision of a collective agreement is considered as a legal provision under the Hungarian law, therefore it should also be covered by labour inspections.

- The organisation system of inspections is becoming more and more restricted, and distanced from the place of work; its primary area of operations has been delegated to county government offices and at the national level a ministry department[197] continues to perform all of the tasks of both (profoundly different) areas, i.e. the general conditions of employment and occupational safety. This solution raises the question of whether raising the competence to the county level is not related more to the extreme shortage of inspectors than to any possible professional reason.

- The new act limits the period of time during which an administrative fine may be imposed during supervisory procedures to one year from the date when the supervision becomes aware of the case. This provision is rather disconcerting in view of the steady reduction, year after year, of the number of inspectors, as specified in the Report. If the procedure is not concluded by the end of the one-year limit, no administrative fine can be imposed on the violator. This rule is particularly disconcerting in the light of cases involving complex working time working time accounting systems or where wages are paid on the basis of multiple legal grounds. The purpose of the regulation cannot be justified by a need for acceleration of the procedure either because the extremely small number of inspectors makes it impossible to keep within the time limit even if the work intensity is increased.

- Another question that is not clear in the regulation is that this one-year time limit for the imposition is also applicable to occupational safety cases that may take particularly long to conclude when a variety of expert opinions have to be obtained. Also unclear is what is to be considered as "becomes aware" and how can its precise date/time be proven (primarily on the part of the employee whose right has been violated), particularly in proceedings started *ex officio*, when proceedings are, as a general rule, started *ex officio*. The maximum amount of the general administrative fine is unjustifiably small (natural person: one million, organisation: ten million forints), while in cases dealt with the employment supervision the labour fine can be imposed (the minimum amount of which is 30,000 forints). (The occupational safety fine may amount to 50,000 – 10,000,000 HUF/place of business). This regulation does not conducive to effective protection of employees or effective procedures either and nor does it strengthen the dissuasive effect of the sanctions, thereby it violates Article 7 of the Convention along with Article 18 on penalties.

[197] The opinion has become somewhat devoid of purpose since the professional management tasks are currently carried out by two professional departments at the MIT. Employment Supervision Management Department and Occupational Safety Management Department.

- The number of labour inspectors continues to be so small that it is insufficient for effective inspections in the supervision of both occupational safety and general working conditions. And the headcount is even decreasing. The number of inspected employers is negligible relative to the total number of employers and has – even regardless of the COVID-19 pandemic – been decreasing year by year. Practice is not in accordance with Article 10 of the Convention, resulting in a serious violation of employees' rights to the observance of the employment regulations and occupational safety. In this regard we specifically ask for an ILO inspection and intervention to facilitate the resolving of this more than a decade old issue. The use of the COVID-19 pandemic as an excuse cannot be accepted in this case either because the number of inspectors decreased in every single year of the reviewed period, and even before 2017.

- The wording "orderly industrial relations" is not an exact and adequate one either because the term industrial relations is used in the Hungarian labour law for collective rights (Labour Code, Part Three) whereas the act on supervision associates with this term the observance of the provisions relating to individual legal relationships. Making certain state allocations conditional upon orderly industrial relations was originally related to the observance primarily of the collective rights of employees/trade unions. We suggest that the wording of the term should be altered and/or adjusted to its original meaning.

Among the opinions expressed by employer interest organisation the recommendations worked out by the Confederation of Hungarian Employers and Industrialists (Hungarian acronym: MGYOSZ) regarding the Bill on services and subsidies facilitating employment and the supervision of employment expresses quite clearly that on the Employer side the system of employment supervision is particularly important to it because it makes a major contribution to the enforcement of equal conditions of competition (level playing field) through the enforcement of the rules. For this reason, it is particularly important to us in the regulation of the supervisory system that the existing capacities of the supervisory authority be increased, with a focus on the elimination of black/grey employment. It is not clear from the Bill, on which the MGYOSZ has expressed its opinion, whether, besides the renaming of the authority, any actual substantive changes will be brought about in the practical operation of the supervision or whether the labour inspection and the occupational safety inspection functions will continue to be operating in the framework of a single authority. In regard to the above the organisation would like to have the above mentioned act be adopted and the implementing decrees be worked out by the government in cooperation with the social partners, in view of the subject's outstanding importance to the labour market.

It should be noted in regard to the role of the social partners that the ILO has made some negative conclusions concerning Hungary (Committee of Experts on the Application of Conventions and Recommendations) The International Labour Conference (ILC) is the norm-setting body of the International Labour Organisation (ILO). Its session took place between 30 May 2022 and 10 June 2022. The committee of experts on the application of international norms found against Hungary on several counts. It found lack of coordination in regard to Conventions No. 81 and No. 129 regulating employment supervisory inspections. In this regard the committee highlighted the continuous decrease in the number of labour inspectors and the increase in the number of accidents at work. In this regard the ILO asked for additional information. The ILO upheld its above findings – made in spring 2022 – and asked the Government to review the regulation in cooperation with the social partners, to which the Organisation offered technical assistance.[198]

[198] ILO: Application of International Labour Standards 2022, Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Conference 110th Session, 2022https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_836653.pdf, downloaded: 25 May 2022

4. INTERNATIONAL OUTLOOK

The chapter International Outlook focuses specifically on systems of sanctions applying to SMEs in other EEA member states. It highlights and emphasises certain relevant specifics of the SME sectors of the various EEA countries and presents so-called best practices of inspections.

4.1. Parallel regulation / partial exemption

Before the detailed discussion of the international comparison mention should be made of the concept of differentiated regulation, i.e. the possibilities of labour law regulation relating to parallel regulation / partial exemption, in particular, the deregulation of the labour markets, the state's role in regulation, and exemption from labour law rules, as an obstacle to economic growth.

4.1.1. Deregulation of the labour markets

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.

The diversity of micro, small and medium-sized 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.[199] These are two separate tasks even though they are closely related to each other.

The best way to ensure the requisites and conditions for *decent employment*decent employment is very likely by creating a regulatory environment that promotes the development, growth and compliant operation of the SME sector. The *compliant operation of businesses* is key because it makes *sustainable growth* and *economic development* possible. Companies operating in accordance with the relevant legal regulations are much more likely to guarantee full and productive employment and the availability of the requisites and conditions for decent employment where the rights of the employees and social security are guaranteed.[200] Accordingly, on the one hand, appropriate regulations must be adopted, and on the other hand, they must be enforced.

Not everybody agrees with the above; a wide variety of – often starkly contrasting – views are being put forth regarding the regulation of businesses. At one end of the scale there is the "neoliberal approach"[201] which is also supported by the World Bank.[202] The proponents of this theory and approach agree in that the legislative environment affects businesses therefore it may play a major role in keeping them away from formal and lawful operation. According to Hernando de Soto – one of the most well known, Peruvian economist, often cited by the World Bank as well – argues that poor legal regulations impede economic efficiency, restrict productivity, make the operation of businesses more expensive through extremely high costs and absurdly complex requirements which ultimately force economic actors to adopt informal practices. De Soto claims that the bad (Peruvian) legal system makes people poor (in Peru).[203] Consequently, according to his theory, the various states should minimise state regulation and not interfere with market processes. Of course this theory is not limited to the labour law – it advocates deregulation of the entire regulatory environment. As to small enterprises, it is particularly the complexity of regulations should be reduced.[204]

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[199] Fenwick – Howe – Marshall – Landau i. m., pp. 4–5
[200] Decent Work and the Informal Economy, i. m., pp. 39–40
[201] Maldonado i. m., p. 709
[202] Doing Business in 2005, Removing obstacles to growth, World Bank, 2005.
[203] de Soto, Hernando: *The Other Path, The invisible revolution in the third world,* Harper & Raw Publisher, New York, 1989, pp. 131–187
[204] Maldonado i. m., 705. és 709–710

Programmes aimed at deregulating the labour market have been launched in many countries all over the world during the recent decades. In the developing world these have taken place in most cases in the context of various structural adjustment programmes, typically with the support of the Bretton Woods institutions (World Bank, International Monetary Fund). Structural adjustments brought about labour market reforms in South America (e.g. in Argentina, Columbia, Chile, Panama, Peru)[205] and in Asia (e.g. in Indonesia, Malaysia, the Philippines, Vietnam, China, Taiwan, South Korea).[206] The deregulation of the labour market is supported in industrialised countries as well because increasing the flexibility of the labour market is presumed to promote increased productivity, thereby strengthening competitiveness in a globalising economy. Every single country takes its own specific approach to labour market deregulation, the Bretton Woods institutions however, substantially influence and impact such processes everywhere through intensively popularising what they call labour market reforms. The aim is to boost companies' productivity and efficiency, and increase labour markets' flexibility. One common element of the programmes is decentralised wage setting and reducing costs by restricting trade union activity, along with the creation of export processing zones to encourage the influx of foreign capital (e.g. in India and China). In many cases the companies operating in the export processing zones are not covered by the given country's national labour law (e.g. in the Philippines or in Sri Lanka), or they are subject to special (softer) regulations. Often governments even allow selective immigration to enable sufficient and flexible labour supply (e.g. in Singapore and Malaysia).[207]

Seemingly, even Bretton Woods institutions support the application of basic labour law norms and consider their existence to be necessary as a kind of a core of basic labour law norms and rights;[208] on the other hand, they also typically argue that high level protection of the employment relationship impedes "wage flexibility" and the "labour mobility", along with the growth of employment.[209]

For instance, the World Bank suggests that high levels of labour law protection causes the level of illegal employment to rise and makes it spread among formally and legally operating companies.[210] They claim that the high proportion of people working in the "grey economy" is a result, for example in South America, of the fact that labour programmes and policies disregard the economic impacts of wages and other working conditions, thereby they essentially reduce the number of legitimate jobs and promote the growth of the "informal economy".[211] This assertion is, however, not supported in the World Bank's publications with empirical evidence; it is much more based on presumptions.

