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## Country report - 2017

### **Hungarian Bar Association**

#### *In Brief*

Throughout 2017, Hungary's economic performance improved. Loose monetary conditions, the stimulus plan announced by the government and higher overseas demand for Hungarian goods boosted economic growth.

There were further public investment thanks to the disbursement of EU structural funds, while business investment expanded thanks to inward FDI and emerging capacity constraints. Robust private consumption should continue into 2018 due to further employment gains and higher real wages and will be driven by an unemployment level which is at a record-low. The fiscal stance also remains expansionary, due to lower taxes and the implementation of growth-supporting measures.

Outside of economic matters, the European migrant crisis remained amongst the biggest stories in Hungary. Following its decision to close its borders to migrants in 2015, the nation's Prime Minister, Viktor Orbán, and the governing Fidesz party presided over a referendum in October 2016 which failed to convince a majority of the population to vote to close the door to refugees and reject the EU's refugee-sharing quota, rendering the result invalid. Then, in September 2017, the European Court of Justice dismissed complaints by Slovakia and Hungary about EU migration policy, and specifically the countries' challenge against the EU's mandatory relocation scheme. In early December, the European Commission said that it would take Hungary (together with Poland and the Czech Republic) to the European Court of Justice about the same.

Another notable story occurred in June 2017. Hungary's parliament passed a law that requires NGOs which receive foreign funding to register with a court, and to declare the fact on websites and official publications. The law applies to all groups that receive more than €24,000 (\$29,000) a year from abroad. The law has already provoked international anger, with some commentators stating that it targets liberal

and human-rights organisations, and especially those supported by George Soros, the Hungarian-born billionaire and philanthropist.

Apart from the short summary offered above, please find below a few comments pertaining to the most important political and legislative events of 2017.

## **1. Political situation**

As noted above, in September 2017 the European Court of Justice dismissed complaints by Slovakia and Hungary about EU migration policy, and specifically the countries' challenge against the EU's mandatory relocation scheme, which aims to relocate 120,000 asylum seekers around the bloc, including 1,294 to Hungary. Mr. Orbán stated that Hungary would abide by the decision but would fight on against the scheme. In early December, the European Commission said that it would take Hungary (together with Poland and the Czech Republic) to the European Court of Justice about the same.

In another notable story, in June 2017 Hungary's Parliament passed a law that requires NGOs which receive foreign funding to register with a court, and to declare the fact on websites and official publications. The law applies to all groups that receive more than €24,000 (\$29,000) a year from abroad. The law is part of what has been called a concerted campaign by Mr. Orban against liberal and human-rights organisations, and especially those supported by George Soros, a Hungarian-born billionaire and philanthropist. State and pro-government media have spent months campaigning against Mr. Soros and his Open Society Foundation, painting Mr. Soros's support of more generous European asylum policies as a liberal plot to flood the continent with migrants and destabilise Hungary. The law has provoked international anger. However, government officials said the law simply aims to ensure transparency and accountability.

Meanwhile, another law is threatening to close down Budapest's Central European University (CEU), which was founded by Mr George Soros in 1991. On April 4th 2017, Parliament passed legislation requiring all foreign-accredited universities to have a campus in their home country. The only university that meets that description is the CEU, which is accredited both in Hungary and in the American state of New York, where it has no campus. This law has also been widely condemned internationally.

At the time of writing (January 2018), the radical rightwing political party, Jobbik, Hungary's biggest opposition party has warned it may pull out of upcoming parliamentary elections after it was fined €2m over receiving illicit donations in kind. The proposed fine, if approved in a final ruling due within weeks, would wipe out Jobbik's campaign budget, party officials said. An election boycott by Jobbik, Fidesz's primary opposition in the Hungarian parliament, would raise questions about the legitimacy of a Fidesz election win.

Despite what could be described as a mixed period for Mr. Orbán and the Fidesz party from a political point of view, the party still enjoys a strong lead in opinion polls in the run up to the next round of elections in 2018.

