

Márton Leó Zaccaria  
University of Debrecen  
Faculty of Law  
zaccaria.marton@law.unideb.hu

## CONNECTIONS BETWEEN THE EUROPEAN PILLAR OF SOCIAL RIGHTS AND THE HUNGARIAN LABOUR LAW, WITH SPECIAL REGARD TO DIRECTIVE (EU) 2019/1152\*

**Abstract:** *The present paper examines two important and up-to-date topics in labour law. First, the analysis focuses on the general aspects and the significance of the European Pillar of Social Rights (EPSR), which is the most recent legal source – except for a couple of directives and regulations based on the EPSR itself – in the social policy of the European Union. It contains several fundamental labour and social rights and one of its main aims is to promote and to strengthen these rights and values throughout the Member States. At the same time, the EPSR is already having an impact on national labour and social law systems in the EU because of some new pieces of labour law-focused legislation. One of these new laws is the Directive (EU) 2019/1152 of the European Parliament and of the Council (20 June 2019) on transparent and predictable working conditions in the European Union that contains very important new norms regarding both the possible broad concept of the “employment relationship” and the workers’ fundamental rights. Second, the paper focuses on some relevant questions of the Hungarian labour law as a case study, analysing the possible – and already visible – impact of the EPSR and the aforementioned new directive. The paper tries to answer some questions based on the paper’s hypotheses centred on the possible change in the Hungarian regulation and legal interpretation taking into account the EPSR and the already cited directive. The analysis is based on the relevant regulations and laws, and the outcomes of the research focus both on some general remarks regarding the EPSR and the Directive (EU) 2019/1152 joint with the*

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*conclusions that can be drawn paying attention specifically to the Hungarian labour law system with special attention to the workers' fundamental rights.*

**Keywords:** *European Pillar of Social Rights, Hungarian Labour Code, labour law, workers' rights.*

## 1. INTRODUCTION TO THE TOPIC

The European Pillar of Social Rights (hereinafter: EPSR) accepted in November 2017 is expected to have a significant effect on the national labour laws of the Member States (hereinafter: MSs, MS) of the European Union (hereinafter: EU). Furthermore, there are already a number of specific legislative outcomes in connection with the EPSR, such as the comprehensive reform of the Directive concerning the posting of workers across MSs,<sup>1</sup> the confirmation of work-life balance from the perspective of labour law,<sup>2</sup> the establishment of the European Labour Authority (hereinafter: Authority),<sup>3</sup> as well as the subject of the current study, Directive (EU) 2019/1152,<sup>4</sup> which modernizes three decades of legislation<sup>5</sup> about employers' mandatory provision of information about the essential aspects of the employment relationship, and adjusts it to contemporary conditions on the labour market. Besides this, there have been several proposals under the auspices of the EPSR substantially affecting the legal status of employees, and, in general, the system of relationships between employers and employees; the proposal for a directive concerning the "European minimum wage"<sup>6</sup> or the proposal for reducing the gender pay-gap and strengthening pay transparency<sup>7</sup> can be mentioned here.

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<sup>1</sup> Directive (EU) 2018/957 of the European Parliament and of the Council (28 June 2018) amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

<sup>2</sup> Directive (EU) 2019/1158 of the European Parliament and of the Council (20 June 2019) on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

<sup>3</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344.

<sup>4</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council (20 June 2019) on transparent and predictable working conditions in the European Union.

<sup>5</sup> See Council Directive 91/533/EEC (14 October 1991) on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

<sup>6</sup> *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union*, Brussels 28 October 2020. COM(2020) 682 final, recital (4). <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52020PC0682&from=EN> (24 November 2020).

<sup>7</sup> *Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms*, Brussels 4 March 2021. COM(2021)

Besides these specific legislations, as well as social regulatory areas, the significance of the EPSR can be witnessed, on the one hand, in the need to strengthen fundamental rights of a social nature included in the Charter of Fundamental Rights of the European Union (hereinafter: CFREU), and, on the other hand, in the general legislative and academic discourse which urges the EU – and, at least indirectly, the MSs – to introduce a social paradigm shift, and, through that, at least a partial change in labour law.

Although the EPSR itself will not be sufficient in the near future to achieve that, in accordance with the EPSR's objectives,<sup>8</sup> the fundamental rights of employees reach a higher level and the labour market become more transparent and efficient, we contend that the EPSR can be a beginning for these processes which mark a truly new era for the norms of labour law and social policy within the EU. These EU efforts, however, are worthless without the MSs' willingness to introduce social reforms, since the EU's legislative powers in social matters are significantly limited,<sup>9</sup> that is, neither the EPSR, nor the abovementioned legislative products and labour law initiatives provide sufficient basis for the reformation of the legislation of the labour market, and, specifically, the status of employees. Using this hypothesis, in the present paper we examine the effects that the key areas of the EPSR,<sup>10</sup> and some specific entitlements declared in them might have on Hungarian labour law in the near future, particularly focusing on those key points that allow me to report some genuine novelties in connection with the EPSR. Therefore, following a brief general evaluation, we apply Directive (EU) 2019/1152 as a case study of sorts with the objective of using a cornerstone of current EU labour law initiatives to highlight potential deficiencies in the affected areas of Hungarian labour law as well as to call attention to the major changes expected in Act I of 2012 on the Labour Code (Hungarian Labour Code, hereinafter: LC) until the implementation deadline (1 August 2022). The present research is centred on the legal protection of employees; therefore, the analyses of legislation will be carried out from this perspective as well. In our conclusion, we attempt to highlight those current issues and future challenges which, based on the EPSR, might affect Hungarian labour law, with special attention to legislation concerning the provision of information by employers, currently being updated.

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93 final. [https://ec.europa.eu/info/sites/info/files/aid\\_development\\_cooperation\\_fundamental\\_rights/com-2021-93\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/com-2021-93_en_0.pdf) (17 March 2021).