Simon Deakin contests the labour law's calculable employment enhancing and economy boosting by proposing his *indeterminacy of labour law* concept, claiming that the economic impacts of a labour law reform cannot be calculated.[212]
Accordingly, employment policy certainly does not depend on a law,[213] therefore it is not at all sure that the desired goals can be attained, or some other, undesirable impacts will be triggered, by labour market deregulation. The World Bank's labour market reform ideas disregard the impacts the reforms they

[205]For more detail, see: Bronstein, Arturo S.: Labour Law Reform in Latin America: Between State Protection and Flexibility, *International Labour Review,* Vol. 136, 1997, pp. 13–23
[206] For more detail, see: Cooney, Sean – Lindsey, Tim - Mitchell, Richard – Zhu, Jing (ed.): *Law and Labour Market Regulation in East Asia,* 2002.
[207] Frenkel, Stephen – Kuruvilla, Sarosh: Logics of Action, Globalization and Changing Employment Relations in China, India, Malaysia and Philippines, *Industrial and Labor Relations Review*, Vol. 55, 2002Kuruvilla 2002, p. 8
[208] *Doing Business in 2004, Understanding Regulation,* World Bank, Washington, D.C., 2004, p. 29
[209] For more detail, see: *Doing Business 2010, Reforming Through Difficult Times,* A copublication of The World Bank, IFC and Palgrave MacMillan, 2009, pp. 22–26
[210] For more detail, see: *Doing Business 2010, Reforming Through Difficult Times,* i. m., pp. 22–26
[211] *Labour and Economic Reforms in Latin America and the Caribbean,* The World Bank, Washington D.C., 1995, p. 6
[212] Deakin, Simon – Sarkar, Prabirjit: Assessing the Long-Run Economic Impact of Labour Law System: A Theoratical Reappraisal and Analysis of New Time Series Data, *Comparative Research in Law & Political Economy.* Research Paper No. 30/2008, http://digitalcommons.osgoode.yorku.ca/clpe/201 downloaded: 17 September 2017
[213] Kun Attila: Az új munka törvénykönyve (*The new labour code*), In: Jakab András – Gajduschek György (ed.): *A magyar jogrendszer állapota (*The state of the Hungarian legal system*),* MTA Társadalomtudományi Kutatóközpont, 2016, p. 398

promote have on other challenges intended to be taken care of by the state. It is very likely true that in certain developing countries – just like in some developed ones – there are regulated areas / areas in need of regulation which should be revised, modernises and rationalised to boost efficiency and productivity. Of course it is also true that labour market reforms are not always and not everywhere the number one challenge facing various states and governments. In many a developing country/economy there are certain social and political issues to be faced (e.g. riots, wars). Taking an objective look at such situations it does not seem to be very realistic that labour market deregulation should be the most important element of political reforms. Accordingly, it is indispensable that states themselves determine their own political priorities and not act under external pressure.[214]

4.1.2. The state's role in regulation

The uncertainties and risks caused by labour market deregulation make it necessary to review other approaches and theories that may promote the SME sector's economic development. The theories and approaches that allow for more state regulation are based on the assumption that *state regulation is necessary because the market cannot function 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.* The most important negative impacts of market competition include, in particular, the suppression of wages and the evasion of statutory requirements, which is, of course, an illegitimate practice. Consequently, *state regulation and coordination are equally necessary if the basic labour law regulations to which employees are entitled are to be ensured.*[215] All this is particularly important for ensuring adequate 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.[216]

It is an important question whether deregulation can lead to increased flexibility in work organisation or in industry structure. Or 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 these would be supported by deregulation; no positive examples of this kind of "flexible specialisation", facilitated or created by deregulation, have been identified so far in particular in South America.[217]

Deregulatory efforts are also continuously on the agenda in Europe as well, particularly as an instrument for fighting unemployment, because the removal of regulations might – according to some – result in increased flexibility. General deregulation – affecting not only the labour law – is also one of the answers to economic problems. The reduction of regulatory obligations may essentially result in cost reductions and it applies to the labour law as well; and cutting costs may result in improved competitiveness.

Deregulation initiatives have been proposed in Belgium on several occasions but they were always replaced by re-regulatory processes because the government did not wish to support the evolution of an unchecked form of capitalism, in spite of the fact that over-regulation is present in many cases. Instead, the government – having recognised that there is a need for the state's participation – re-regulated the current issues, paying particular attention to make sure that employees in more exposed situations are not deprived of their rights.[218]

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[214] Fenwick – Howe – Marshall – Landau i. m., pp. 6-7

[215] Maldonado i. m., p. 705. and pp. 709–710

[216] Reinecke – White i. m., pp. 32–33, and Fenwick – Howe – Marshall – Landau i. m., p. 7, as well as 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

[217] Portes, Alejandro: When More Can Be Less: Labor Standards, Development, and the Informal Economy, in: Rakowski, Cathy A. (ed.): *Conrapunto – The Informal Sector Debate in Latin America,* State University Press of New York, Albany, 1994, pp. 126-128

[218] Engels, Chris: Deregulation and Labour Law: The Belgian Case, in: Blanpain, Robert (ed.): Deregulation and Labour Law, *Bulletin Comparative Labour Relations* 38, 2000, p. 40

Similar conclusions can be drawn regarding Sweden, where re-regulation also overwhelmed the deregulatory endeavours,[219] because they did not want to end up with insufficient regulation while striving for increased flexibility. Of course the employer side keeps pressing for deregulation in Sweden as well, to facilitate job creation.[220]

The same initiatives led to similar results in Germany. Accordingly, no comprehensive deregulation experience is available; a few regulations were repealed at most, without any significant impact.[221] The deregulation processes affecting the labour law in Germany are vehemently opposed by the trade unions, arguing that it only leads the restoration of uncontrolled capitalism and does not facilitate the attainment of the stated goal, i.e. it does not alleviate problems caused by unemployment. Instead, the trade unions consider reduced working time as a possible solution for addressing the problem of unemployment, for which they have been fighting successfully.[222]

Accordingly, states and governments continue to play an outstanding role in shaping and developing appropriate regulatory environments. This is particularly important in regard to small enterprises because without adequate funds and knowledge they will not be more than mere sweatshops engaged in ad hoc trade with the up-to-date economy or function as "household plants" working directly for a livelihood. 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.[223]

It should be pointed out however, that regulation and deregulation are not mutually exclusive concepts. The state or some other entity (e.g. market participants by collective agreements) can regulate more or less directly or indirectly, but there always is some system of rules, some regulation. For the purposes of this paper – since it scrutinises the labour law and regulations of relevance to the labour law – labour market deregulation may be used as an example. Should this happen – based on its theory – it would become possible for the market to determine the various rules itself, i.e. the contract law would replace the labour law, determine labour market transactions and legal relationships, the way it used to. But what would general rules, together with the market, substituting the state as legislator, creating regulatory mechanisms on the basis of their own preferences, actually mean in reality?[224] It is perfectly clear that this would not mean the absence of regulation; it would only be a different way of regulation.

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[219] For example: Employment contracts for definite periods of time may only be concluded in Sweden based on adequate justification (e.g. for substitution, probation period, on-demand work, project work, seasonal work), and even then, only for up to 6 months in any two-year period. No government has undertaken so far to withdraw these strict requirements to facilitate job creation at small businesses; even the social-democratic government dared only to ease this regulation somewhat when in 1996/1997 they adopted an addendum allowing contracts to be concluded for definite periods of time based on mutual agreement. Such contracts could be concluded for essentially any reason, for periods up to 12 (in certain cases 18) months during any three-year period. Source: Eklund, Ronnie: Deregulation and Labour Law: The Swedish Case, in: Blanpain, Robert (ed.): Deregulation and Labour Law, *Bulletin Comparative Labour Relations* 38, 2000, pp. 120–123

[220] Eklund i. m., pp. 131–133

[221] For example: There used to be no restrictions in Germany regarding the durations for which fixed-term employment contracts could be concluded, therefore the relevant rules have been modified and now employment contracts may be concluded for periods exceeding two years, during which they may not be modified more than three times. Another good example is that the Kündingungsschutzgesetz (the act on protection against termination of employment) originally stipulated that it only applied to employers of more than 5 employees; this rule was modified in 1996 and the scope of the act was reduced to employers of more than 10 employees. Source: Joost, Detlev: Deregulation and Labour Law in Germany, in: Blanpain, Robert (ed.): Deregulation and Labour Law, *Bulletin Comparative Labour Relations* 38, 2000, pp. 60–61

[222] Joost i. m., pp. 66

[223] Portes i. m., pp. 126–128

[224] This would be the most extreme deregulatory approach; since only one or another legal institutions under the labour law is terminated now and then in practice, no such extremes can occur.

It should also be noted that the markets themselves also need regulation – they cannot function without regulation. The key elements of market regulation are law and legal institutions which create and protect property, the rights of legal transactions and legal relationships.[225] It should also be pointed out that in the free market the will of the economically stronger party always prevails, where social considerations and social justice do not count as real values. Moreover, a number of other side effects have to be taken into account, for instance, "the decrease of state control and governance, and at the same time the increase in the market's regulatory role in a wide variety of social areas, dramatically increases the numbers of civil law and economic law suits while a dominance of centralised organisation of society by the state reduces the number of suits."[226]

It should also be mentioned here that even large – typically Anglo-Saxon – multinational enterprises themselves adopt remarkably large numbers of codes, policies, regulations and other guidelines on the widest variety of subjects, which apply to all of their subsidiaries on a mandatory basis, which can then fill these framework rules with content. The reason why this is characteristic typically of Anglo-Saxon businesses because under their legal system they have the least "over-regulated" labour law, for instance. That market participants prefer to operate without rules is therefore not a credible argument. Of course we also admit that a similar self-regulation is not the same as when the state adopts rules which are binding on all.

Undoubtedly, small businesses, just like all for-profit undertakings, respond primarily to market demand, but it should also be noted that the market is not operating in a vacuum either. The market is not positioned "out there" in an already pre-existing (given) state and political environment, since a highly functional market does not just come about by itself; much rather it depends on various institutionalised solutions and regulations as well as political interventions.[227]

In view of the above, we do not consider deregulation as a suitable option but mention has to be made of regulatory solutions that are also contained in the effective Labour Code, such as that the parties can deviate from the relevant labour legislation in their collective agreement, in many cases even to the benefit of the employer. Accordingly, the law through the provisions of collective agreements, allows the parties to adopt their own rules, in case they can agree on them with the organisations representing the employees (trade union, works council). This method should, however, not be confused with deregulation because here the various aspects of the labour law are fully regulated, only the parties are allowed to deviate from certain rules. This arrangement is also different from deregulation because even if the parties cannot come to an agreement, there is an effective rule which they must observe, therefore the text of the law is a "starting point" for their negotiations.

This is not conceivable in all areas of the labour law in its broader sense. Negotiations between employer and employees' representatives is not considered to be a viable option when it comes to matters of occupational safety or social security either. Any easing of the occupational safety regulations might contribute to further deterioration of already poor occupational safety conditions at small enterprises. And we do not consider more liberal regulation on social security because providing for it is one of the state's obligations therefore decision on the funds required for it cannot be delegated to the employer and the employees' organisations.

4.1.3. Promotion of compliant operation

Accordingly the various states not only have the possibility to work out, but are also responsible for working out, adequate regulatory environments, which is not an easy task, by far. At the same time, they must face the challenge of having to contribute to the attainment of such complex objectives as growth in the number of businesses, job creation, ensuring the conditions for decent employment, guaranteeing job quality, promoting economic growth and making sure that (small) enterprises are operating lawfully.[228]

[225] Fenwick – Howe – Marshall – Landau i. m., pp. 7–8
[226] Pokol Béla: *Jogszociológiai vizsgálódások (*Legal sociology studies*),* Rejtjel Kiadó, Budapest, 2003, p. 6
[227] Polányi Károly: *The Great Transformation,* Beacon Press, Boston, 1957, pp. 178–191
[228] Fenwick – Howe – Marshall – Landau op. cit., p. 8

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 areas[229] 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.

Everyone agrees that as many small enterprises as possible, and from as wide economic segments as possible, should be integrated in the legal economy, that their fully legal operation should be facilitated and enforced, in which state programmes may play a key role. However, according to certain studies and surveys, *labour law is one of the main factors impeding the lawful operation of small enterprises*, even if it is not mentioned among the most problematic obstacles.[230] Small businesses' attitude to labour law affects their willingness to operate lawfully on account of its complexity. Another regularly encountered argument is that *the application of the labour law inevitably results in the over-regulation of business*, obstructing economic growth. This position however, disregards the fact that the various governments may apply a wide variety of regulatory practices to attain specific political objectives, in order to facilitate for instance the lawful operation of small enterprises. There is, however, *no clear and strong evidence to support the claim that the exemption of small enterprises from the labour law – either formally or simply in practice – significantly promotes their lawful operation,* as it is well-nigh impossible to obtain relevant data. The most important shortcoming is that many states do not have accurate and recent labour market data. Many of the states that do have such information do not manage data on small enterprises separately, therefore it is not easy to identify the actual impacts and influence of the labour law on the performance and growth of the economy. Consequently, we cannot examine the impact of the labour law, as an influencing factor, separately from other factors.[231]

The above mentioned *indeterminacy of labour law* concept contests the labour law's alleged employment increasing and economy boosting function, claiming that the economic impacts of a labour law reform cannot be measured;[232] so employment policy surely does not depend on a single act,[233] and it is not at all certain that the desired objectives can be attained by deregulating the labour market or exempting small enterprises from the labour law.

