1. Definitions

1.1 What is the definition of the collective agreement in your country?

The Labour Code (Act XXII of 1992) gives the following definition: Collective bargaining agreements may govern:

a) rights obligations originating from employment relationship, the method of exercising and fulfilling and the procedural order of such relationship;

b) the relations between the parties to the collective bargaining agreement (Article 30).

This definition contains only one aspect: the subject of the collective agreement. Other aspects (who can conclude it etc) are regulated in other places of the Act.

1.2 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?

There are collective agreements on the enterprise level and also sectoral agreements. The enterprise level might be considered the most decisive in Hungary, thus sectoral agreements are of secondary importance. National-level collective is typical only of the areas of public employees, because wage negotiations affecting state budget expenditure are applicable for the employees of several sectors.

We can also differentiate between single-employer and multi-employer agreements on the one hand, and agreements concluded at the employers falling under the Labour Code and the Act on the Status of Public Employees (No collective agreement might be concluded in the case of public servants and at the armed forces).

There are also extended collective agreements. The Minister of Labor may extend the scope of the collective bargaining agreement to the entire sector (or sub-sector).

2. Please summarize the history of collective agreements in your country.

Though the post-transition labour policy of Hungary was primarily based on the models of continental Europe both in terms of legislation and the development of labour institutions,
the development of a bargaining system with a similar weight to that of the European models fell through. The extensive social science literature dealing with the failures of “institution-building” in the post-socialist countries offers a wide range and variety of explanations to this phenomenon. In legal and institutional terms, the system of collective bargaining in Hungary – similarly to other East-European countries – is different from the practice of continental Europe that had evolved after the Second World War. On the one hand, the most important level of bargaining is the conclusion of enterprise collective agreements, while sectoral agreements are only of secondary importance. In addition to this, the organisational structure of the social partners also differs from the respective structures in the majority of the EU countries. Moreover, the most significant part of the operation of the trade unions related to collective bargaining is carried out in the enterprises, and the role of sectoral trade union centres independent from the employers remained less significant. Though the employers' organisations playing a key role in the conclusion of sectoral collective agreements were established after the change of the political regime, their organisational structure continued to be weak. The other characteristic feature of Hungarian collective bargaining is trade union pluralism developing after the fall of socialism. As a consequence, we have to reckon with the joint presence of several trade unions at the enterprises.

3. Collective agreement as a source of law

What are the constitutional or/and legal grounds of collective agreements?

Article 4. of the Hungarian Constitution states that labour unions and other representative bodies shall protect and represent the interests of employees, members of co-operatives and entrepreneurs. Article 70/C para (1) ensures everyone the right to establish or join organizations together with others with the objective of protecting his economic or social interests. In harmony with the Constitution and the international treaties, The Labour Code grants the right of concluding collective agreements for the trade unions as a basic freedom.

3.2 Does a collective agreement have a contractual or statutory status (or both)?

Both.

3.3 The relationship between collective agreements and other sources of law

3.3.1. How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?

See 3.1.

The Labour Code states that a collective bargaining agreement is qualified as an employment-related regulation (Article 13 para (5)), so it is binding and enforceable.

3.3.2. Relationships between collective agreements and general principles

A) Hierarchy of standards

1) Principle of hierarchy
a) Are collective agreements and covenants subject to superior standards?

Yes

b) Does a hierarchy of levels exist between collective agreements?

Yes

2) Derogations

a) Are collective agreements subject to the “principle of favour” (exemption “in melius” from the laws or higher-ranked agreements)?

As a basic rule, collective agreements may differ from the minimum standards defined by the Labour Code only in favour of the employees. Exceptionally, based on concrete authorisation granted by the law, the collective agreement may prescribe regulations that are more unfavourable for the employees. In general these regulations facilitate for differences from the regulations on working hours, rest periods and remuneration for work.

There exists a similar relationship also among the different collective agreements. Lower-level collective agreements may differ from the higher ones, but only when the differing regulations are more favourable for the employees.

b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably (“in pejus”) to higher ranked agreements?

See above.

A collective bargaining agreement of limited effect shall only depart from one with a broader scope insofar as it specifies more favorable regulations for employee (Article 41).