<sup>8</sup> József Hajdú, "A szociális jogok európai pillérének körvonalai", *Acta Universitatis Szegediensis: Forum: Acta Juridica et Politica*, 1/2018, 95-96., 101. and 105.

<sup>9</sup> Ane Aranguiz, "More majority voting on EU social policy? Assessing the Commission proposal", *EU Law Analysis – Expert insight into EU law developments*, 26 June 2019. <http://eulawanalysis.blogspot.com/2019/06/more-majority-voting-on-eu-social.html> (11 January 2020).

<sup>10</sup> Sára Hungler, Éva Gellérné Lukács, Zoltán Petrovics, Katalin Dudás, *Az Európai Unió szociális és munkajoga*, ELTE Eötvös Kiadó, Budapest 2020, 35-36.

## 2. KEY AREAS OF THE EUROPEAN EPSR OF SOCIAL RIGHTS AND THEIR CONNECTION TO HUNGARIAN LABOUR LAW

It is difficult to draw well-founded conclusions as to the specific conclusion the mostly abstract reform efforts connected to the EPSR might have on Hungarian labour law. The reason for this is, primarily, that the EPSR itself currently marks a special but still uncertain position, but, additionally, it is still in question which of the abovementioned new norms will have specific legislative effects. If we examine the new stances together, in their entirety, then the need to raise the general level of the legal protection of employees, or the strengthening of equal opportunities on the labour market can be such specific areas, but – to stick to the specific examples – the comprehensive modification of the posting directive<sup>11</sup> or the establishment of the Authority have not (so far) had implications for Hungarian law. However, in some cases, the transposition of already existing legal sources into Hungarian law raises certain dilemmas on the side of employees, such as the posting directive mentioned above.<sup>12</sup>

Nevertheless, since the arch of the process and the notions of the reform plan are clearly noticeable, we contend that those areas in which we can foresee factual changes in legislation should definitely receive attention. The foundations of the new Directive addressing work-life balance are present in the LC as well, but the new principles more distinctly focus on the rights of fathers, as well as on the equality of parental positions in labour law. On the level of individual, specific norms, legislative changes can definitely occur in the future in the area of the conceptual separation of atypical-typical forms of employment relationships,<sup>13</sup> as well as in the labour law protection parents are entitled to.<sup>14</sup> The other similar question is the uniform definition of an employment relationship as described by the new directive regarding the provision of information,<sup>15</sup> and, on a related note, extending the scope of minimum standards in labour law. We should note, however,

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<sup>11</sup> For details regarding changes in Hungarian labour law, see Gábor Kártyás, *Kiküldött munkavállalók az uniós és a magyar jogban (Jogtudományi Monográfiák 15.)*, Pázmány Press, Budapest 2020, 167-222.

<sup>12</sup> Gábor Kártyás, “A sender state’s response to the new posting rules: The amendment of the posting of workers directive and its transposition in Hungary”, *Magyar Munkajog/Hungarian Labour Law Journal Online Journal*, 1/2020, 73-75 and 77-82.

<sup>13</sup> Jácint Ferencz, *Atipikus foglalkoztatási formák*, Dialóg Campus, Budapest-Pécs 2015, 172-179.

<sup>14</sup> Kolos Kardkovács (ed.), Anna Kozma, György Lőrincz, Lajos Pál, Róbert Pethő, *A Munka Törvénykönyvének magyarázata (Harmadik, hatályosított kiadás)*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest 2016, 167-169., 256-257. and 265-267.

<sup>15</sup> According to Section (2) of Article 1 of Directive (EU) 2019/1152, „This Directive lays down minimum rights that apply to every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each MS with consideration to the case-law of the Court of Justice.”

that it is, for the most part, not a question of legislation but that of legal interpretation, but, all things considered, the scope of de minimis protective legislation can, indeed, be subject to legal amendment.<sup>16</sup>

Earlier we pointed out that it is uncertain whether the EPSR would affect upcoming Hungarian legislation of the next few years in many specific questions, and we also raised the issue that since the outcome of the EPSR is still, from a certain aspect, uncertain, therefore its effects on Hungarian legislation can mostly be projected in general terms. We also have to add, however, that in a given legislative area – for example, in connection with employers' obligation to inform workers in writing –, new or modified legislations fundamentally always bring about legislative tasks as well, therefore there is cause to examine the previously mentioned key areas and the expected developments in these areas.

Out of the three key areas, the one receiving particular attention in our research is the support of equal opportunities and the fundamental right to employment, discussed in Chapter I of the EPSR.<sup>17</sup> This area attempts to summarize all those problems of the labour market which necessitated – among others – the establishment of the EPSR,<sup>18</sup> while, at the same time, it also offers solutions by strengthening certain social subdivisions. An interesting point of this chapter is that it discusses equal opportunities and the right to employment – that is, the means of facilitating that right<sup>19</sup> – in the same section, therefore it follows that equal opportunities on the labour market should be understood extensively but in close connection with national social policy. These four sections, besides being based on fundamental rights in EU law,<sup>20</sup> also highlight what a complex task is providing access to employment on the labour market, and what complex means are necessary to ensure it, especially if a MS genuinely wishes to provide it to everybody. When it comes to Sections 2 and 3, we can detect new impulses in connection with the aforementioned Directive (EU) 2019/1158, since aspects of general equal opportunities and gender equality relevant to labour law are clarified in Hungarian labour law.<sup>21</sup> We have to add, of course, that these

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<sup>16</sup> György Kiss, "A munkavállalóhoz hasonló jogállású személy problematikája az Európai Unióban és a jogállás szabályozásának hiánya a Munka Törvénykönyvében" *Jogtudományi Közlöny*, 1/2013, 11-13 and Tamás Gyulavári, "A gazdaságilag függő munkavégzés szabályozása: kényszer vagy lehetőség?" *Magyar Munkajog/Hungarian Labour Law Online Journal*, 1/2014, 17-24.