## **2. International arbitration award related to Hungary**

2.1 In the *Edenred v Hungary* procedure ICSID tribunal ruled against Hungary (ICSID Case No. ARB/13/21);

2.2 CJEU ruled against Hungarian voucher schemes (C-179/14)

Recently, Hungary lost two significant cases in front of international forums, which were both related to the current Hungarian system of food and recreation vouchers.

Since the 90's, employers in Hungary were allowed to provide food and recreation vouchers to their employees with beneficial taxation. The suppliers of these vouchers were mainly multinational companies, for example the local subsidiary of the French Edenred group.

In 2011, the government turned the market of these vouchers upside down by introducing the "*Erzsébet voucher*" and the "*SZÉP leisure card*". The introduction of the Erzsébet voucher and the SZÉP-card was accompanied by a significant change in the taxation of vouchers, which imposed significantly lower tax rates on the Erzsébet voucher and the SZÉP-card compared to vouchers supplied by other companies on the market. According to the government, the reason for this change was to make the Erzsébet voucher the market leading voucher, which would have enabled the government to spend the profit achieved through the vouchers on social purposes, for example on providing holidays to underprivileged children.

This change technically drove the other voucher suppliers out of the market in Hungary. Understandably, they went to fight the new legislation in multiple forums. Some companies initiated ICSID arbitration, on the grounds that the new voucher system violated the bilateral investment treaties between Hungary and the state of their parent company. The first decision in these cases was the decision in the case of *Edenred* (ICSID Case No. ARB/13/21). The ICSID tribunal ruled that Hungary violated the bilateral investment treaty between France and Hungary and ordered the Hungarian government to pay damages to Edenred.

The new voucher system was also examined by the European Commission. The Commission found that the new voucher system infringes upon the freedom of establishment laid down by the Treaty on the Functioning of the European Union. Since Hungary disputed this, the Commission challenged the voucher system in front of the European Court of Justice. The ECJ agreed with the Commission and ruled that the voucher system infringes upon the freedom of establishment, since it imposes unnecessary restrictions on foreign companies who want to operate on the Hungarian voucher market (case no. C-179/14).

### 3. New legislation

A few elements of the recent legislative activity of the Hungarian Parliament will be considered below.

#### 3.1 *New Act on the Legal Profession*

The new Act entered into force on 1st January 2018. In light of the importance of this new legislation, further details will be discussed in Section 4 below.

#### 3.2 *Tax law changes (corporate tax rate reduction)*

The Ministry of National Economy introduced significant amendments to the tax system at the end of 2016. Among several other significant changes the most publicized ones were aimed at stimulating domestic business activities through tax cuts. These include the abolishment of the second bracket of the corporate income tax, resulting in a flat tax rate of 9%, which is one of the lowest on the continent. This change is paired with the extension of the small taxpayers' itemized lump sum tax (KATA) scheme, which helps to lower the administration and tax burden of taxpayers involved in irregular or low volume business activities. The rules of the small business tax (KIVA) scheme are also softened and the tax rate is lowered from 16% to 14%. In order to lower the tax burden on employment, the healthcare contributions payable by employers after employees were lowered from 27% to 22% as well.

#### 3.3 *The adoption of the new Code of Civil Procedure*

The Hungarian Parliament adopted the new Code of Civil Procedure (**CCP**) on November 22, 2016; however, it only entered into force on January 1, 2018.

After being in force for more than six decades, the current CCP and the civil procedure system were ready for fundamental changes due to the challenges of the 21st century and changes to Hungarian regulation, for instance the new Civil Code, which entered into force on March 15, 2014. The new CCP aims to ensure faster and more efficient procedures.

One of the main changes is the new system of procedure divided into two phases, where the parties are obliged to provide all necessary and relevant information in the phase of the preparation for the litigation in question (in Hungarian: *perfelvéteeli szak*), so that the court hearing the case will be better able to adopt a decision in the hearings phase (in Hungarian: *érdemi tárgyalási szakasz*).