B) Principle of equality: non-discrimination and “equal pay for equal work”

1) May collective agreements set conditions of unequal treatment and are these upheld as legal?

It is possible, but there is no case law regarding this topic.

There is a possibility for the employer and the local trade union branch to jointly adopt a program of equal opportunities for a predetermined duration. The program of equal opportunities of an employer shall contain an analysis of the work conditions of workers considered disadvantaged, such as

- women,
- workers over the age of forty,
- gypsies,
• workers with some degree of handicap, and

• working parents with two or more children under the age of ten and single parents with children under the age of ten.

The analysis shall address the wages, career advancement and the training of such workers, and the allowances available to them to reconcile their occupational and family obligations, as well as the employer's goals set for the year to ensure equal opportunities and the means designated to facilitate the achievement of these goals, such as in particular, programs related to training and labour safety, and any other program or programs introduced in connection with any other aspect of employment (Article 70/A).

2) Are collective agreements subject to the principle of equality?

Yes

C) Law and order

1) Is there a definition of “social” law and order (which is different from “economic” or “management” law and order)?

No

2) Is there a distinction between absolute and relative law and order?

No

D) Is there a duty of good faith in collective bargaining?

Yes, it is a general principle in the Labour Code. Moreover the parties are also obliged to cooperate with one another (Article 3 para 1).

3.3.3. Collective agreements and other sources of law

A) Collective agreements and law

1) Are collective agreements allowed to abridge rights that employees have been given by law?

As a basic rule, collective agreements may differ from the minimum standards defined by the Labour Code only in favour of the employees. Exceptionally, based on concrete authorisation granted by the law, the collective agreement may prescribe regulations that are more unfavourable for the employees. In general these regulations facilitate for differences from the regulations on working hours, rest periods and remuneration for work.

2) May the law itself annex a collective agreement?

It happens in the case of extended collective bargaining agreements. The Act orders that the Minister of Economy shall publish his resolution on the initiation or
cancellation of extension of scope of collective bargaining agreement, and the official text of collective bargaining agreements with extended scope in the Ministry's official gazette. An extension of scope shall become effective on the day of its publication (Article 34 para (8)).

3) May a law delegate some of its powers to a collective agreement?

Yes, in the third part of the Labour Code we may find legal institutions that are defined by the law only in a wide sense. In these cases, the detailed regulations and the respective procedures on the application of the regulations are to be defined by the collective agreement. Such partly regulated legal institutions are the following: disciplinary procedure and the right to directly impose obligation to pay minor compensation without a court procedure.

B) Collective agreements and regulations

1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

No, it is just a possibility. According to Paragraph 34 of the Labour Code, the Minister of Economy has the right to extend the scope of collective agreement, or certain parts of it to the whole sector (sub-sector), should the contracting parties, being representative in the sector (sub-sector) in question apply for it. The conditions for sectoral and sub-sectoral representativeness are independently defined. In this respect, the law says that those interest representation organisations of the employer are especially representative that are the most significant in terms of the number of their members, economic importance and the number of employees. Based on similar criteria, those trade unions are representative that are the most significant in terms of the number of their members and their support by the employees. Support by the employees should be measured on the basis of the results of the last work-council elections held prior to the conclusion of the collective agreement. (The lists on the criteria of representativeness of the employers and the trade unions are not complete as they only give examples. The legislator did not exclude the possibility to take other characteristics, not listed in the act, into account when defining representativeness.) In respect of the extension of the scope of a collective bargaining agreement concluded by more than one trade union, the representative rights of the trade unions shall be reviewed collectively.

2) Are some collective agreements subject to approval by ministerial order?

Yes, in the case of extending the scope of the collective agreement.

C) Collective agreements and customs

1) Does a collective agreement challenge custom when its object is the same?

Yes

2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?
3) Have you something else to say about this point?

D) Collective agreements and the labour contract

1) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

Labour contract may differ from the collective agreement(s) if it contains even more favourable regulations for the employee. So it is not possible to differ in a less favourable way. There is only one exception: collective bargaining agreements shall not apply to executive employees, therefor their contract can differ less favourable.

2) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

It is a disputed topic in Hungary. The majority says that it is independent.