Small businesses are usually operating lawfully in environments that are favourable for investment and business and where full compliance is not too expensive.[234] This is all the more important in the case of small enterprises because their costs of compliance are relatively much higher than those of their larger counterparts.[235] The reforms aimed at simplification, and reduction of costs (of registration) tend to be the ones helping small enterprises the most. Registration costs are of a more or less fixed amount and account for a considerable part of the total costs of compliance.[236]

ILO Recommendation 189 suggests that regulations resulting in inappropriate, inadequate and unjustified burdens should be removed – including those that do not encourage the hiring of employees; attention should, however, be paid to keeping up the quality of employment.[237] It is rather difficult to measure the impacts of various regulatory systems on the levels of legality of businesses' operations

[229] Occupational safety, social security, tax law, competition law, administrative law etc.
[230] Reinecke – White i. m., p. 68; Dyring Christensen – Goedhuys i. m., p. 35. and p. 42; *Business environment, labour law and micro- and small enterprises*, 2006, pp. 4–5; Schwab Klaus: The Global Competitiveness Report 2015–2016, World Economic Forum, 2015, pp. 196 http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf downloaded: 7 May 2022
[231] Fenwick – Howe – Marshall – Landau i. m., pp. 65–66
[232] Deakin – Sarkar 2008, http://digitalcommons.osgoode.yorku.ca/clpe/201 downloaded: 2022. 05. 17.
[233] Kun i. m., p. 398
[234] Decent Work and the Informal Economy, i. m., p. 27
[235] Flores i. m., p. 19; Biagi i. m., p. 456
[236] Reinecke – White 2004, p. 90
[237] Recommendation 189: Job creation in small and medium sized enterprises 6. (h)

because in practice it is difficult to distinguish an illegally operating business, which is just changing its legal status to operate lawfully, from one that is actually just established.[238]

4.1.4. Is exemption an obstacle to economic growth?

Although it is not an issue relating to the labour law but it is a generally accepted view that the fact that the cost and time required for the registration of company is one of the key factors contributing to newly established companies opting for 'informal operation'. This is, in many cases, quite understandable because the registration procedure is really expensive and takes a lot of time in the various countries. Accordingly, a reduction in the registration costs and in other regulatory burdens should necessarily promote small enterprises' lawful operation. In this way small enterprises would be covered by the formal labour law and the labour standards, as well as state supervision and control. On the other hand, in the legal economy employees would – presumably – enjoy better social protection because one frequently encountered problem is that social security contributions are not paid for employees, and also wages are significantly lower in the informal economy, than in the legal economy.[239] It is also clear at the same time, that lawful operation does not, in itself, guarantee for SME employees that the relevant labour law norms are complied with. Since labour law regulations are not always necessarily applied in practice, the extent to which programmes and policy efforts aimed at making the registration of small enterprises easier contribute to the quality of employment cannot be established with certainty. Nonetheless, there is a great potential in making it easier for businesses to become formal enterprises, because in many countries a variety of different, interrelated, administrative steps are required of businesses if they are to operate formally, thereby increasing at least the likelihood of small enterprises complying with labour law regulations.[240]

Where the social security regulation is poorly designed or imposes excessive burdens on the subjects of the employment relationship, it may increase the costs of employment further. This may also dissuade small enterprises from operating formally, in observance of the rules. By contrast, in Vietnam for instance, the relatively low level of the social security contribution limits the mobility of labour because employees do not trust that they would be provided with adequate services by the social security system, should it be necessary.[241] Consequently, they do not dare leave their immediate environment because in case of need they can rely only on their families, relatives and friends. On the other hand, if the social security contribution is too expensive, it may, being unaffordable for small businesses, also demotivate participation in the system. In Ecuador the low rates of participation of both employees and employers in the social security system is caused by low pays and businesses' low profit rates, practically excluding them from the system.[242] *Typically, small businesses point to their economic limitations as the reason for what – how decent – conditions they can guarantee for their employees. At the same time, the competitiveness of small enterprises is markedly influenced by the quality of employment they provide for their employees.* A World Bank survey found in relation to Malaysia's small manufacturing shops for instance, that the size of a business does not necessarily limit its efficiency or job quality. Malaysia's efficient businesses focus much more on competing through laying emphasis on quality. They are also very active in authorising diverse technologies, in joint ventures and in manufacturing for exports. They never cease to emphasise the importance trainings and the adoption of appropriate HR policies, whereby they encourage job stability and the acquisition of additional capabilities and skills. This finding is also borne out by an ILO study of export processing zones of the 1990s. The study found that under the same regulations conscious, innovative companies with a focus on quality pay higher wages to their employees than the national average, along with better working conditions, and of course trainings, whose vitally important consequences include improving job quality in the sector.[243]

The most frequently voiced argument for the exemption of small enterprises from the (labour)law is that this *reduces their burdens* stemming from the regulatory environment, thereby encouraging

[238] Reinecke i. m., p. 11
[239] Decent Employment through Small Enterprises: A Progress Report on SEED activities, ILO, Genf, 2003, p. 17
[240] Fenwick – Howe – Marshall – Landau i. m., pp. 67–68
[241] Nicholson, Pip: Vietnam's Labour Market: transition and the role of law, in: Cooney, Sean – Lindsey, Tim – Mitchell, Richard – Zhu, Ying (ed.): *Law and Labour Market Regulation in East Asia,* Routledge, London - New York, 2002, pp. 142–143
[242] Fenwick – Howe – Marshall – Landau i. m., p. 68
[243] Job quality and small enterprises.

entrepreneurship and economic growth. In stark contrast with this is the theory according to which exemption from the (labour) law may create a kind of a *growth trap* besides resulting in *negative discrimination of the employees* concerned. Accordingly, if, for example, small enterprises with fewer than 10 employees are exempted from the labour law or from certain rules of relevance to it, the result may even be a counter-incentive to increase their headcount to 10 or more. Accordingly, as an undertaking is approaching the limit (of 10 employees), it may choose to remain "small" if it wishes to continue to be exempt from the (labour) regulations and the related costs. In such a case, entering the world of the formal labour law is a lot more expensive than the extra costs of having 10 employees under the conventional, regular rules.

Such costs can sometimes be so high that it would not be economically worth crossing the statutory headcount limit. In extreme cases even the risk of certain companies resorting to *creative fragmentation* may arise as they look for solutions for coming under the softer rules.[244] Of course this applies not only to the labour law because the application of different tax rates may also have similar dissuasive effects. This issue can be managed in taxation by applying a staggered progressive tax rate structure, in which when the company's income reaches a given level the higher tax rate applies only to the amount above the given limit. This however, cannot be applied under the labour law because of the prohibition of discrimination; it is inconceivable that the company's first hired nine employees are not, but the tenth is, covered by the labour regulations. One good alternative solution may be the application of parallel labour rules but application in tiers or brackets is not an option in this case either, because once the company's headcount reaches and exceeds the limit the general labour rules have to be applied to all of its employees, to avoid discrimination. Differentiated labour rules are not really a good solution either. On the one hand, if the alternative (alleviated) labour rules do provide actual meaningful advantages, then reaching the limit concerned will definitely have a dissuasive effect. On the other hand, if the alternative (alleviated) labour rules do not provide real advantages, i.e. they do not disincentivise growth upon reaching the limit, they unnecessarily complicate the regulatory environment which has its drawbacks form the aspect of legal certainty.

It is not easy to obtain data measuring the impact of the labour law on investment projects, or, at small businesses, on employment. Data and surveys relating to the labour law have shifted towards employers' subjective opinions; that is, most limits are not objectively judged. This does not mean, of course, that the data so gathered are worthless or useless because employers' opinion and considerations are obviously important, as these constitute the foundations of their investment and employment decisions.[245] Surveys suggest, however, that small businesses, as employers, do not consider the labour law or other rules of relevance to the labour law, as being the main obstacle to increasing their headcounts.[246]

According to Tamás Gyulavári labour legislation is not an employment policy wonder-weapon with which employment can be materially increased. The rate of employment depends primarily on economic development, which is significantly affected changes in the global economy and the state's regulatory system (including taxes, contributions, allowances, aids etc.). Decisions on new investment projects – creating jobs – are influenced primarily by factors such as education, the vocational qualifications of the available employees, the infrastructure, motorways, the mobility of the workforce, wage costs etc. Labour regulations are usually preceded by many other factors in such lists. Accordingly, the labour law is mentioned among factors either facilitating or impeding employment; for the creation of jobs, or the increasing of employment, that is, for decisions on investment projects enabling these, however, a number of prerequisites have to be met, many of which come before labour legislation.[247] Whilst agreeing with this opinion, it should also be noted that the various atypical work conditions related to, and influence, the rate of employment; however, the labour law really cannot be regarded as an "employment policy wonder-weapon". Indeed, account should also be taken of "sacrifices" "on the altar of competitiveness" that might result from increased flexibility in the labour legislation.[248]

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[244] Homicskó – Kun i. m., p. 104
[245] Dyring Christensen – Goedhuys i. m., p. 2
[246] Dyring Christensen – Goedhuys i. m., p. 35
[247] Gyulavári Tamás: Út a rugalmasságba (*The road to flexibility*), in: KUN Attila (ed.): *Az új Munka Törvénykönyve dilemmái* (*Dilemmas of the new Labour Code*) (ex-post conference publication), Károli Gáspár Reformed University, Faculty of Law and Political Science, 2013, p. 94
[248] Kun i. m., p. 397

Small enterprise employers find access to credit and market to be the key obstacles to their economic development and obstacles to increasing their headcounts. Of the rules introduced by the state on the other hand, taxes and tax rules have adverse impacts on the operation of small enterprises; most employers regard these as the main obstacles to the proper functioning of business.[249]

According to the ILO survey the costs of labour, labour legislation, government policy and taxation are the least influencing factors as regards matters of job creation and employment.[250] Conclusions can be drawn from this survey concerning the factors taken into account by employers in making their decisions on employment and on improvements in the working conditions. The market was ranked first, followed by buildings and stores, with funds in the third position, exports in the fourth, financing in the fifth, costs of employment and labour legislation in the sixth and seventh positions, followed by government policy, and finally, taxation ranked ninth, as factors affecting matters of employment.[251]

The World Bank's survey on the investment environment – in which more than 26,000 business managers in 53 countries were asked what they considered to be the main obstacle to the operation of their businesses – came to a similar conclusion. The question there was of a more general nature and probed not the direct obstacles to increasing headcount numbers and improving job quality but obstacles affecting their operations in general. Some 60% of the companies asked mentioned labour rules as an obstacle and 16% of them considered them to be a major obstacle.[252]

A survey conducted by the World Economic Forum produced similar results regarding Hungary where labour law was only ranked 11th of the 16 obstacles listed.[253]

In surveys conducted in Hungary with a focus on factors impeding the growth of SMEs respondents usually mention high tax and social security contribution rates, the unpredictability of economic regulations and the heavy administrative burdens. Probably as a consequence of the crisis, they also mentioned insufficient market demand as a major growth obstacle. Interestingly, the questionnaire based survey conducted among SMEs made no mention at all of labour law as a factor impeding growth (although the tax and social security burdens were mentioned in the first place).[254]