<sup>17</sup> Sections 1 (education, training and life-long learning), 2 (gender equality), 3 (equal opportunities) and 4 (active support to employment).

<sup>18</sup> Sacha Garben, "The European Pillar of Social Rights: Effectively Addressing Displacement?", *European Constitutional Law Review*, 1/2018, 212-215.

<sup>19</sup> S. Garben, 222-225.

<sup>20</sup> CFREU, Articles 14 (right to education), 15 (freedom to choose an occupation and right to engage in work), 21 (non-discrimination) and 23 (equality between women and men).

<sup>21</sup> Tamás Gyulavári, "Három évvel az antidiszkriminációs szabályozás reformja után", *Esély*, 3/2007, 5-6. and 33-35.

expectations are present not only on the level of labour law, since the social care system or the family support system<sup>22</sup> can provide real help in the fulfilment of these rights, and it can be suggested that women's position on the labour market could be strengthened further by the instruments of labour law.<sup>23</sup> Of course, equality on the labour market appears in things other than the expectation of combating gender discrimination, but, within the framework of the EPSR, we are certainly going to see new developments affecting Hungarian law in this respect.

In connection with employment policy, it is generally expected of the state to exhibit such active behaviours that create real means and opportunities to combat and decrease unemployment, and to divide effectively the available workforce.<sup>24</sup> The expected changes in connection with these sections will probably be implicit, as there is a lack of harmonisation in the EU in social policy<sup>25</sup>, therefore, the EPSR “dare not” go too far in this area. At the same time, it can take advantage of the available means, since personalized, active, genuine state help in gaining employment<sup>26</sup> in the course of one's career building is a generic but important expectation from every MS.<sup>27</sup> These days Hungarian employment policy clearly focuses on the active side<sup>28</sup> and has focused on it until the latest period characterized by a lack of workforce.<sup>29</sup> This is supplemented by special

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<sup>22</sup> Tamás Prugberger, “A munkával összefüggő jogviszonyok változása és a család”, *Családi Jog*, 3/2015, 4-6.

<sup>23</sup> Sára Hungler, Ágnes Kende, “Nők a család- és foglalkoztatáspolitikai keresztútján”, *Pro Futuro*, 2/2019, 100-101. and 109-112.

<sup>24</sup> Recitals (9)-(11) of the EPSR.

<sup>25</sup> “Member States and the Union shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union.” Article 145 of the Treaty on the Functioning of the European Union.

<sup>26</sup> See – among others – the details of research conducted on the labour market focusing on this area: István Horváth, Sára Hungler, Réka Rácz, Zoltán Petrovics, “Szociális párbeszéd a válságban – válság a párbeszédben? A 2008-ban kezdődött gazdasági krízis tünetei és kiutak Közép-Kelet-Európa munkaerőpiacain” *Pécsi Munkajogi Közlemények*, 1-2/2019, 44-47. and 53-54.

<sup>27</sup> Subsection a) of Article 4 of the EPSR: “Everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects. This includes the right to receive support for job search, training and re-qualification. Everyone has the right to transfer social protection and training entitlements during professional transitions.” Therefore, we can see that MSs can only comply with the high-level expectation of the EPSR by sufficiently effective and harmonised measures guaranteeing labour market, labour law and social protections.

<sup>28</sup> Katalin Dudás, Szilvia Halmos, Gábor Kártyás, *A munkajog szerepe a munkaerőhiány kezelésében: Kutatási zárótanulmány*, Budapest 2018, 25-27. [https://www.liganet.hu/images/a10122/Zrtanulmny-munkaerhiny2018\\_1.pdf](https://www.liganet.hu/images/a10122/Zrtanulmny-munkaerhiny2018_1.pdf) (21 December 2020).

<sup>29</sup> Szilvia Halmos, “A munkaerőhiány, mint a munkajog tetetője?” (eds. Zoltán Bankó, Gyula Berke, Erika Tálné Molnár), *Quid juris? Ünnepi kötet a Munkaügyi Bírák Országos Egyesülete megalakulásának 20. évfordulójára*. Kúria – Pécsi Tudományegyetem Állam- és Jogtudományi Kar – Munkaügyi Bírák Országos Egyesülete, Budapest – Pécs 2018, 147-150.

legislations<sup>30</sup> such as the support of public employment<sup>31</sup> or that of co-operative work.<sup>32</sup> That is, the objectives and the means are mostly given to realize the EPSR's goals, but we also have to consider that changes generated by the EPSR itself might lead to further measures that can affect Hungarian law, or they may necessitate the more affective handling of labour shortage (such as education<sup>33</sup>), let alone the global problem of flare-ups in unemployment.

The central elements to legislative reforms potentially affecting Hungarian law are the sections in Chapter II of the EPSR concerning fair working conditions, ultimately about the fundamental rights of workers.<sup>34</sup> If we view these principles and rights in their entirety, then we can notice the outlines of the reform process, which, based on the previous arguments, we can witness in EU law in relation to new or amended legislations formulated in the framework of the EPSR, or still waiting to be formulated. Work-life balance, the employer's obligation to provide information or wages<sup>35</sup> are all areas of social policy which are either already changing and developing or where changes will need to happen in the upcoming years to comply with the EPSR's commitments. As a result, the effect of these

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<sup>30</sup> In relation to the economic and employment crisis caused by the pandemic of 2020, the Hungarian Law CXXXV of 2020 can be significant from the perspective of employment policy. The law concerns services and benefits aiding employment, as well as the supervision of employment, and its primary objective is to make gaining employment easier and to substantially facilitate the process, as well as to make the labour market more productive. This law enters into force on 21 March 2021.

<sup>31</sup> Jácint Ferencz, "Közfoglalkoztatás mint atipikus munkaviszony", *Jog – Állam – Politika*, 2/2014, 125-128. and Botond Bitskey, "A közfoglalkoztatás alapjogi kérdései", (eds. Zoltán Bankó, Gyula Berke, Lajos Pál, Zoltán Petrovics), *Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest 2019, 70-76.