3) May a new collective agreement modify the contract of employment?

It depends on that the modification is favourable or less favourable than the contractual regulation. If it is favourable it modifies the contract (Also disputed question).

4. Elaboration of collective agreements

4.1. Collective bargaining

4.1.1 How many levels of bargaining exist in your country?

There are collective agreements on the enterprise level and also sectoral agreements. The enterprise level might be considered the most decisive in Hungary, thus sectoral agreements are of secondary importance. National-level collective bargaining is typical only of the areas of public employees, because wage negotiations affecting state budget expenditure are applicable for the employees of several sectors.

The Act also orders that the Government shall discuss issues of national significance pertaining to labor relations and employment relationships with the interest representation organizations of employees and employers through the National Labor Council. The National Labor Council is a tripartit forum for the conciliation of the different (governmental, employee's, employer's) interests. It has certain rights:

The Government, with the agreement of the National Labor Council, shall

a) establish the provisions, in derogation from this Act, concerning the termination of employment due to economic reasons affecting large numbers of employees, in the interest of preserving jobs;

b) decree the provisions for the mandatory minimum wage, the supervision of labor relations and teleworking;
c) submit recommendation to define the maximum duration of daily worktime and to determine official holidays.

The Governments shall initiate *national wage negotiations* in the National Labor Council.

The Minister of Labor, *in agreement with the National Labor Council*, may determine the system of labor qualification.

4.1.2 How are they related?

There is a hierarchy between the different levels.

4.1.3 Is collective bargaining freely decided or mandatory?

With one single exception, Hungarian law does not oblige the parties to carry out collective negotiations or to conclude collective agreements on certain issues. The only exception is the obligation of the employer to initiate wage negotiations every single year with the trade unions having representation at the workplace in question.

Therefore carrying on collective negotiations is not mandatory. Any party has the right to initiate collective negotiations. The fact that the other party should not refuse this initiation to negotiate is partly guaranteed by the basic principle of labour law stipulating that both the employer and the trade unions are burdened with the obligation to co-operate in terms of practising their rights and meeting their obligations.

4.1.4 What subjects may collective bargaining include?

See above. It is up to the parties, there is only one obligation of the employer to initiate wage negotiations every single year with the trade unions having representation at the workplace in question.

Collective bargaining agreements may govern:

a) rights obligations originating from employment relationship, the method of exercising and fulfilling and the procedural order of such relationship;

b) the relations between the parties to the collective bargaining agreement (Article 30). The bargaining can contain all these elements.

4.2. Conclusion of collective agreements

4.2.1. Signatories

a) Who can be parties to the collective agreement?

1) Only unions (or their representatives)?

Collective agreements might be concluded, on the employer's side, by single employer, several employers and the interest representation organisation of the employers; on the employees' side only by the trade unions. In this context, the term trade union does not only mean the trade unions themselves, but also the units of
trade unions which operates within the workplace and the association and confederation of trade unions as well.

2) Also the employees, or work-council, or workforce delegates?

If the trade unions don't fullfil the conditions for concluding collective agreements (see latter), the negotiations might be carried on with the participation of all the trade unions represented at the employer and the text of the agreement can be worded, but the collective agreement might be concluded only if the employees are in favour of it. *The employees should vote on it.* This vote is valid only if more than half of the employees take part, and the majority of them should be in favour of the collective agreement in order to get the necessary support. In practice it means that the collective agreement can be concluded with the support of one-fourth of the employees.

3) Other responses?

As an additional condition to be competent to conclude a collective agreement, the Labour Code ordains that only and exclusively parties independent from each other have the right to conclude collective agreements.

b) Must the parties meet a condition of representativity?

Primarily representative trade unions have the right to conclude collective agreements.

c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?

- If there is only one union at the employer, and that received 50 per cent of the cast votes at the elections of the work councils, this trade union has the right to conclude the collective agreement.

- If there is more than one trade union at the employer, then – as a basic rule – they jointly hold the right to conclude the collective agreement, provided that they received minimum 50 per cent of the cast votes at the election of the work councils.

- If the collective agreement can not be concluded by all the trade unions, the representative trade unions have the right to conclude it, provided that they received 50 per cent support from the employees.