According to the ILO survey employers were a lot more willing to provide their employees with advantages – e.g. training, performance incentives (commissions, bonuses), pay rises and safe working conditions – if they thought it would contribute to their businesses' economic performance. They were less willing to meet those requirements which they regarded purely as obligations prescribed by the labour law or other labour regulations, such as, for instance, written employment contracts, health and pension insurance, parental leave etc.[255]

It is concluded from the findings of the above surveys that *small enterprises as employers do not consider the costs of compliance with labour regulations as a major obstacle* that might potentially impede headcount increases. The findings of the survey may, however be weakened by the fact that the survey was based on subjective employer opinions. It must also be noted here that businesses of different sizes are affected by labour rules in different ways. Labour rules impose the heaviest burdens on medium-sized companies (with 20-100 employees), while small enterprises are less affected for

[249] For more detail, see: *Business environment, labour law and micro- and small enterprises*, 2006, pp. 4–5; and: Schwab, Klaus: The Global Competitiveness Report 2017-2018, World Economic Forum, 2017, p. 142, http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf downloaded: 1 June 2022

[250] Dyring Christensen – Goedhuys i. m., p. 35

[251] Dyring Christensen – Goedhuys i. m., p. 35 and p. 42

[252] *Business environment, labour law and micro- and small enterprises*, 2006, pp. 4-5. old., http://www.ilo.org/public/english/standards/relm/gb/docs/gb297/pdf/esp-1.pdf, downloaded: 15 April 2022

[253] Schwab i. m., p. 142

[254] Kis- és középvállalkozások stratégiája 2014-2020 (*The strategy of small and medium-sized enterprises*) (Társadalmi egyeztetésre készített tervezet) (*Draft for public consultation*) (May 2013), p. 8, https://www.nth.gov.hu/hu/tevekenysegek/gazdasagfejlesztes/hazai-vonatkozasu-dokumentumok downloaded: 21 September 2016

[255] Dyring Christensen – Goedhuys i. m., p. 43

instance as a result of exemption by law or in practice, or by operating informally.[256] Indeed, in many cases employers managing small enterprises are not even familiar with the rules which they should observe; this fact also distorts the result of the survey. Since a very large number of small enterprises are not covered by the labour law, or do not comply with the rules in practice, answers given by their employers are not considered as "decisive" results. It is also clear however, that small enterprises make strategic decisions on which elements of the regulatory environment they will and which they will not comply with. Therefore the various states should adopt responsive regulatory policies, taking into consideration the fact that the subjects of the regulation are not static and respond immediately to norms applying to them.

It is therefore key that governments should design their regulatory agendas in cooperation and in consultation with the social partners. The most important point in developing responsive regulation is that small enterprises also fully realise and recognise the costs and benefits of labour legislation and do not regard it as a necessary evil. Clearly, full compliance with the labour law norms, in all their detail, is expensive – even in view of all of the resulting advantages – and such costs are extremely cumbersome for smaller businesses. This might, presumably, be why small enterprises are fully or partly exempted from labour legislation an regulations in a broader sense. Such theories and programmes however, look only at the current – momentary – operating costs, taking into account only the costs of compliance with the labour law. They fail to take into account, however, the more long term benefits which may stem from compliance with the labour law, i.e. *more highly qualified, more motivated and more productive employees.* In other words, this approach takes no account of, and does not distinguish between, *short and long term goals*, so in the long term "keeping the small ones small" generates substantial additional costs. Such policies encourage small enterprises not to be productive or to be less productive than larger ones. These then contribute to continuously keeping their income low, as an be typically observed in most developing countries. Accordingly, at a macro level they have a negative impact on development.[257]

Reference should again be made to the survey conducted by the World Economic Forum where inadequately trained workforce was ranked 1st as a factor causing difficulties, while poor work ethic among employees came in 7th.[258] From this it can be concluded that business managers are also aware in Hungary of the fact that *the quality of employment is more important than being exempted from the labour law.*

In view of the above, the possibility that *exemption from the labour law might be the single most serious obstacle to the growth of small enterprises* should also be taken into account. Small businesses have to be provided with support; by interventions aimed to promote the growth and development of markets in which small enterprises can evolve, grow and develop their corporate culture which is largely dependent on the skills, capabilities and productivity of their workers. In other words, they have to remain competitive in the labour market as well, and that is based on the conditions of employment.[259] Therefore, the strategies aimed at boosting economic development – promoting growth and competition in the market of products – may in themselves lead to wider compliance with the norms of the labour law, particularly where this is a key element of a responsive labour regulation strategy.

4.2. Comparison of the situation in certain EEA countries with the domestic situation

The following chapter 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

[256] *Business environment, labour law and micro- and small enterprises*, 2006, pp. 4-5. old., http://www.ilo.org/public/english/standards/relm/gb/docs/gb297/pdf/esp-1.pdf, downloaded: 15 April 2022
[257] Fenwick – Howe – Marshall – Landau i. m., p. 71
[258] Schwab i. m., p. 142
[259] Reinecke – White i. m., p. 37

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

4.2.1. Poland

a) Regulation

The regulation in place in Poland, the operation and special features of its supervision, are discussed in detail in the relevant chapter of the study entitled "Concept for future directions of the development of the Hungarian labour authority's controlling system"[260] therefore we only outline the most important characteristics below.

The National Labour Inspectorate (Państwowa Inspekcja Pracy), hereinafter: NLI) is an authority y established to supervise and inspect the observance of labour law, in particular occupational safety and health regulations and rules, as well as regulations on legality of employment and other paid work.[261] Accordingly, it performs both labour and occupational safety inspections. The National Labour Inspectorate reports to the Parliament of the Republic of Poland. Supervision over the National Labour Inspectorate in the scope specified in the Act is exercised by the Labour Protection Council, appointed by the Speaker of Parliament. The National Labour Inspectorate is managed by the Chief Labour Inspector (appointed by the Speaker of Parliament), who is assisted by the deputies.[262]

The NLI widely cooperates, while fulfilling its tasks, with other (state) bodies and other organisations, such as trade unions, works councils, employers' organisations, bodies of state administration, the National Fiscal Administration, as well as the Police, the Border Guard, the Social Insurance Institution etc.[263] Besides the NLI as main organisation there are 16 district labour inspectorates and 42 sub-district offices in Poland, with a training centre in Wroclaw.[264]

The NLI is authorised to inspect not only employers, but also entrepreneurs not being employers and other entities for which work is performed by natural persons, including those who conduct economic activity on their own account, regardless of the basis for carrying out work.[265]

b) Best practices

Of the Polish best practices mention should be made of, and it is worth analysing in detail, the so-called "*First Inspection*" strategy which affected specifically the SME sector in 2016 and 2017. The inspections were focused on micro enterprises (1-9 workers), small enterprises (10-49 workers) and medium-sized enterprises (50-249 workers). The purpose of the first inspection in an enterprise was mainly to instruct and provide advice. A labour inspector carried out a comprehensive inspection of the given enterprise's legal compliance (labour law regulations, legality of employment, occupational health and safety) and thereafter they expressed recommendations/warnings with the aim of improvement (improvement notices), gave verbal instructions and issued decisions.[266] The instructive and advisory nature of the first

[260] 3. 1. 3. Visegrád countries

[261] Act 13 of 2007 on the National Labour inspector Inspectorate, https://www.pip.gov.pl/pl/f/d/208103/Act%20on%20NLI%2006.2019%20final.pdf, downloaded: 10.07.2022

[262] Report on the National Labour Inspectorate's activity in 2020 – abbreviated version for the International Labour Organization, p. 1 https://www.pip.gov.pl/pl/f/v/251660/Report%20on%20NLI%20Activity%20in%202020%20-%20abbreviated%20for%20ILO.pdf, downloaded: 10 July 2022

[263] Report on the National Labour Inspectorate's activity in 2020, op. cit. p. 5

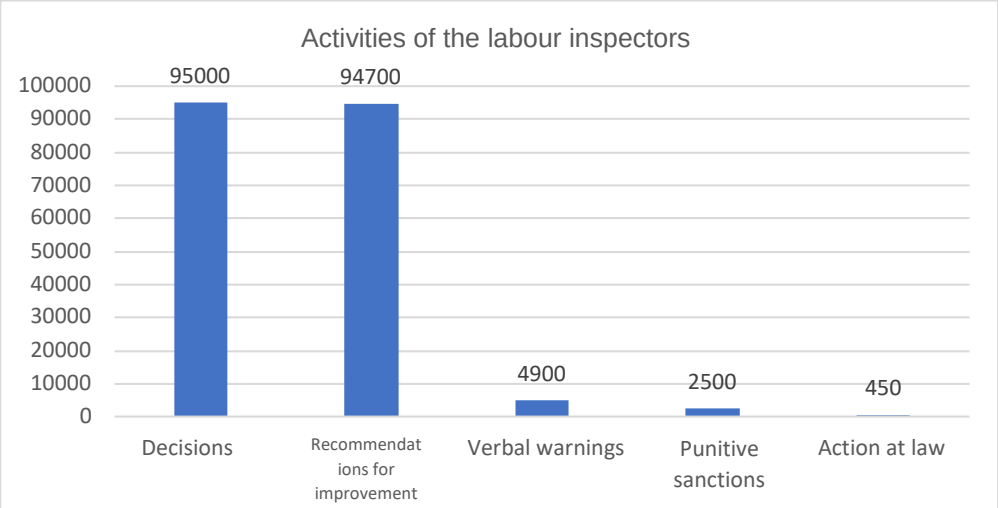
[264] National Labour Inspectorate – Structure and competencies, https://www.pip.gov.pl/pl/f/v/35972/The%20NLI%20s%20organizational%20structure%20and%20responsibilities.pdf, p. 2 downloaded: 10 July 2022

[265] Act of 13 April 2007 on National Labour Inspectorate, Section 11 (5)

[266] Report on the National Labour Inspectorate's activity in 2017 (Summary for the ILO), https://www.pip.gov.pl/en/f/v/193358/NLI%20Poland%20report%20for%202017%20summary.pdf p. 7

inspection meant that some time was left for the employer to eliminate the identified deficiencies or avoid presumable defects, and that penal sanctions (disciplinary measures) were not applied to them. Exceptions to the latter included cases of glaring breaches of occupational health and safety (OHS) regulations and rules, in particular situations of an immediate risk to life and health of workers, serious and fatal accidents as well as illegal employment and serious breaches of labour law protection rules. The figure below shows the distribution of the activities of the labour inspectors.

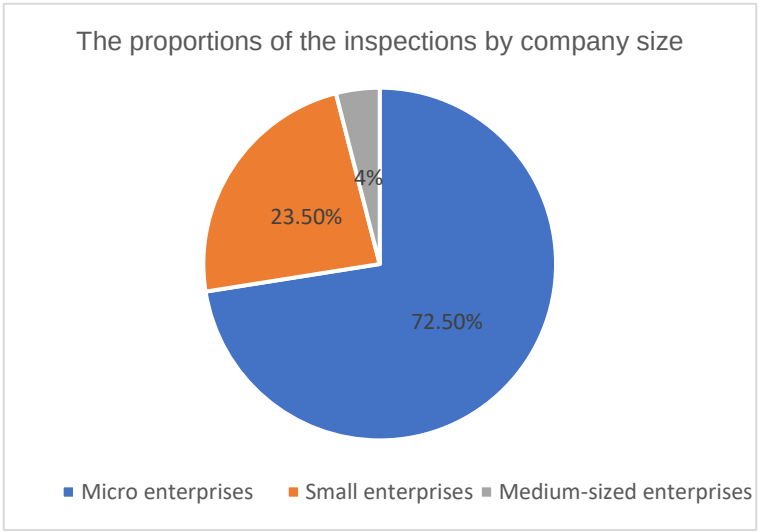
Figure 3: Activities of the labour inspectors



Source: Fostering a work safety culture in Polish companies – the role of the National Labour Inspectorate, 2018. p. 6[267]

The authority conducted more than fifteen thousand inspections in 2017. The inspections were carried out in the following breakdown in terms of company size. The diagram shows that micro enterprises were focused on, and only a very small number of medium-sized enterprises were inspected.