<sup>32</sup> Jácint Ferencz, "A szociális szövetkezet tagjának munkaviszonya", *Magyar Munkajog/Hungarian Labour Law Journal Online Journal*, 1/2015, 64-68.

<sup>33</sup> Article 1 of the EPSR: "Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market." Therefore, besides the fundamental social expectation of everybody having the right to quality education, the objective of the EPSR in this case as well is specifically the improvement of chances on the labour market and labour policy.

<sup>34</sup> Articles 5 (secure and adaptable employment), 6 (wages), 7 (information about employment conditions and protection in case of dismissals), 8 (social dialogue and involvement of workers), 9 (work-life balance) and 10 (healthy, safe and well-adapted work environment and data protection) of the EPSR.

<sup>35</sup> Here we have to mention that, apart from the "European minimum wage," this topic does not constitute a subject of detailed examination, but we certainly have to take into account certain effects on labour law. In connection with the background of the new Directive and its objectives, see: Torsten Müller, Thorsten Schulten, "The European minimum wage on the doorstep", *European Economic, Employment and Social Policy*, 1/2020, 1. <https://www.etui.org/publications/policy-briefs/european-economic-employment-and-social-policy/the-european-minimum-wage-on-the-doorstep> (27 November 2020).

sections on Hungarian law will be made possible by the examination of specific, individual items of legislation, and, primarily, we can find interesting connections between Directive (EU) 2019/1152, analysed in detail below, and the reform of legal norms aiming to facilitate work-life balance. However, the guaranteeing of fair wages is obviously the responsibility of the MSs,<sup>36</sup> but the minimum wage legislation aiming to formulate uniform principles can greatly affect that as well, even if it does not affect the amount of compulsory minimum wages. We can also raise the issue that expectations regarding flexible and safe employment – even if these are not necessarily new<sup>37</sup> – can bring about the introduction of new rules about working time, or a review of further questions about employment. A largely hypothetical idea regarding Section 8 is in connection with labour relations, based on which these relations should be improved and developed in Hungary, primarily by supporting the relationship systems of collective labour law and social partners, but even by strengthening the collective rights of workers.<sup>38</sup> We can argue that the desired outcome in the area is not necessarily achieved by legal means, but, according to the EPSR, a stable legislative side is indispensable to a successful social dialogue.

The narrowly defined social protection issues of Chapter III of the EPSR do not constitute the subject of the present analysis, but we still have to mention their significance on the labour market. Sections 11-20 do not seem homogenous in the first place, at least from the perspective of their potential effect on legislation. Comparing, for instance, the support to children<sup>39</sup> with unemployment benefits,<sup>40</sup>

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<sup>36</sup> Section c) of Article 6 of the EPSR: “All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.” That is, legislation of the MSs is still dominant in this area, but, on the one hand, social partners must have a key role in the processes, and, on the other hand, legislations must reflect shared EU values and expectations from this point on.

<sup>37</sup> Zoltán Petrovics, “A flexicurity koncepciója és a munkajogviszony megszüntetése”, (eds. Z. Bankó, Gy. Berke, E. Tálné Molnár), 357-359.

<sup>38</sup> A current example of this in Hungary is the Employment Advisory and Dispute Settlement Service, which was launched at the end of 2016. See: Tamás Gyulavári, *A Munkaiügyi Tanácsadó és Vitarendező szolgálat működése*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest 2017, 3-60.

<sup>39</sup> Article 11 of the EPSR: “a) Children have the right to affordable early childhood education and care of good quality. b) Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.” That is, the EPSR intends to support children’s development and equal opportunities through several specific measures.

<sup>40</sup> Article 13 of the EPSR: “The unemployed have the right to adequate activation support from public employment services to (re)integrate in the labour market and adequate unemployment benefits of reasonable duration, in line with their contributions and national eligibility rules. Such benefits shall not constitute a disincentive for a quick return to employment.” In our opinion, major stances in Hungarian employment policy are consistent with these ideas, and, based on this, the “European Unemployment Benefit Scheme” may have a key role in the future. See: Miroslav Beblavý, Gabriele Marconi, Ilaria Maselli, *A European Unemployment Benefit Scheme – The*



we can clearly see the differences, although the general premise of social protection does connect the two. Minimum wage<sup>41</sup> also presents strong connections to labour law – see the arguments presented in connection with wages –, so, overall, we can see that the EPSR demands support for participants on the labour market even beyond social policy. Social protection policies, therefore, can bring about novelties in Hungarian law in related legislative areas or through the revision of the coordination of social protection systems, but since these norms, for the most part, constitute national competences; therefore, the most important achievement of the EPSR can highlight the responsibility of the MSs.

Developing the efficiency of social coordination can, in itself, point in a direction which, even if it does not lead the overhaul of a MS's social security system, it can affect Hungarian legislation with the harmonisation and stronger coordination of minimum requirements. It is important to note that Hungary already does a lot to eradicate unemployment,<sup>42</sup> so, among the specific measures, the provision of unemployment benefits is, in itself, not a novelty, but since until recently the handling of unemployment did not seem like much of a challenge in Hungary,<sup>43</sup> the effect of the EPSR will probably be lesser for the time being, when compared to Chapter II, and even Chapter I. At the same time, however, the EU does strengthen worker mobility, and thus, ultimately supports free movement, so social rights and social protections might see the emergence of new impulses and a need for reform in Hungarian legislation as well.

### 3. CASE STUDY – THE EXPECTED EFFECT OF DIRECTIVE (EU) 2019/1152 ON THE LABOUR CODE

In this section, we briefly review those sections and principles of the legal matter indicated in the title of this section, which, on the one hand, provide the

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*rationale and the challenges ahead*, European Commission – Directorate-General for Employment Social Affairs and Inclusion, Directorate Employment & Social Governance, Brussels 2017, 1-31. <https://www.ceps.eu/ceps-publications/european-unemployment-benefits-scheme-rationale-and-challenges-ahead/> (8 January 2021).