- In some cases, not even the representative trade unions can conclude the collective agreement (because they did not receive 50 per cent support, or they failed to reach an agreement among themselves concerning the standpoint of the employees). If so, the single trade union that received 65 per cent of the votes has the right to conclude the collective agreement independently.

- Should not even this condition be met, the negotiations might be carried on with the participation of all the trade unions represented at the employer and the text of the agreement can be worded, but the collective agreement might be concluded only if the employees are in favour of it. The employees should vote
on it. This vote is valid only if more than half of the employees take part, and the majority of them should be in favour of the collective agreement in order to get the necessary support. In practice it means that the collective agreement can be concluded with the support of one-fourth of the employees.

d) Does a right of opposition exist?

No

4.2.2 Formal requirements

a) Must collective agreements be made in writing?

The Act doesn't dispose wiring form, but in the practice it is necessary.

b) Must a notice be given?

Yes, unless otherwise agreed, a collective bargaining agreement may be canceled by either party to the agreement with three month notice. Neither of the parties shall be entitled to exercise the right of rescission within six months of the conclusion of the collective agreement.

c) Must collective agreements be registered?

Yes, the parties to the collective agreement shall jointly send it to the Ministry of Employment and Labor for registration within 30 days following the date of conclusion and shall supply the related data and information required. The parties shall also notify if the collective agreement is

- amended,
- terminated
- changed in scope in terms of the contents
- cancelled.

Simultaneously with the notification an original copy of the collective agreement bearing the signatures of the parties to the agreement shall be deposited with the Ministry if it pertains to more than one employer.

5. The enforcement of collective agreements

5.1 Scope of collective agreements

5.1.1 Geographic area

a) National, regional, local?

b) International?
5.1.2 Professional sphere

What jobs, professions or branches are concerned?

Sectoral agreements: Where the agreements cover only a narrow area, where only a few companies operate, and the decisive companies of the sector participate in the agreements (production of deep-frozen products, cement industry, pharmaceutical industry), the situation is good. However, it is also true of several, relatively large companies that the concluded sectoral agreements cover the majority of employees (metallurgy, chemical, electricity and baking industries).

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

Yes

5.2.2 What about the mandatory application of “extended” collective agreements?

It exists. According to Paragraph 34 of the Labour Code, the Minister of Economy has the right to extend the scope of collective agreement, or certain parts of it to the whole sector (sub-sector), should the contracting parties, being representative in the sector (sub-sector) in question apply for it.

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

Yes, but just in case if it is favourable for the employees.

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

According to the hierarchy the higher ranked agreement precedes the others. The transfer of undertakings has a special regulation.

In the event the employer is replaced by legal succession, the work conditions, not including the work order, as prescribed in the collective bargaining agreement applicable to the predecessor at the time of succession shall be honored by the successor employer, in respect of the employees affected by the succession, until the collective bargaining agreement is canceled by the predecessor employer or the expiration of the collective bargaining agreement, or until another collective bargaining agreement is concluded with the successor employer, or in the absence of such for at least one year following the date of succession.

If the work conditions stipulated in a collective bargaining agreement which applies to the successor employer are more favorable for the employees than those stipulated in the collective bargaining agreement which applies to the predecessor employer, the collective bargaining agreement applicable to the successor employer shall be authoritative Article 40/A).
5.3 Binding force of collective agreements

5.3.1 Are collective agreement enforceable upon signing?
Yes

5.3.2 Do collective agreements apply automatically?
Yes, after the signing

5.3.3 Are collective agreements binding (imperative)?
Yes

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

The parties can choose it freely.

Collective bargaining agreements may govern:

a) rights obligations originating from employment relationship, the method of exercising and fulfilling and the procedural order of such relationship;

b) the relations between the parties to the collective bargaining agreement (Article 30). The agreements can contain all these elements.

6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?
Yes, it is possible.

6.2.2 Form and content of the contract of employment

- Requirements concerning the use of fixed-term contracts?
  Yes, it is possible.

- Form of the contract: in writing; compulsory mentions?
  Yes, it is possible (but the Act itself regulates these, and the collective agreements can't be contrary).