Figure 4: The proportions of "First Inspections" by company size

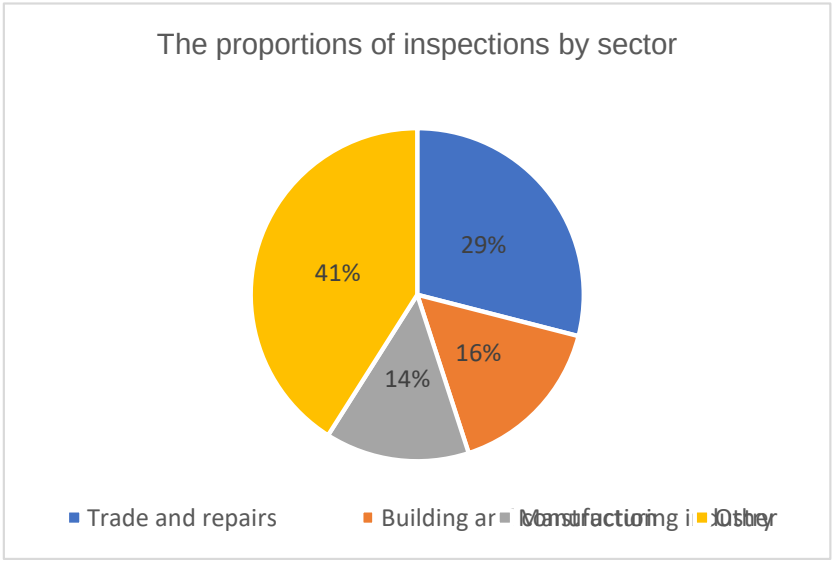


Source: Fostering a work safety culture in Polish companies – the role of the National Labour Inspectorate, 2018. i. m. p. 7.

[267] Fostering a work safety culture in Polish companies – the role of the National Labour Inspectorate, 2018. https://ec.europa.eu/social/BlobServlet?docId=20170&langId=en, downloaded: 10 July 2022

As well as company size, a figure also provides information on the sectors covered: trade and repairs were the dominant sectors, followed by construction and manufacturing, and then others in smaller proportions.

Figure 5: The proportions of "First Inspections" by sector



Source: Report on the National Labour Inspectorate's activity in 2017, i. m., p. 7

More or less the same twelve types of irregularities were found during the inspections at practically all companies. Since nearly all inspected companies were micro or small enterprises, the findings provide an insight into the issues and characteristics of compliance among these employers. Most of the irregularities committed by employers stemmed from giving preference to economic interests (e.g. at the expense of spending on human resource management) or from the lack of adequate (legal) knowledge, i.e. they did not have specialists who could have checked and monitored compliance with the requirements. Accordingly, doing as recommended or advised by the labour inspectors was, indeed, in the interest of the inspected businesses. It must be pointed out that only one in eight inspected businesses was imposed penal sanctions.[268]

The inspectors conducted a total of 1900 follow-up inspections in 2017. They established the extent to which the earlier applied sanctions were effective and checked whether any other irregularity could be identified. A follow-up inspection uncovered an average of two irregularities per company, a significant improvement in comparison with the first inspections with their average of twelve irregularities. The newly identified gaps were usually different from the ones found by the first inspections. It should be noted however, that only 302 follow-up inspections (about 15% of the total number) found issues relating to violations of employee rights.[269]

Inspectors found that employers took the "first inspection" concept positively, particularly those who had not been in business for a long time. The labour inspectors' advice and recommendations relating to obligations under the labour law prompted employers to be even more conscious about their legal obligations. During the inspections the inspectors even provided employers with promotional and educational materials, thereby encouraging them to deepen their knowledge of the labour law.[270]

Unlike in 2017, the "First Inspection" strategy in 2020 was focused only on micro and small enterprises that had not been in business for more than a year and had not been inspected before. Unlike before,

[268]Report on the National Labour Inspectorate's activity in 2017, i. m., p. 7
[269] Report on the National Labour Inspectorate's activity in 2017, op. cit. p. 8.
[270] Ibid.

irregularities of various types and natures were found this time at the 768 businesses inspected for the first time. It was established that enterprises have their tasks of occupational health and safety carried out by external specialists, many of whom provide similar services for multiple clients in different sectors. The template documents they prepared were, however, not always adapted to the given companies and their sectors. Undeclared employment was only found in 221 cases, or 28.8% of the inspections.

On the whole, it can be concluded from the Polish example that auditing/advisory type inspections do promote compliance with labour regulations. Meaning positive change may, of course, only be expected of such a programme where the irregularities are caused by the employers' lack of knowledge or the absence of competent staff. In such cases the companies "make use" of the inspectors' "free" advice, which they accept and integrate in their day-to-day practices. Some employers however, breach certain rules deliberately, in awareness of their legal obligations. They often explain this by referring to financial reasons but even this has, in many cases, been proven not to be the case.[271]

4.2.2. Italy

a) Regulation

Labour inspections in Italy are taken care of by the National Labour Inspectorate (*Ispettorato Nazionale del Lavoro,* hereinafter: INL)[272]. Inspections are regulated in detail by Decree-law 124/2004.[273] The organisation operates across Italy and is intended to ensure the implementation of all labour law and social security rules in industry, trade and agriculture, and in all wage earning situations. Accordingly, the organisation's powers cover all economic branches with a few exceptions (inland transport, quarries and mines). The INL is also in charge of controlling the application of the employment rules in the public sector as well and, in cooperation with local offices, its inspections also cover compliance with the rules on occupational health and safety, work hygiene, public health, food hygiene and even animal health.

Inspections are carried out by a number of other offices / organisations as well, functioning as partner authorities with the INL in this field, including, for instance the fire brigade, the "Guardia di Finanza", the "Carabinieri", the state police, the local police, the inspection services of the local health authorities and the Corps of the Port Captaincies. Moreover, during inspections of certain special areas, the relevant ministries are commissioned, including the Ministry for Economic Development in the case of mining operations or the Justice in the case of prisons. Authorities may determine inspections even on the basis of reports and evaluations of trade unions.

Inspectors may make planned visits based on complaints, or random ones at employers. They also carry out inspections on the basis of reports, at any time of day, even at night or on weekends, as required by the given situation. Most inspections are performed by two inspectors. An inspector may *inter alia* perform the following during an inspection: recording voluntary declarations of employees worker at the site; reviewing all of the documents of relevance to the inspection; requesting information from all state offices, labour consultancies, employers and social security institutions (INPS, INAIL, INPDAP etc.). The report is then used as evidence and as a basis of the application of any administrative, civil law or criminal sanction.[274] One problem is the insufficient number of exclusively dedicated inspectors. There are only a few thousand of such inspectors, while there are nearly eight thousand municipalities in Italy.[275] Until a sufficient staff increase the INL's inspections are based on a preventive assessment whereby they identify the sectors and areas most at risk.

Depending on the gravity of the irregularity found, the sanction may be an administrative one (a fine) or one under the criminal law (prison sentence). The following procedure is followed particularly in cases where it is possible to intervene in the procedure aimed at eliminating the irregularity: if the inspector

[271] Report on the National Labour Inspectorate's activity in 2017, op. cit. pp. 8-9.
[272] https://www.ispettorato.gov.it/it-it/Pagine/default.aspx downloaded: 10 July 2022
[273] Decreto legislativo 23 aprile 2004, n. 124. Razionalizzazione delle funzioni ispettive in materia di previdenza sociale e di lavoro, a norma dell'articolo 8 della legge 14 febbraio 2003, n. 30.
[274] ILO: Italy. https://www.ilo.org/labadmin/info/WCMS_126019/lang--en/index.htm downloaded: 10 July 2022
[275] This may perhaps be a somewhat unusual basis for comparison but the Italian organisation we contacted provided us with these data.

identifies a gap (e.g. warning signs missing) they sanction the owner of the business (imposing a fine) who will then pay a fine reduced by a percentage rate specified by law if they take action within the time frame and in the way specified by the inspector. Sanctions are imposed on the basis of a number of relevant factors, including the company's size, turnover, headcount and, in particular, the gravity of the infringement. The precise rates of the fines are specified by a decree-law.[276] According to Section 13 of Decree-law 124/2004 labour inspectors may warn employers to remedy identified non-compliances (provided, they can be remedied). Warning the employee is to be regarded as the lowest level sanction ("sanzione ridottissima").

Black employment is the most prevalent type of irregularity taking place in Italy. Local lawyers report that[277] the rate of undeclared employment is so high in Italy that cannot even be precisely expressed by official statistics. This applies particularly to Southern Italy where the number of inspections is very law. On the whole, the number of undeclared jobs is high. State bodies are considered by some not to have sufficient resources for carrying out extensive inspections, so most infringements remain undetected.

With a particular focus on *black employment* it can be stated that sanctions are differentiated by the length of the time / number of days of employment during which employers did not declare their employees. A tiered system is in place regarding the amounts of the sanctions, which may even be increased by up to 20% in the case of aggravating circumstances. Accordingly, the system of sanctions applying to undeclared employment is as follows.[278] The rate of the fine is an cumulative amount; it is to be applied on the whole for all of the violated tax, labour and administrative rules as a whole.

A 'black employer' has to pay a fine:

- EUR 1,800 – 10,800: for every undeclared employee, actually employed for not more than thirty days;
- EUR 3,600 – 24,600: for every undeclared employee, actually employed for more than thirty days but not more than 60 days;
- EUR 7,200 – 43,200: for every undeclared employee, actually employed for more than sixty days. [279]

The above amounts may be increased by 20% if any of the following takes place:

- employment of "foreign" employee (as specified in Section 22 (12) of Decree-law 286/1998[280])
- employment of minors the employment of whom is prohibited by law ("minor not employable")
- employment of people receiving citizenship income (as per Decree-law No. 4/2019)

If the employer can be regarded as a recidivist[281], the amounts of the sanction may be increased by 20% and the above percentage rates may be doubled.[282]

From the above data and the interviews conducted by the Authors it is concluded that the rates of the financial sanctions can be regarded as very high – and has been steadily increasing in recent years. Compliance has, however, not been increasing proportionally. Indeed, businesses (SMEs or large enterprises) are still more willing to face sanctions than comply with all of the legal regulations applying to them. This applies in particular to Southern Italy where the employers' position is that they are simply unable / unwilling to comply with all legal regulations. Even employees do not, according to the interviews, object to this attitude because they prefer to be paid more in cash illegally than being left with less after the payment of all taxes and contributions. Accordingly, the "logic" of undeclared employment is the same in Italy as in Hungary.

[276] Decreto Legislativo 9 aprile 2008, n. 81

[277] Based on interviews conducted by the Authors in the spring of 2022, with Italian labour law experts. The number of labour law specialists is reportedly very low.

[278] INL: Maxisanzione per lavoro sommerso, 2022. p. 5 https://www.ticonsiglio.com/wp-content/uploads/2023/05/vademecum-maxisanzione.pdf downloaded: 10 July 2022

[279] Ibid.