<sup>41</sup> Article 6 of the EPSR: “a) Workers have the right to fair wages that provide for a decent standard of living. b) Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.”

<sup>42</sup> Judit Nagy, *Foglalkoztatáspolitikai*, Kormányzati tanulmányok, Nemzeti Közszerzői Központ, Budapest 2018, 26-27. and 42-44. <https://nkerepo.uni-nke.hu/xmlui/bitstream/handle/123456789/7211/Foglalkoztat%20politika2.pdf;jsessionid=0857CF79967FE5D925609394794-C7EA2?sequence=1> (27 November 2020).

<sup>43</sup> By this, I mean the labour market that has been experiencing a lack of available workforce until recently. See: Sz. Halmos, 147-150.

most novelties with regard to working conditions, primarily from the perspective of employees' legal protection, and, on the other hand, can induce changes in Hungarian labour law. We will not discuss the quasi employee-definition in Section (2) of Article 1 of the Directive, since it could constitute the subject of a separate analysis, we will merely suggest that Hungarian labour law will soon have to face the difficulties<sup>44</sup> of expanding this definition as hoped by the Directive's legislative intent. That is, it is important that the entitlements discussed below do not only govern those employed in the restrictively interpreted framework of an "employment relationship," but national legal specificities must be considered here along with the interpretation of the European Court of Justice.

Section (2) of Article 4 of the new Directive lists a number of items, which Paragraph 1 of Section 46 of the LC currently does not cover. Therefore, the problem may arise as to how Hungarian legislation will comply with new expectations in EU law if these will not be covered in the future, either. Legislature will have to fill these loopholes, we have to see, however, that some of these items are governed by "stronger" legal tools in Hungarian law – such as the beginning of an employment relationship, since law refers it primarily to the scope of the employment contract, similarly to the probationary period –, and we can find some which can be deduced from the general obligation of information provision and/or from the contract principle (rules of resignation, basic salary), and some are not represented in the LC at all (trainings). It seems that the modified regulation genuinely wants to settle these employer responsibilities extensively, and there seems to be a direct link between the conceptual structure of Article 2 and the content expectations of Article 3, since the Directive mentions directly, in several instances, the special obligation of information provision governing non-traditional employment relationships.<sup>45</sup>

Section (1) of Article 5 can provide substantial novelties for the LC, since it proclaims that the required information must be provided in writing on the first day of an employment relationship, thus guaranteeing the employee's interests. In this respect, the LC allows 15 days as a rule,<sup>46</sup> so it is important that, alternatively, the new Directive allows the employer a period of seven calendar days at most to provide the required information. As a result, the new legislation – as opposed to the previous one<sup>47</sup> – represents a principle of immediacy, and it specifically addresses the problems of employee accessibility.<sup>48</sup> Currently, there is no legislation with the same content in the LC; however, it can be deduced from the obligation

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<sup>44</sup> Directive (EU) 2019/1152, recitals (2), (4) and (11)(13).

<sup>45</sup> Directive (EU) 2019/1152, recitals (11), (25) and (26).

<sup>46</sup> Section (1) of Article 46 of the LC.

<sup>47</sup> Based on Section (1) of Article 3 of Directive 91/533/EEC, information may be given to the employee not later than two months after the commencement of the employment relationship.

<sup>48</sup> Based on Section (1) of Article 4 and Section (1) of Article 5 of the new Directive.

of the communication in contracts.<sup>49</sup> The other set of cases worthy of further examination can be found in Chapter III of the Directive, since the new standards explicitly require the application of such rules which are undoubtedly directly connected to the information detailed in Article 4, they still state obligatory, essential requirements regarding the contents of employment contracts. This new legislation is one of the most important amongst the new norms of the Directive, since it at least implicitly attempts to partially harmonize labour laws in MSs, since the contents of an employment contract can settle virtually every essential component of the relationship between employer and employee in Hungarian law as well.<sup>50</sup> Therefore, according to EU law, some sort of “common denominator” and a minimal structure of legal protections are essential among transparent work conditions in EU social policy.

Based on this, Article 8 sounds less surprising, as it specifies the maximum length of the probationary period, and Hungarian rules comply with this as the article limits the length of this period to six months.<sup>51</sup> Article 9, on the other hand, restricts employers’ prevention of the parallel employment of employees, but the Directive leaves open a possibility of restriction.<sup>52</sup> While there is no such rule in the LC, we can find no such ban or restriction in the labour law of the private sector;<sup>53</sup> we can conclude that the LC in its current form does comply with this part of the Directive. It is important, however, that the point of this legislation is to discourage employer decisions that would unreasonably limit employees’ economic range,<sup>54</sup> so a shared goal is the prevention of employment in the informal economy. In other words, it is not unimaginable that legislation with such content would better serve compliance with the Directive, and, at the same time, help the parties involved in resolving practical difficulties.

Articles 12 and 13 also require novel interpretative attitudes, since they are entirely new both to the Directive and to the LC. The former concerns the shift between forms of employment, while the latter concerns trainings provided by the employer to the employees. Section (1) of Article 12 – to quote Hungarian

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<sup>49</sup> With reference primarily to the rule of written communications settled by Section 24 of the LC.

<sup>50</sup> József Radnay, *Munkajog (Nyolcadik kiadás)*, Szent István Társulat, Budapest 2009, 87-90.

<sup>51</sup> Section (1) of Article 8 of the new Directive does not exclude the possibility of a longer period of probation, with regard to the specificities of the employment or the interest of the employee.

<sup>52</sup> Based on Section (2) of Article 9 of the new Directive, MSs may lay down conditions for the use of incompatibility restrictions by employers, based on objective grounds.

<sup>53</sup> Exempt from this are employees in leadership positions, as well those in the public sector, but in each case, it is the specificity of the given employee status that justifies this.