- Various clauses
  o Covenant not to compete?
    Yes, it is possible.

  o Compensation (financial) for covenant not to compete?
    Yes, it is possible.
Probationary period?
Yes, it is possible.

6.2.3 Minimum wages?
Yes, it is possible, it is quite often.

6.2.4 Classification and career of staff members?
Yes, it is possible.

6.2.5 Hours of work
Yes, it is possible.

As a basic rule, collective agreements may differ from the minimum standards defined by the Labour Code only in favour of the employees. Exceptionally, based on concrete authorisation granted by the law, the collective agreement may prescribe regulations that are more unfavourable for the employees. In general these regulations facilitate for differences from the regulations on working hours, rest periods and remuneration for work. Therefore almost all of the collective agreements contain orders for working hours.

6.2.6 Rights of an employee who is on sick leave?

- Suspension of performance of the contract of employment?
  No, it is not possible in Hungary just in the case of public employees, where the Act itself regulates it.

- Guaranteed resources?
  Yes, it is possible.

- Job security?
  Yes, it is possible.

6.2.7 Discipline
In the third part of the Labour Code we may find legal institutions that are defined by the law only in a wide sense. In these cases, the detailed regulations and the respective procedures on the application of the regulations are to be defined by the collective agreement. Such partly regulated legal institutions are the following: disciplinary procedure and the right to directly impose obligation to pay minor compensation without a court procedure.

6.2.8 Vocational training?
Yes, it is possible
6.2.9 Follow-up of the agreement?

Yes, it is possible

7. Interpretation of and litigations to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

No

7.1.2 Other bodies or organizations?

No

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?

No

b) Can it be retroactive?

No

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

Yes

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

Yes, the labour and employment controllers have the right to monitor that does the employer follow the provisions of the collective agreement or not, and they can dispose penalty. Besides this the breach of the collective agreement provisions related working hours and minimum wages is infringement, so at first instance the police, at second instance the court has authority for these cases.

7.2.2 Which body or authority ascertains violations?

Labour and Employment Controllers, Police, Court

7.2.3 What are the civil remedies?

a) Individual claims?

Yes

b) Collective lawsuits?

Yes
7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?

Yes

7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?

Only the Labor Court

7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?

The parties refer to it and introduce it as an evidence.

8. Altering and challenging of collective agreements

8.1 Cases and procedures

8.1.1 Do procedures exist for the review and termination of collective agreements?

Mainly not, the only rule is that there is a necessary three month notice before the cancellation and neither of the parties shall be entitled to exercise the right of rescission within six months of the conclusion of the collective bargaining agreement (Article 39. para (1), (2))

8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?

In the event the employer is replaced by legal succession, the work conditions, not including the work order, as prescribed in the collective bargaining agreement applicable to the predecessor at the time of succession shall be honored by the successor employer, in respect of the employees affected by the succession, until the collective bargaining agreement is canceled by the predecessor employer or the expiration of the collective bargaining agreement, or until another collective bargaining agreement is concluded with the successor employer, or in the absence of such for at least one year following the date of succession.

If the work conditions stipulated in a collective bargaining agreement which applies to the successor employer are more favorable for the employees than those stipulated in the collective bargaining agreement which applies to the predecessor employer, the collective bargaining agreement applicable to the successor employer shall be authorative Article 40/A).

8.1.3 What happens before and during the time of expiration of the agreement?

There are no rules for this, in the pratice the parties start a bargaining.

8.1.4 What is the procedure for substituting a collective agreement with another one?

There are no rules for this.
8.2 Can employees retain vested or established rights (“droits acquis”) in case of termination of collective agreements?

9. Conclusions

9.1 Is there a policy promoting collective bargaining and contractual collective law?

Yes

9.2 Are there problems concerning the relationship between contract of employment and collective agreements?

Yes

9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

As a basic rule, collective agreements may differ from the minimum standards defined by the Labour Code only in favour of the employees. Exceptionally, based on concrete authorisation granted by the law, the collective agreement may prescribe regulations that are more unfavourable for the employees. In general these regulations facilitate for differences from the regulations on working hours, rest periods and remuneration for work.

9.4 Are there any additional conclusions or problems you want to mention?