[280] Decreto Legislativo 25 luglio 1998, n. 286

[281] If the employer has been imposed administrative or criminal sanction during the past three years for the same violations.

[282] As per the 2019 budget act. Legge di bilancio 2019 (Legge 30 dicembre 2018, n. 145 - GU Serie Generale n. 302 del 31-12-2018 - Suppl. Ordinario n. 62)

Different sanctions are meted out for the violation of rules on occupational safety and of rules on social security.

b) Best practices

Mention should by all means made of the labour inspectors' so-called Code of Conduct (*Codice di comportamento dei dipendenti dell'Ispettorato Nazionale del Lavoro*).[283] The purpose of the Code – adopted in 2006 – was to harmonise a segment which had long been heterogeneous in the Italian system. Thus it harmonises and standardises the inspectors' work during their inspections focusing on compliance with the labour rules and on compliance with the social security rules. The Code comprises four large structural units, the first one of which lays down the general principles applying to its subject, sets the Code's scope and also discusses aspects of diligence, loyalty, integrity and impartiality. The second part lays down guidelines for conduct towards the employer being inspected, including, in particular:[284]

- *Cooperation.* Accordingly, the inspector must cooperate in the full investigation of the irregularities committed by the employer before determining the sanctions to be applied.
- *Mutual respect.* Abandoning the presumption that the employer to be inspected must have committed some irregularity, together with the approach that the trust and confidence in the state's controlling function is fully embodied by the inspector who thus "has the right to do anything".
- *Less disruption.* In the sense of non-intrusiveness into the enterprise's activity subject to the inspection visit.
- Etc.

The third part specifies the procedures and formalities to be followed during the inspection. It discusses each phase of the simplified schematic structure of the labour inspection.[285]

The fourth part contains rules of ethics to be followed by the inspectors during their visits. Sections 20-26 present the actual and adequate obligations of conduct, of which the following should be highlighted:

- the fundamental values: impartiality, objectivity, efficiency, confidentiality, professional adequacy, transparency, honesty (personal and intellectual) and integrity (moral);
- the obligation for the labour inspector to refrain him/herself performing the inspection if there are possibilities to get personal or financial advantages;
- the obligation to protect, keeping secret, the source of the complaint when the inspection visit begins following a request of intervention.[286]

Perhaps in line with the Italian mentality and culture of interest organisations there is, in Italy, an employer interest organisation for SME employees. The organisation called *Confapi* (Confederazione Italiana Piccola e Media Industria Privata, talian Confederation of Small and Medium Private Industries)[287] has been at the service of SMEs since 1947. Its main objectives and tasks include protecting and promoting the real interests of Italian SMEs at all levels and facilitate their development through dialogue with the government and the social partners. Moreover, the organisation enters into collective agreements for SMEs operating in the manufacturing, transport, services and industrial sectors. It has participated in the conclusion of agreements concerning, for example the following sectors: tourism, accommodations and outdoor facilities; business communication; agricultural and horticultural workers; workers of old people's homes, residential and social welfare institutions, those

[283] INL: Codice di comportamento dei dipendenti dell'Ispettorato Nazionale del Lavoro https://www.ispettorato.gov.it/it-it/notizie/Documents/Codice-comportamento-INL-febbraio-2022.pdf downloaded: 10 July 2022

[284] Mario Fasani: Labour Inspection in Italy. ILO, Working Document No. 11. – March 2011. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_154063.pdf downloaded: 10 July 2022

[285] For more detail, see: INL: Codice di comportamento dei dipendenti dell'Ispettorato Nazionale del Lavoro, from page 13

[286] Fasani i. m., 17

[287] https://confapi.org/it/chisiamo/la-storia.html downloaded: 10 July 2022

working in of auxiliary services etc.[288] The organisation's activity is best illustrated by the fact that more than eighty thousand businesses – employing more than eight hundred thousand workers – use the collective agreements signed by Confapi.

In addition to the above, the Confapi enters into confederation agreements with national trade union confederations, such as the CGIL[289] (Confederazione Generale Italiana del Lavoro, Italian General Confederation of Labour), the CISL[290] (Confederazione Italiana Sindacati Lavoratori, Italian Confederation of Workers Unions) and the UIL[291] (Unione Italiane del Lavoro, talian Labour Union). Confapi implements initiatives and programmes promoting the development of the country's economic and civil society development in connection with other national, and European, organisations and institutions.

For curiosity, mention should be made of a website called "*pmi.it*"[292] (piccola e media impresa, SME), providing Italian SMEs with information and services. Users can find a collection of forms with fill-out instructions, along consultancy to answer questions, thematic articles and even podcasts, discussing key issues and questions of relevance to SMEs, from a practical angle.

4.3. International trends and solutions for prevention

International examples shows 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.

It can be concluded from the above discussion 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.

Moreover, the legislator is faced with numerous challenges when it comes to developing labour regulations for SMEs, because job creation needs to be supported but at the same time the quality of employment is not adequate, and the conditions of decent employment are not met, in the 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 burdens on businesses, does not impede their development or thwart their economic growth potentials. The legislator must continuously seek for an equilibrium between the above two policy goals, but one thing is certain: it cannot simply think in terms of deregulation when decisions have to be made on labour legislation for the SME sector with the aim of facilitating their operation and competitiveness, because in a longer term it creates a growth trap and would have serious negative impacts on job quality and decent employment, in addition to be ineffective in attaining its originally identified objective. Many countries exempt SMEs from part of the applicable regulations, but they have not achieved significant positive results; job quality is still low, SMEs are not

[288] For more detail, see: http://www.confpmiitalia.it/web/elenco-documenti-contratti downloaded: 10 July 2022
[289] https://www.cgil.it/
[290] https://www.cisl.it/
[291] https://www.uil.it/storia.asp
[292] https://www.pmi.it/

operating more lawfully and they carry on with their proven methods of making strategic decisions on complying or not complying with rules.

State regulation is necessary because no market can operate properly without it. 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 and decent employment, 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.

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 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.

Responsive regulation 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.

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 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.

4.4. Recommendations

A proposal is made below for a method of regulation that can simultaneously encourage and promote job creation and economic growth and promote job quality improvement and the creation of the requisites and conditions for decent employment. As explained above – and in agreement with the relevant positions of other authors[293] – the state should not simply exempt small enterprises from the labour law or from its application in practice. Instead, the state should strive to improve the quality of employment ensure the fundamental values of decent employment, along with encouraging small enterprises to operate in a lawful and formalised way, even by contemplating the application of innovative methods. Accordingly, the aim is to develop such labour legislation – and to ensure its

[293] Homicskó – Kun i. m., 117, and Fenwick – Howe – Marshall – Landau i. m., pp. 113–114

applicability – which represents the state's interests based on the values of decent employment, and which is, at the same time, responsive to the needs of small enterprises. *Creating appropriate regulation managing closely interrelated issues such as problems relating to job quality and small enterprises' informal operation, is not only a possibility but also a responsibility for governments.* Such goals cannot be attained by exempting SMEs from the obligation to comply with labour rules.

The solution we propose is *responsive regulation* based on three principles:[294]

- In addition to concentrating on the normative content when working out (labour) legislation, attention must also be paid to the question of how the various rules can be complied with, or enforced, if necessary.
- A participatory system is more than desirable – indeed, necessary – element 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, and geared to take care of small enterprises' special needs and problems.

In working out the regulations the legislator must also take into account the need for ensuring that the regulation can be complied with, and that compliance can be monitored, and enforced, where necessary. Effective implementation is an essential element of (labour) legislation and of the accomplishment of social objectives because (legal) regulations that cannot be enforced will not likely accomplish their social objectives.[295] Most labour legislation is based on the so-called *command and control* concept. In other words, the mandatory labour rules and standards are laid down, the relevant (labour) authority is authorised to supervise implementation and control compliance, and is provided with sanctions for application in case employers fail to comply with the regulation. There are, on the other hand, quite a number of countries where such rules are – for a variety of reasons – not followed by the authorities either in the course of labour inspections or in the implementation of the regulations, regarding small enterprises. It is needless to say that certain states' failure to consistently observe their own regulations is a source of a number of issues. Authorities' picking rules they enforce and ones they do not might promote corruption as well, which then enhance these negative impacts.[296]

Moreover, adequate control and implementation is impeded by numerous practical obstacles as a consequence of neither (labour) control nor enforcement will be adequately effective. One such obstacle is inadequate funding, that is, the scarcity of funds allocated to labour authorities. By way of criticism it might be added that in other cases the labour authority may adopt a strategic decision – as part of a wider enforcement strategy – on the approach to be applied to enforcement.[297] The analysis of the ineffectiveness of regulation reveals however, that *aspects of application, controlling, implementation and enforcement should be factored in already in its very first phase, in the drafting of the rules*; they cannot be managed separately and worked out only after the adoption of the finished regulation.[298]

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, to promote compliance.[299]

It is clear that 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. Much rather, the question is what would be an ideal combination of these two strategies so that the effectiveness cooperation and sanctions can be maximised towards the ultimate objectives.[300]

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[294] Fenwick – Howe – Marshall – Landau i. m., p. 105

[295] Gunningham, Neil: Enforcement and Compliance Stategies, in: Baldwin, Robert – Cave, Martin – Lodge, Martin (ed.): *The Oxford Handbook of Regulation,* Oxford University Press, New York, 2010, p. 120

[296] Fenwick – Howe – Marshall – Landau i. m., p. 105

[297] Ayres, Ian – Braithwaite, John: Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, New York, 1992, pp. 38–41

[298] Fenwick – Howe – Marshall – Landau i. m., p. 106

[299] Ayres – Braithwaite i. m., pp. 20–21

[300] For more detail, see: Kun Attila: A munkajogi megfelelés ösztönzésének újszerű jogi eszközei (*Innovative legal instruments for encouraging labour law compliance*), L'Harmattan Kiadó, 2014, p. 28; Gunningham i. m., p. 125; Ayres–Braithwaite i. m., pp. 20–21

This type of holistic approach – focusing on enforcement as well, as early as during the elaboration of a regulation – is likely to enable the adoption of the most effective legal norms. In case questions of enforcement are already taken into account in the elaboration of the (labour) rules, the resulting norms can be expected to be more effective.[301]

The challenge is 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* of Ayres and Braithwaite; it 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.[302] In our view – although this is just a suggestion – the enforcement authority should start enforcing the regulation at the bottom of the pyramid, assuming that the rules will be followed on a voluntary basis. In case the assumption turns out to have been unfounded, escalation to the next level, with a stronger dissuasive force, is necessary. This treatment also provides a picture at the same time – through repeated interaction – on why the subjects of the regulation do not fulfil the requirements.[303]

The "enforcement pyramid" theory is a suitable tool also in working out responsive labour rules. The concept of Ayres and Braithwaite was carried forward by co-authors Fenwick, Howe, Marshall and Landau, who worked out the theory of the "labour regulation pyramid".[304] The idea underlying the regulation pyramid is that regulation can be more effectively enforced if regulators have a variety tools for enforcing compliance. The existing legal regulations and norms lay down the labour rights and standards as an unquestionable minimum conduct requirement in which case the subject of non-compliance, that is, the non-discretionary sanction, which is to be found at the top of the pyramid. These specify the objective of labour regulation and the values of the rights-based approach at the same time, as fundamental elements of regulation, beacons and, ultimately, the sources of the sanction as well.