<sup>54</sup> *Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union*, Brussels 21 December 2017. COM(2017) 797 final, Recitals 6. and (2). <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52017PC0797&from=HU> (9 December 2020).

labour law terminology – ensures such an application procedure to the employee, with which the employee has the chance to move from an atypical form of employment to a traditional form of employment, thus raising the guarantees of their employment. This possibility is already given in the LC, but the Directive requires the employer to answer the application within a month in writing, which may clearly become a new obligation in the future. However, we cannot conclude that employers will actually have an obligation to change the form of their employees' employment, but the receipt and consideration of the application, and the response to it in a specific manner and within a specific time is a further guarantee for employees. As to trainings, the Directive only prescribes that employees be exempt from the financial costs of trainings required by the employer, in which we can highlight the strict guarantee of the legislation.

Article 14 of the Directive<sup>55</sup> contains an interesting and traditional provision of a social character, which is extremely important when it comes to the legal protection of employees, as it sets out the possibility of circumventing a collective agreement. According to the article, as to Chapters I-III of the Directive, social partners shall have the chance, *mutatis mutandis*, to come to a different agreement with the provision that it is only possible with “guaranteeing the full protection of employees.”<sup>56</sup> Therefore, it does not follow that provisions less favourable to employees could be applicable, but it is an important provision for Hungarian labour law, since Article 46 of the LC is indeed strict in this respect, however, the possibility of *in peius* differences for employees, even in the abovementioned work conditions – in theory – are not impossible,<sup>57</sup> even in collective agreements.<sup>58</sup> Therefore, it is a question how “full protection” can be guaranteed with contract clauses like this, but I contend that we can reasonably suppose that the Directive wishes to strengthen the collective labour law protections established in the EPSR,<sup>59</sup> or widen them alongside the previously mentioned individual labour law objectives. Regarding Hungarian legislation, it is important that the LC does not forbid a unilateral deviation from Article 46, which details employers' obligation

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<sup>55</sup> Which is listed in the final text simply as Article 14, not as a separate chapter.

<sup>56</sup> Article 14 of Directive (EU) 2019/1152.

<sup>57</sup> *Proposal T/4786 of the Labour Code*. p. 85. <https://www.parlament.hu/irom39/04786/04786.pdf> (21 April 2019).

<sup>58</sup> For more details, see: Tamás Gyulavári, “The Hungarian Experiment to Promote Collective Bargaining: Farewell to ‘Principle of Favour’”, Tamás Gyulavári, Emenule Menegatti (eds.), *The Sources of Labour Law*. Kluwer Law International, Alphen aan den Rijn 2020, 245-260. The point of this legislative method is that full dispositivity is not excluded even collective agreements furthering the potential interests of employees, even if the LC does not allow it in the case of every important element. Nevertheless, this legal policy approach – analysed in detail by Gyulavári – strengthens the autonomy of the parties, but, at the same time, it can weaken the enforcement opportunities of employees.

<sup>59</sup> Article 8 of the EPSR.

to provide information to employees. That is, in this respect the LC explicitly sets out to protect the rightful interests of employees, since the chance of a unilateral deviation ultimately prevents the possible disadvantaging from the side of employers.<sup>60</sup>

Article 15 of the new Directive establishes mostly new legislative principles and norms regarding subsequent information provision when information was not provided in the first place. To be more precise, it concerns a refutable presumption of this Article, which serves to make sure that unlawful states originating from the negligence of employers can be resolved as soon as possible. Moreover, the objectives included in this part of the Directive include the avoidance of legal disputes originating from conflicts of interest between employers and employees. It is important, however, that this possibility of correction is not in opposition with the principle of immediacy, since the former does not prevail over the latter but merely strengthens it with a sort of indirect sanctioning pressure. Based on the Directive, MS will have a specific duty to choose between enforcement mechanisms after this period is over. A shared characteristic of these systems is that they protect the employee, based on the assumption that as the weaker party in the employment relationship, they do not have all the necessary information, and, as a result, their status is precarious.<sup>61</sup> The first possibility is the case of “advantageous presumption,” in which, if the employer failed to provide information regarding the relevant elements of the working relationship, then we have to ex lege presume that the employment relationship was established for an indefinite period of time, with full-time employment, and without a probationary period. In certain cases, therefore, this presumption suggests a state at least partially opposed to the intention of the parties involved in the contract, which could be a noteworthy rule in Hungarian labour law as well. Although Article 46 does not concern the validity and content of the contract, we can still debate whether a valid, fixed-term clause can be effectively modified – as sort of a sanction – by the legislature, if, despite the failure to provide the necessary information to the employee, the opposite is prescribed. The question so far is merely a hypothetical one; however, it also follows from subsection a). Subsection b) refers the problem to the administrative authorities and wishes to allow the application of administrative sanctions. Thus, the content of the employment relationship would not be altered, but the possibility of the authorities being involved might prevent potential infringements on the side of employers, with additional conflict resolution opportunities based in the interests of both parties.<sup>62</sup> The breach of employer duties laid down in Article 46 of the LC can currently lead to infringements requiring the involvement

<sup>60</sup> Section (1) of Article 43 of the LC.

<sup>61</sup> Sections (3)-(7) and Sections (16)-(17) of the Preamble.