Another major change is that the procedures reviewing decisions in administrative matters do not fall under the scope of the new CCP.

Needless to say, with such an integral new piece of legislation coming into effect, the Hungarian legal community has had to work hard in preparation for its implementation.

### *3.4 Changes to public procurement procedures*

The new Act on Public Procurement (**PPA**) has been adopted due to the changes to EU regulation on public procurement, and entered into force on November 1, 2015. The latest amendment of the PPA, which affects the still emerging legal field of public procurement, entered into force on January 1, 2018.

A major amendment, among others, is that an economic operator falls under exclusion from public procurements for 90 days if the Public Procurement Dispute Board (**PPDB**) or a court reviewing the procedure of the PPDB adopts a final decision establishing that the economic operator has seriously breached the PPA during the performance of the contract concluded as a result of the public procurement procedure. However, the PPA does not define the breaches to be considered as serious.

### *3.5 Major amendments to the Competition Act*

Due to the obligation to implement the provision of the 2014/104/EU Directive, the Competition Act has been amended. The amendments entered into force on January 15, 2017. In addition to the incorporation of the Directive's provisions, the main changes affect merger control, and aim to increase the effectiveness and cooperation between clients and the Hungarian Competition Authority by introducing the notification system instead of permission, by increasing the threshold limits and by decreasing the administrative fees and the deadlines.

### *3.6 Hungary adopts a new Administrative Procedures Act*

By adopting Act CL of 2016, the Hungarian parliament adopted a new Administrative Procedures Act. This general procedural code mostly regulates administrative proceedings. Therefore, it plays a very significant role in the life of a practicing lawyer. This new act came as a surprise to some, since the current administrative procedural code only came into force in 2004.

The reasons cited by the Ministry of Justice for adopting a brand new code was that the current administrative procedural code had been amended so many times in the last 10 years that it had become less coherent, and its general structure became outdated in the digital era. Also, the new Administrative Procedures Act is part of a general overhaul of Hungarian public administration, by which the government wants to significantly decrease bureaucracy. The new Administrative Procedures Act was published in December 2016 and enters into force in January 2018.

### *3.7 Major amendments to the Hungarian Criminal Procedure Code*

Major amendments have been made to the Hungarian Criminal Procedure Code (**CPC**), which enters into force on July 1, 2018. The most important changes are the following:

- i) The new CPC grants further safeguards to the injured parties.

- ii) Rules of substantial preparation for the first trial of a case will play a key role, in order to cut unnecessary delays and to enable the courts to be able to make decisions in a reasonable amount of time.
- iii) There are new rules regarding an accused party who cooperates with the authorities or confesses to the crime, which would mean lighter sanctions for the accused party.
- iv) The rules of secret information gathering are included in sector specific regulations at the moment, however they will be integrated into the new CPC.
- v) The prosecutor will play a more significant role in secret information gathering.
- vi) According to the new CPC there is no burden of proof in connection with uncontested facts.
- vii) There will also be a revision of the remedy system in order to reduce the number of decisions which are repealed.

#### **4. New Act on the Legal Profession**

Act No. LXXVIII of 2017 on the Legal Profession (the "Act") entered into force on 1st January 2018. In general, we can say that the Act was prepared with the participation and in regular consultations with the HBA.

While this summary does not intend to touch upon all the details, the main changes and novelties of the Act are as follows:

- 4.1 Employed in-house legal counsels may register and become members of the Bar. This regulation aims at further unifying the legal profession.
- 4.2 The scope of activity that can be carried out by a lawyer has been expanded, and a number of activities may be practiced along with the legal profession, e.g. acting as a trustee, managing condominiums, providing advice on tax, advising on health and labour insurance, providing general insurance counselling, etc.
- 4.3 The rules on profession secrecy, including rules on the conditions concerning how official public bodies (police, competition authority, etc.) may have - exceptionally - access to confidential information have been further specified and improved for the benefit of maintaining confidential information. It is important to note that public authorities can never have access to any document/information which has been prepared and/or exchanged between client and lawyer for the purposes of defence in a criminal procedure. Similarly, client-attorney privileged documents are also exempted from access by authorities.
- 4.4 Rules on the use of electronic signature by lawyers have been further specified.