The most effective way to achieve changes in behaviour is when the subjects of the regulation opt for compliance – that is, observance of the relevant rights and standards – on a voluntary basis and without sanctions. The same applies in the context of the labour law to small enterprises, because a behaviour enforced by sanctions will never be as effective as compliance without coercion. This is why the regulation pyramid comprises other regulatory strategies too, available for use by the state as well, often in cooperation with other regulatory actors, to achieve the desired change by introducing a responsive regulation which is sensitive to the needs and circumstances of small enterprises. Flexibility is one of the crucially important advantages of this 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.[305] It is much rather a way to formulate and graphically illustrate a number of regulatory approaches that can be applied by the state, each of which support key development goals, which is the most important objective of regulation.

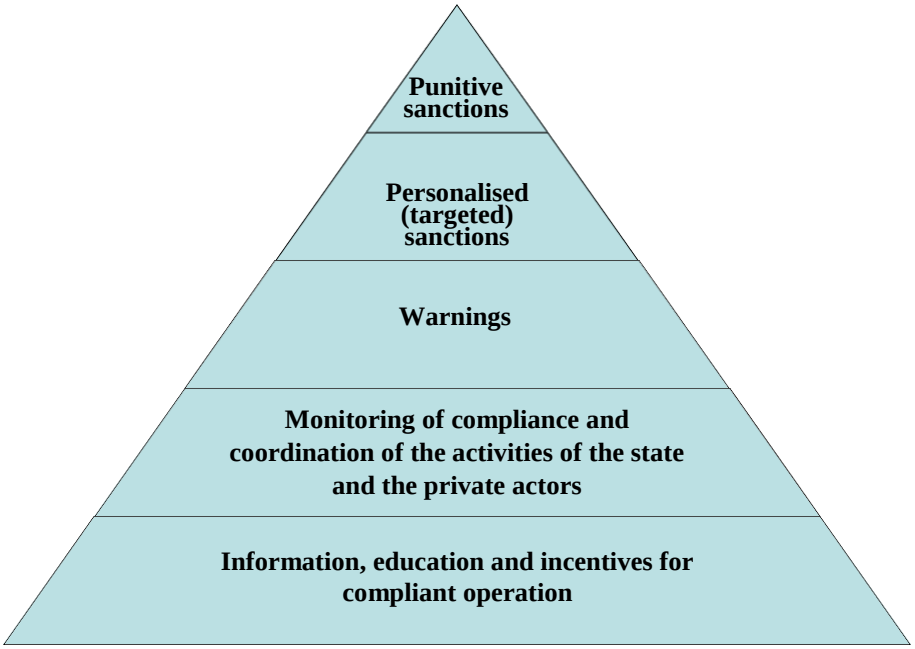
A *gradual approach* needs to be applied in this model, under which always the weakest consequences, shown at the bottom levels of the regulation pyramid, are to be applied, to the extent possible. Another also essential element of this model is, besides the gradual approach, the presence of a *punitive sanctions* at the top of the pyramid, which should have an adequate dissuasive effect on those who are unresponsive to all of the weaker instruments. The ultimate sanction however, is, however in place not only for those who are unaffected by all of the other instruments, because their presence influences the behaviour of all of the subjects of the regulation. Thus it promotes the effectiveness of the methods at lower levels in the pyramid, because disregarding them is bound to lead to the higher levels, with the punitive sanction at the top. Consequently, it has a vital tactical function as well, which may even be more important than punishing the most stubbornly non-compliant participants.[306]

Accordingly, the most essential part of the regulation pyramid, is its very top, comprising the punitive sanctions for those violating the (labour) rules. On the one hand, it is needed in order for the labour authority to ultimately have means for enforcing compliance with the rules, should the less severe legal consequences fail to achieve this. On the other hand, the mere existence of the ultimate punitive

[301] Fenwick – Howe – Marshall – Landau i. m., p. 106
[302] Ayres – Braithwaite i. m., p. 35
[303] Gunningham i. m., p. 126
[304] Fenwick – Howe – Marshall – Landau i. m., p. 106
[305] Fenwick – Howe – Marshall – Landau i. m., pp. 106–107
[306] Gunningham i. m., p. 126

sanction improves the effectiveness of the application of the other – non-punitive – legal consequences as well. However, the rest of the pyramid can, and should, be different in the various states, aligned to the local economic, cultural and political environment.[307]

Figure 6: Labour regulation pyramid



Source: Fenwick–Howe–Marshall–Landau i. m., p. 107

a) Information, education and incentives for legal operation

Information and education is based on the recognition of the fundamental fact the most common reason for non-compliance is that the subjects of the regulation are not aware of the rules, i.e., neither the employer, nor the employee knows the applicable regulation. Accordingly, legal illiteracy is the most common cause of violations and obstacle of compliance. Moreover, employers often take strategic decisions regarding compliance with (labour) rules, i.e. which rules are worth and which are not worth observing. They often take an erroneous view of labour legislation, thinking that it restricts and slows down economic growth. In such cases advice or education (on the labour law) coupled with other incentives for small enterprises may be a basis for a comprehensive enforcement strategy, the first level of the regulation pyramid. These strategies support voluntary compliance, therefore they avoid the simple but ineffective approach of regulation vs. deregulation.[308]

One example for this regulatory approach is the ILO WISE programme[309] where small business employers were informed about the close connection between higher productivity and better working conditions, the recognition of which prompts such employers to improve their working conditions. One important element of the WISE programme is the improvement of the conditions of occupational health and safety because they heavily impact job quality and decent employment. Another important element is the upkeep and development of the employees' capabilities and skills; this is indispensable for the continuous improvement of productivity. The aim of the WISE programme was to improve working conditions in the SME sector which it intended to accomplish by providing owners and managers with education and training. In exchange for improving working conditions it promised increasing productivity.

[307] Fenwick – Howe – Marshall – Landau i. m., pp. 106–107
[308] Fenwick – Howe – Marshall – Landau i. m., p. 108
[309] Work Improvements in Small Enterprises, http://www.ilo.org/travail/whatwedo/projects/WCMS_119287/lang--en/index.htm, and http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/instructionalmaterial/wcms_152469.pdf, downloaded: 21 April 2022

The programme started from the recognition that the biggest problem at small enterprises is poor occupational health and safety conditions. Neither employers, nor employees, typically care about the possible consequences of the problem. The WISE programme focused essentially on cost effective and inexpensive solutions to improve job quality. The programme wished to involve the ILO, state bodies, employers, civil society organisations as well as trade unions in the efforts toward its objective and its evaluation shows that it had a positive impact on working conditions and productivity in the SME sector.[310]

b) Monitoring of compliance and coordination of the activities of the state and the private actors

The labour authorities have to monitor the extent to which small enterprises comply with the requirements laid down in labour legislation. There is a need for an effective inspection system, adapted to the circumstances of small enterprises. For instance, positive results were also achieved in Chile by applying an inspection system adapted to the conditions and circumstances of SMEs. That system, besides investigating employee complaints, covers even the more sensitive economic branches by scheduled investigations combining the conventional labour inspection toolkit with information campaigns and analyses of compliance in certain sectors. Nonetheless, the inspection programmes are focused on sectors in which small businesses outweigh, say, the textile and clothing industry.[311]

Moreover, the authorities may involve various interest organisations in the performance of this activity. One fine example for this is the Swedish system of regional occupational safety officers. This system shows the crucial role trade unions may play in monitoring and enforcing compliance. The regional safety representative in Sweden[312] is a good example of the initiative aimed at removing the restriction according to which only the companies' employees may be representatives. In Sweden, like in many other countries, small enterprises are not obliged by the labour regulations to elect occupational safety representatives below a certain headcount. Instead, trade unions have the right to elect a safety representative from outside the company, i.e., an individual who is not the company's employee. This statutory right is the basis of the regional occupational safety representative (RSR) system. A regional safety representative can be appointed even to an employer who has at least one employee who is a member of a trade union.

The key tasks of the regional safety representative:

- as a kind of a travelling occupational safety representative they check whether the conditions of occupational health and safety are met at the visited small enterprises and demands that the necessary changes be made;
- they support the employees' participation in the performance of tasks relating to the protection of occupational health and safety, in hiring and staff training and at the local occupational safety representative;
- they propose and initiate local occupational safety tasks at small enterprises in the context of comprehensive internal inspections.

This system is considered as essentially successful because it covers the overwhelming majority of SMEs in Sweden and the occupational safety representatives have generally good relations with the occupational inspectors and the employers. The occupational safety representatives typically visit employers only once every two years, however, this is still a lot more favourable than in the case of the inspectors of the labour inspectorate who make visits once every eight to ten years on average. Moreover, the occupational safety representatives play an important role in educating small enterprises as well, and they make a significant contribution to the improvement of the work environment and thereby to the reduction of occupational accidents and diseases.[313]

The authorities may also play an important role in the systems developed along the above lines, in the coordination of inspections and enforcement between the labour administration and the representative organisations, particularly where companies also participate in the voluntary initiatives.

[310] Fenwick – Howe – Marshall – Landau i. m., p. 95
[311] Fenwick – Howe – Marshall – Landau i. m., p. 93
[312] http://www.eurofound.europa.eu/emire/SWEDEN/ANCHOR-REGIONALTSKYDDSOMBUD-SE.htm, downloaded: 21 April 2022
[313] Fenwick – Howe – Marshall – Landau i. m., p. 94

c) Warnings

The next level of the labour regulation pyramid is, before the application of formal sanctions, when the labour authorities formally notify the small enterprise concerned that it is not compliant with the labour legislation. The notification may be accompanied by a warning as well, making it clear that the enterprise should expect some sanction in the case of continued non-compliance.

Warning should be given when the education, the monitoring and the inspections have failed, i.e. they have not brought about the intended change in compliance with the (labour) law norms.

d) Personalised (targeted) sanctions

Personalised sanctions enable labour authorities to apply legal consequences in response to violations of (labour) law rules that are adapted to the infringing entity and its economic position, the gravity of the violation and other relevant circumstances.

One good example for this is the Chilean programme where small enterprises employing fewer than 10 persons may – in the case of an infringement – participate in a mandatory labour law training whereby they can avoid having to pay the fine that would have been imposed on them. This sanction is based on the presumption of the employer's acting in good faith, attributing the violation to a lack of knowledge.[314]

Another good example for personalised sanctions is the act on labour inspection in Hungary under which the employer's specific relevant circumstances must be taken into account when it comes to imposing a labour fine. In case the employee concerned employs fewer than 21 persons, the maximum amount of the fine that can be imposed is HUF 5 million instead of the HUF 10 million stipulated as a general rule, while in the case of a natural person employer it is HUF 1 million.[315] In addition, a natural person employer may file a leniency application in case their health status or financial position has changed since the date on which the decision imposing the fine has change in such a way that makes it significantly more difficult to fulfil the obligation.[316]

e) Punitive sanctions

Punitive sanctions is the ultimate element of the regulation pyramid. This might well be the most frequently applied enforcement instrument, applied by labour authorities almost everywhere, as its availability – as has been explained – is inevitable. No matter how lenient and understanding one may be about small enterprises, the availability of punitive sanctions is an essential element of all regulations, including the regulation pyramid, for the following two reasons.

On the one hand, on account of its *ultima ratio* nature, from which it follows that it should only be applied when actually necessary, i.e. when the other levels of the regulation have failed – this is because the best results are obtained through voluntary compliance, in which the relationship between the authorities and the subjects of the regulation play an important role. Accordingly, it is important not to stress the relationship between the labour authority and the employees with unnecessary sanctions; therefore the punitive sanction should only be applied based on a gradual approach, as a last resort. In some cases however, the severity of the given violation may preclude the application of the gradual approach.