<sup>62</sup> *Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union*, Brussels 21 December 2017. COM(2017)

of the employment authority, so this might require only minor modifications in Hungarian law.<sup>63</sup>

Articles 16-18<sup>64</sup> concern the possibilities of the enforcement of employees' rights, as well as the underlying legal provisions. Merely recording that employees must be provided with effective opportunities for legal remedies during the course of and after the termination of their employment does not bear any substantial novelty for Hungarian legislation. However, the Directive goes further than that and suggests the apparently most effective way of legal remedy in the form of damages paid to the employees. According to the new Directive, employees have the right to the "appropriate" damages in the methods of conflict resolution mentioned above in case the employer infringes upon the rights established in the Directive. The question arises, then, if the employer fails to provide information to employees or not providing appropriate information can, in fact, constitute grounds for damages. In our opinion, in extreme cases it can already constitute grounds even based on current legislation, since – setting aside the unlawful termination of employment defined by law<sup>65</sup> – employers would cause injury in connection with the employment relationship even in such a case, but it is still a question what disadvantages are suffered by the employees. With expansive interpretation, we could claim that such an act could be the unreasonable hindrance of conforming performance, but this is merely a theoretical suggestion, since it does not follow from the current interpretation. It is worthwhile, however, to observe the question from the other perspective as well, since Article 46 of the LC is not definite enough in this very respect, since breaching the provisions of the article does not result in detriment for the employer, but legislation of this kind could change that. Thus, the objective of new legislation could lead to interpretative novelty in this area of the LC in the future.

Article 17 concerns protection against discrimination separately in such cases in which the employee or the employee's representative lodges a complaint or initiates proceedings in order to enforce rights established in the Directive. That

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797 final, p. 16. <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52017PC0797&from=HU> (9 December 2020).

<sup>63</sup> In connection with Article 16, it is important to mention the "redress period" of fifteen days stipulated in Article 14, to supply missing information or amend incorrect information. Including this time period in legislation indicates the graduality and "ultima ratio" nature of possible sanctions and opportunities of legal remedy for employees. However, the language of the existing text does not contain this "redress period," which means fundamentally stricter legislation for employers, since the Directive does not require the passing of these fifteen days in connection with the employee options detailed above, but it does not exclude that MSs may define the criterion of immediacy in their national law more strictly or even more flexibly.

<sup>64</sup> Article 19 on sanctions is tangentially connected here, but since it does not contain any novelty compared to current practices, I do not discuss it in any detail here.

<sup>65</sup> Section (2) of Article 82 of the LC.

is, the Directive explicitly bans retaliative behaviours for employers, and, in our opinion, the significance of this lies in the fact that in case of enforcement, there is a new, specific element in the range in which legislators explicitly protect employees' right to information. Article 18 defines a quasi termination protection,<sup>66</sup> which goes further than the previous protection against employer retaliation<sup>67</sup> and suggests that employees must be protected against termination based on the employees' enforcing and practicing their right established in the present Directive. In the same manner, sanctions equal to dismissal are forbidden – in our opinion, such a sanction could be the application of penalty as laid down in Article 56 of the LC –, from which it follows that the Directive has set out on an – otherwise nearly impossible – course to harmonise the legislation of dismissals,<sup>68</sup> even if only marginally as yet. To be more specific, the Directive establishes further criteria through clear legislative expectations which, we think, could be a novelty in Hungarian labour law as well, since according to the rules of the LC, such a dismissal could be imagined as termination based on employee behaviour, but it should probably be qualified as an abuse of rights, if the reason for termination were the employee's action in accordance with the Directive. Section (2) complements this by requiring employers to give their reasons in writing in such cases when employees perceive the given measures as injurious on the aforementioned grounds. The employers' duty to provide their reasoning still stands without this part of the legislation, but it allows us to conclude that employers have increased responsibility when injurious cases are suspected. This is fully realized in Section (3) with the reversal of the burden of proof, since based on this the applicant employees only need to provide *prima facie* evidence that they were injured because of their practice of their rights provided by the Directive, and employers have to defend themselves with substantial proof.

That is, to use an example from Hungarian legislation and practice, it seems that the Directive stands on the grounds of the principles of burden of proof as laid down in Resolution no. 95 of the Labour Law Division of the Hungarian Supreme Court (Curia of Hungary nowadays) and settles the question similarly in cases with reference to the breach of the principle of equal treatment.<sup>69</sup> However,

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<sup>66</sup> While, when considering the terminology of the LC, the name may be confusing, the function of the limitation is this.

<sup>67</sup> I have to once again emphasise the differences and connections, since “retaliation” as understood by the information directive is similar only in its nature of being an infringing act to retaliation (victimization) as defined in Section (3) of Article 10 of Act CXXV of 2003 on equal treatment and the promotion of equal opportunities.

<sup>68</sup> Guus Heerma van Voss, Beryl ter Haar, “Common Ground in European Dismissal Law”, *European Labour Law Journal*, 3/2012, 215. and 228-229.

<sup>69</sup> According to Section (1) of Article 19 of Act CXXV of 2003 on equal treatment and the promotion of equal opportunities, the applicant only needs to provide *prima facie* evidence, while the burden of proof lies with the defendant.

since in cases of such termination an abuse of rights on the employer's side can be perceived, we can see the reverse of the proof process used in cases of abuse of rights,<sup>70</sup> which is noteworthy because these rules regarding the protection against termination are not substantially different from Hungarian legislation, but the background of guarantees in principle and procedural rules also contain novelties.<sup>71</sup>

#### 4. CONCLUSION

Although a number of years have passed since the launch of the EPSR, and even the novelty of some relevant social policy texts may have faded in the meantime, we think that it is still difficult to draw substantial conclusions from the EPSR's effects on Hungarian labour law. What is more, the EPSR itself, or rather its legal nature, is still being moulded, and the subsequent legislative mechanisms are constantly in flux, therefore it might be overly ambitious to expect an analysis of real and tangible legislative or interpretative effects. Despite all this, since the EPSR has already delivered actual results, and EU decisionmakers are, without a doubt, using it as a foundation when shaping the future of European integration, we can establish that the principles laid out in the EPSR may have a significant effect on Hungarian labour law even in the next few years.