4.5 Fees for professional legal services have remained within the ambit of free stipulation between the client and the lawyer. In other words, legal fees are not regulated by the legislator or the Bar. A success fee - which could be stipulated before subject to meeting the "*pactum de quota litis*" criteria - can still be stipulated, however, with the limitation that a success fee exceeding 2/3rd of the agreed ordinary fee cannot be enforced before a court.

4.6 Rules on combating money laundering and related client identification obligations have been further specified and improved.

4.7 Managing deposits on an escrow account has always been a delicate and sensitive issue, however, there is a substantial demand from clients that lawyers and law firms should provide this sort of legal services. The rules on managing an escrow account have been adjusted and expanded, including safe-guarding measures.

4.8 The new Act provides detailed rules on a newly adopted special category - in-house counsels admitted to the bar (*kamarai jogtanácsosok* - bar counsels) - available to in-house legal advisers who wish to join and be registered by the bar.

4.9 There has been no significant change to the rules on how a lawyer registered in another EU member state may practice law in Hungary under applicable EU Directives. These rules were already adopted in 2004 when Hungary accessed the European Union and so far they have worked without any significant problem.

4.10 The Act incorporated and further specified the rules under which lawyers, law firms, EU legal counsels and foreign legal advisors may closely and permanently cooperate with each other under a common name and firm profile, without a formal merger (*ügyvédi társulás és ügyvédi irodaközösség* - lawyers' alliance and lawyers' cost sharing scheme).

4.11 For the first time in Hungarian legislation pertaining to the legal profession, the Act regulates the activities of paralegals (*ügyvédasszisztens* - lawyer assistant); however, detailed regulation is left to the Bar and the employer.

4.12 Similarly to the past, the disciplinary power over the lawyers remained within the competence of the Bar for the first (local bar) and the second (HBA) instance procedures. However, the final decision of the HBA may be challenged before the court. The Act - for practical considerations - also provides rules on the formation of regional disciplinary bodies, which aim at easing the procedure of smaller territorial bar associations.

4.13 The Act provides rules on the obligation of the bar to cooperate with other bar associations and law societies of the EU member states (mainly registration, delisting, disciplinary and liability issues).

4.14 The Ministry of Justice continues to supervise the legitimate functioning of the bar associations. However, its power to intervene in specific matters remains strictly regulated and very limited, and mainly pertains to the regulatory power of the HBA.

4.15 Regulating the ethics of conducting professional legal services lays with the HBA. The Code of Ethics applicable in Hungary has already coordinated with the CCBE and implemented the CCBE's Code of Ethics. Following Hungary's accession to the EU, and upon the challenge by the Competition Authority, the rules on promotion and advertisement activities permitted to be carried out by lawyers and law firms have been further specified. Generally speaking, such rules are in full compliance with applicable EU rules and practice, more specifically the rules on fair market practices regulated by the Services Directive. The HBA is now in the process of updating the Code of Ethics by providing rules applicable to the in-house counsels who are expected to register with the bar after 1st January 2018.

## **5. Bar news**

5.1 The next bar elections will be held before 28 February 2019. In light of the 4 year mandate, this provision appears to be a slight extraordinary extension of the term of the officers of the bar associations elected in 2014.

5.2 The Hungarian Bar Association, in its capacity as a self-regulating body, is fully busy preparing and updating internal bar regulations required by virtue of the implementation of the new Act on the Legal Profession discussed in Section 4 above. The preparatory work has been conducted with the involvement of the representatives of the in-house counsels.

5.3 The HBA Delegation to the CCBE remains active, participating in both the day-to-day committee works and furthermore in the consultative activity and policy and decision-making at the Standing Committee and the Plenary Session level.

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