On the other hand, the very existence of the punitive sanction, that is, the fact, that it can be applied by the authorities as the last resort, increases the efficiency of the lower levels. From this aspect even the fact that it is on the top of the regulation pyramid does not matter, because it is available, and, based on the gradual approach, its application is not mandatory.

In our view the theory of the labour regulation pyramid can be applied appropriately to the SME sector as well, in line with the above discussions. Gunningham claims however, that the regulatory or enforcement pyramid should be built up and applied on the basis of six milestones,[317] formed by the literature on law during the recent years:

[314] Fenwick – Howe – Marshall – Landau i. m., p. 109
[315] Section 7 of Act LXXV of 1996 on Labour Inspection (hereinafter: Labour Inspection Act)
[316] Section 8/A (6) of the Labour Safety Act.
[317] Portes i. m., pp. 126–129

1. In the case of escalation – applying higher level, more severe legal consequences – any unintended impacts must also be taken into account; a punitive legal consequence will alter the motivation of a voluntarily compliant participant if they are penalised for a minor irregularity. This may even transform a relationship of cooperation and confidence into one of dissuasion and distrust.[318] Another thing to be taken into account is that it is a lot easier to build up mutual confidence with a company or its managers without any previous legal procedure against it or them; rebuilding confidence however, is an altogether different matter.[319] In our view these observations apply much more to the SME sector, particularly where the owner themselves directly takes care of the company's affairs; they will be more influenced by their emotions than in the case of a company where business is taken care of by employed managers instead of the owner, who might take a labour sanction less as a personal offence.

2. Another crucial requirement for the proper functioning of the pyramid is that there should be no difficulties in the flow of information between the regulator and the regulated entity, even at the bottom of the pyramid. In other words, there must be real communication, since if the top managers of the employer concerned do not take warnings seriously – because, for instance, considerations of profit and other business matters are more important for them – a gradual approach makes no sense. Both the employers and the community should be made aware of the importance of these regulatory objectives. In many cases this is not easy to achieve and even more difficult may be to communicate compliance as a "business interest". This consideration of Gunningham also applies fully to small enterprises, and one can fully agree with it. At the same time, mention should here be made again of the already noted importance of education and information which, if effective, will raise awareness among business managers of the advantages of compliance and the risks of non-compliance.

3. Various categories of regulated actors should be distinguished: voluntarily compliant, reluctant compliant, incompatible and deliberately non-compliant. This is a relatively simple and clear categorisation but a static one, which is not quite compatible with the nature of the regulation pyramid because it essentially follows the strategy of questions and answers, i.e. interaction between authority and the subjects of the regulation is key. For example, if a relatively great majority is found to violate certain rules, for which there is a rational explanation, the authority must be enabled to decline to automatically apply the next level of response because negotiation and bargaining in plays a crucial role in this model, including analysing, and seeking for, realistic goals instead of simply choosing one or just automatically escalating. This should be taken into account because the various players are driven by different motives, and should thus be dealt with under different strategies.[320] Gunningham's position should – in our view – be treated with some reservations because allowing the authority to decline to apply certain rules might even lead to an erosion of the rules; indeed, increase the risk of corruption by "giving a free hand" to the person taking care of the given procedure. One suitable solution to the problem raised by Gunningham may be applying the regulation pyramid simultaneously with the other two conditions of responsive regulation, i.e. by involving the subjects of the regulation in the regulation process and by trying to make the regulation targeted by taking account of small enterprises' needs and problems. This improves the chances of the adoption of a regulation which its subjects are able to follow and the authority does not have to end up realising that it is being ignored by large numbers of small enterprises.

4. Regulation and enforcement are essentially risk-based procedures, where decisions on inspections and enforcement are based essentially on the risks associated with the subjects of the regulation.[321] What this results in is essentially ignoring the gradual approach because those engaged in activities of (possibly) higher risks are inspected more frequently and sanctioned heavily for violations, while those engaged in lower risk activities may be inspected less frequently so their minor infringements may go without sanctions.[322] A variety of problems are bound to result from this, for instance, that a large number of minor risks are typically not dealt with because of a smaller number of major risks. A risk-based

[318] Haines, Fiona: *Corporate Regulation: Beyond the 'Punish or Persuade',* Clarendon Press, 1997, p. 119
[319] Haines i. m, p. 120
[320] Braithwaite, John: *Restorative Justice and Responsive Regulation,* Oxford University Press, New York, 2002, pp. 36–40
[321] Black, Julia: Managing Regulatory Risks and Defining the Parameters of Blame: A Focus on the Australian Prudential Regulation Authority, *LAW & POLICY,* Vol. 28, No. 1, 2006. január, 4
[322] Black i. m., p. 12

approach is not contrary to the gradual approach inherent in the enforcement pyramid either but there are two differences between them in the way they manage risks. On the one hand, the more numerous minor risks must also be responded to, and on the other hand, the enterprises that are found by the first inspection to have breached rules need not, under the gradual approach, be treated in the strictest possible way. Of course this is not to say however, that the gradual approach must be applied on a mandatory basis; it is more of a recommendation and can be ignored as the case may be. In our view the above problem can be adequately dealt with even by applying the regulation pyramid, as the application of the gradual approach is not a mandatory requirement. If the labour inspector finds non-conformities when inspecting a higher risk activity, they do not have to take the gradual approach if the violation they have identified cannot be immediately remedied and the requirements not met are indispensable prerequisites for continued work; in such cases the lighter legal consequences cannot be applied and the operation of the small enterprise concerned must be suspended. Lower risk businesses are generally less frequently inspected, primarily because of the limitations of the authorities' capacities; it does not stem from the application of the enforcement pyramid.

5. It should also be noted that the regulation or enforcement pyramid is a polycentric regulation system comprising the roles of those working out the regulation, those in charge of monitoring compliance with it and those in charge of enforcing them. These functions are distributed among numerous institutions and the system is made even more complicated by certain overlaps between the judicial powers. This is absolutely normal in a complex modern society, provided the tasks are distributed in a reasonable manner.[323]

6. Finally, adequate repeated interaction between regulators and regulated – which is necessary for the proper functioning of a regulation pyramid – is missing from a large number of sectors. An inadequate response has to be given to a lighter sanction before the more severe sanction is to be applied. If however, the "response" function is not working because the regulated does not know what the correct response should be, they cannot apply the regulatory instrument received at the lower level or do not understand the problem itself. Accordingly, the regulated need to know exactly how to interpret the instruments of the regulation and how to respond and react to their application. What this requires of the authority enforcing a regulation is not only detailed knowledge of the regulation programme and the implications of the various legal consequences but also profound knowledge of the regulated, including for instance, the environment in which the given enterprise is operating, the principles and values underlying its actions, the ways they will respond to the various legal consequences and the reasons for which they will respond in those particular ways.[324] This is an immense task, without which the regulation pyramid is by far less useful. This however, requires real interaction between the two parties.

While agreeing with Gunningham's above remark, we must note that this kind of issue is also faced when other enforcement strategies are followed. Mention should, however, also be made here of the already emphasised importance of education and information: small enterprises must be fully informed of the ways they can meet the various requirements and of the purposes of the various requirements, as far as possible.

Scott argues that the first 5 items are relatively likely to be feasible but the 6th one is often practically impossible because in certain cases no repeated interaction can take place. He points so small enterprises as an example for this because authorities – having limited capacities – can only carry out occasional inspections at such enterprises therefore, he argues, the gradual approach cannot be applied to them, which is why the regulation pyramid can be applied in that sector to a very limited extent. In such cases the authorities enforcing the regulation prefer to apply one-off coercive sanctions, depending on the severity of the given violation.[325]

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[323] Baldwin, Robert – Black, Julia: Really Responsive Regulation, *The Modern Law Review,* vol. 71, January 2008, p. 93

[324] Johnstone, Richard: *From Fiction to Fact – Rethinking OHS Enforcement,* National Research Centre for OHS Regulation, Working Paper 11, July 2003, p. 18

[325] Scott, Colin: Regulation in the age of governance: the rise of the post regulatory state, In: Jordana, Jacint – Levi-Faur, David (ed.): *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance.* CRC series on competition, regulation and development, Edward Elgar Publishing, Cheltenham, 2004, pp. 145–174

Scott's remark is very important indeed; labour authorities have limited capacities and small enterprises cannot be regularly inspected. Performing targeted inspections may, however, be an option: if some non-conformity has been identified at a small business, a repeated – now targeted – inspection should be carried out in 6 or 12 months at the same employer, checking compliance with a focus on the issue identified during the previous inspection.

The regulation pyramid is not the technique to be preferred in the case of serious violations either, where the gradual approach cannot be applied. Of course this does not mean that the enforcement pyramid is an unsuitable technique. As the gradual approach is only recommended, the punitive sanction at the top of the pyramid may also be used right away when necessary, but in that case the innovative advantages stemming from the pyramid approach are lost.

Another problem with the regulation pyramid theory is that it takes more complex thinking on the part of the authority, involving the adoption of responsible decisions, for instance when they have to choose the correct response to an infringement. The regulation pyramid theory relies on interactions; if the labour inspector knows that they can expect no change on the part of the small enterprise concerned, they must proceed accordingly and apply the consequence which is bound to be effective. The regulation pyramid must not be viewed as a static option in which the first level is applicable in response to the first violation, then on to the second, the third and so on because this will result in the concept's failure.

Another requirement is that the pyramid should be adapted to the given economic, social and cultural environment, because what works in one state might be useless in another.

5. RECOMMENDATIONS, METHODS

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 a 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.[326] 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 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.[327] Moreover, the

[326] Gyulavári i. m., p. 101
[327] Fenwick – Howe – Marshall – Landau i. m., p. 41

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.[328] Employees working 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 be 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.

[328] Decent Employment through Small Enterprises: A Progress Report on SEED activities, ILO, Genf, 2003, pp. 16–17, and Reinecke – White i. m., 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 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.

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 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. 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 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.[329]

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,[330] 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.[331]

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"[332] whose basic tenet is that regulation can be more effectively enforced if regulators have a variety 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.

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.*

[329] Ayres – Braithwaite i. m., pp. 20–21
[330] For more detail, see: Kun i. m. 2014, p. 28; Gunningham i. m., p. 125; Ayres – Braithwaite i. m., pp. 20–21
[331] Ayres – Braithwaite i. m., p. 35
[332] Fenwick – Howe – Marshall – Landau i. m., p. 106

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).[333]

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 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.

[333] Homicskó–Kun i. m., pp. 104–105

6. SUMMARY

This study contains a detailed discussion of the impacts of labour law violations specifically on the SME sector. 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.[334] 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 SMEs[335], while the Hungarian ratio is 99.9%.[336] 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.[337] 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.[338] 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.[339] These are made even more challenging by the complexity of the legal system of the given

[334] Section 3 of the SME Act

[335] 2021 SME Country Fact Sheet European Union, p. 1, https://ec.europa.eu/docsroom/documents/46060 downloaded: 20 April 2022

[336] 2021 SME Country Fact Sheet Hungary, p. 1, https://ec.europa.eu/docsroom/documents/46078 downloaded: 20 April 2022

[337] 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, 2-3 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0394:FIN:EN:PDF, downloaded: 10 May 2022

[338] 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

[339] 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.,

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.[340] 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 areas[341] 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

http://kgk.sze.hu/images/dokumentumok/kautzkiadvany2010/horvath%20bianka.pdf, downloaded: 5 June 2022

[340] Portes i. m., pp. 126–128

[341] Occupational safety, social security, tax law, competition law, administrative law etc.

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 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 discussed in detail above, in the way of an evaluation of the findings of the research.

- 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.
- 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.

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