We might consider the new Directive regarding information provision on the employment relationship used as a case study in the present paper, since the Hungarian legislature has actual legislative tasks until the implementation deadline of the Directive. This is, however, just one example, but the EPSR's holistic social perspective and its approach focusing explicitly on the legal protection of employees – along with the necessary modernization of labour law – can easily lead to reforms concerning fundamental work conditions. This may induce substantial changes in Hungarian labour law as well, but ultimately, we cannot disregard the actual legislative product, since the spirit of the EPSR in itself is not enough to launch a review of labour law in the national law. With the connotations of the legislation of transparent and predictable working conditions and the compulsory information on the employment relationship, this might not be a very distant possibility.

The future effects of Directive (EU) 2019/1152 on Hungarian law and legislation are uncertain. Based on the scope of application laid down in the current

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<sup>70</sup> In connection with labour law, see: Tamás Tercsák, *A joggal való visszaélés. A joggal való visszaélés elmélete, bírói gyakorlata és munkajogi jelentősége*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest 2018, 493-498.

<sup>71</sup> For a detailed analysis of this question, see: Márton Leó Zaccaria, "A munkáltatói tájékoztatásról szóló irányelv reformjának potenciális hatásai a magyar munkajogra", (eds. Z. Bankó, Gy. Berke, L. Pál, Z. Petrovics), 435-450.



statute book it seems that since Article 46 of the LC contains the relevant norm of the Directive, there it cannot be applied *mutatis mutandis* on other persons carrying out work. However, the root of the problem is not to be found in the existing wording of the LC but in the construct of the definition that, partly due to traditional reasons, partly out of necessity, takes the concepts of “employee” and “employment relationship”<sup>72</sup> out of the catalogue of relationships concerning work. However, in the current legislative and interpretative climate this is an understandable and rational approach, in our opinion the directional reform being discussed here can be the first substantial change that could force the hand of Hungarian legislation and practice, since the widening personal scope of the Directive certainly goes beyond the conceptual framework of the LC. And if we approach less from the direction of formalizing definitions and more from the direction of the specification of relationships between the parties, we might find that the rules laid down in Article 46 of the LC suppose a personal dependence between the subjects, which is clearly the *differentia specifica* of the employment relationship,<sup>73</sup> but it is not its exclusive characterising specificity. Therefore, it is justified to approach this definition anomaly with the question whether other relationships can be inserted into the rules of the Directive, that is, we can examine why these rules only concern the traditional employment relationship. Although the answer is merely founded on theory, it can still point towards the affirmative regarding the objective and legislative methodology of the new Directive.

As to the merits of the new Directive, we conclude that the material contained in Article 46 of the LC might need modifications or amendments in the course of the implementation in several respects. Although, Article 46 of the LC in its current form mostly complies with higher-level requirements, the spirit of the legislation and some of its specifics have substantially changed. These changes show complete consistency with the ideas and socially motivated objectives of the EPSR, as the strengthening of employees’ protection and guaranteeing fair working conditions as defined by Article 31 of the CFREU<sup>74</sup> are key on the European labour markets of the future, and even that of the present. In our opinion, Hungarian legislation will need to react to all these changes. Therefore, the EPSR in its entirety effects Hungarian labour law in a way and to an extent that are difficult to define, but using the example of Directive (EU) 2019/1152 we must conclude that it is only a matter of time before the effects of further EU labour law and social policies appear in Hungarian labour law.

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<sup>72</sup> Tamás Gyulavári, *A sűrke állomány. Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán*, Pázmány Press, Budapest 2014, 104-107. and 109-110.

<sup>73</sup> György Kiss, „Foglalkoztatás gazdasági válság idején. A munkajogban rejlő lehetőségek a munkajogviszony tartalmának alakítására (jogdogmatikai alapok és jogpolitikai indokok)”, *Allam- és Jogtudomány*, 1/2014, 39-43.

<sup>74</sup> Recital (1) of Directive (EU) 2019/1152.

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Hungarian Law CXXXV of 2020 can be significant from the perspective of employment policy. The law concerns services and benefits aiding employment, as well as the supervision of employment, and its primary objective is to make gaining employment easier and to substantially facilitate the process, as well as to make the labour market more productive. This law enters into force on 21 March 2021.

Act I on the Labour Code.

Act CXXV of 2003 on equal treatment and the promotion of equal opportunities.

Proposal T/4786 of the Labour Code. <https://www.parlament.hu/irom39/04786/04786.pdf> (21 April 2019).

Мартион Лео Закарија  
Универзитет у Дебрецину  
Правни факултет  
zaccaria.marton@law.unideb.hu

## Однос Европског стуба социјалних права и мађарског радног права са посебним освртом на Директиву 2019/1152

**Сажетак:** У раду се размајрају две важне и актуелне теме из радног права. Прво, аутор анализира опште аспект и значај Европског стуба социјалних права (ЕПСП), који је представља новији извор права – изузев неколико директива и уредби заснованих на самом ЕПСП – на пољу социјалне политике Европске уније. Његов посебан значај је у томе што уређује неколико основних радних и социјалних права и један од његових главних циљева је да промовише и ојача социјална права и вредности широм држава чланица. Истовремено, ЕПСП већ остварује утицај на националне системе радног и социјалног права у ЕУ. То се чини најпре кроз Директиву (ЕУ) 2019/1152 Европског парламента и Савета (20. јун 2019.) о трансферентним и предвидљивим условима рада у Европској унији која садржи веома важне новине у погледу шире концепције појма радног односа и основних права радника. Поштом, аутор се фокусира на релевантна питања мађарског радног права као студију случаја, анализирајући моћни – и већ видљиви – утицај ЕПСП-а и поменутих нове директиве на мађарско законодавство. Ова анализа настоји да одговори на питања заснована на хипотезама рада усредсређеним на моћну промену мађарске регулативе и тумачења послоједних прописа, узимајући у обзир ЕПСП и већ цитирану директиву. Резултати испитивања ипак су усмерени на неке опште најмене у вези са ЕПСП-ом и Директивом (ЕУ) 2019/1152 и њиховим утицајем на основна права по основу рада.

**Кључне речи:** Европски стуб социјалних права, радно законодавство у Мађарској, радно право, права по основу рада.

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