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In Brief

The Hungarian economy kept growing at an increased pace throughout 2019. GDP grew at 5.1% according to official government figures, which compares favourably to the planned growth rate of 4.3%. This optimistic outlook was also reflected by most major international bodies monitoring and forecasting economic performance (including the European Commission, IMF, Fitch and OECD, etc.), which all revised their GDP growth predictions for Hungary upwards on at least one occasion. The main driving sectors behind this upwards trend continued to be construction industry and the manufacturing and services sectors.

According to reports released a few weeks ago by Hungary's Central Statistical Office (KSH), the country's economy is expected to grow by 4.8 percent in 2019. This would mean that Hungary will meet its well-established economic policy goal of achieving a level of economic growth that is at least 2 percent above the EU average. Indeed, its economic performance compares favourably with the Q2 2019 rates for other neighbouring countries, including Romania (4.4 percent), Slovakia (1.9 percent) and Czech Republic (2.7 percent).

Overall growth was stimulated by the low interest rate environment (the Hungarian Central Bank's base interest rate has remained unchanged at 0.9 % since May, 2016), EU structural funds, wages growth and increased employment. The unemployment rate decreased to 3.5%, while the average wage increased by 11.8% year-on-year in comparison with November, 2018. However, the Hungarian Central Bank's current directive on foreign exchange rates (the Hungarian Central Bank currently avoids intervening when the Hungarian currency depreciates) and the increasing average wage also had an impact on inflation. Prices increased by 3.4% throughout 2019, driven by the price increase of energy, fossil fuels, services, food products, tobacco and alcoholic beverages.

Outside of economic matters, the stand-out political theme of 2019 was the uneasy nature of the relationship between Hungary and the European Union. Prime Minister Viktor Orban's government has vociferously criticised the EU's migration policies, while the bloc has taken umbrage with Hungary's foreign diplomatic policy and continues to conduct the so-called article 7 procedure against the Hungary's government - for posing a "systematic threat" to democracy and the rule of law - in response to the controversial "Stop Soros" legislation that was adopted in the country in 2018 (see section one below).

Please find below comments pertaining to the most important political and legal events of 2019.

1. Political developments

2019 was a year which brought Hungary's relationship with the European Union into sharper focus.

Prime Minister Viktor Orban has led Hungary for almost a decade, and he has been an inspiration for certain factions across the continent as nationalism has gathered momentum in recent years. In the run-up to the 2019 European Parliament elections this year, he ran a combative and contentious campaign against the EU that criticised the institution over how it handled the migration crisis. Ahead of the elections, Orban declared that he wanted "anti-immigration forces" to become a majority in all European Union institutions, including the European Union Parliament and the European Commission. Ultimately, his ruling Fidesz party won 13 of the country's 21 seats in the European Union parliament, one seat more than in the 2014 vote, while the Democratic Coalition led by former Socialist Prime Minister Ferenc Gyurcsány secured four seats and the Liberal Momentum Movement won two seats.

Hungary has also been seen as pushing the boundaries of the bloc's common foreign policy positions, asserting a need to safeguard national interests while opponents complain of damage to EU efforts to project itself as an international power. In the past six months, Hungary has made plans to upgrade diplomatic ties with Bashar al-Assad's regime in Damascus, attempted to block EU statements condemning Israeli settlements and the Turkish incursion into Kurdish-held northern Syria and has pushed to discuss recognising Russian-issued passports for residents of eastern Ukraine. The country also recently decided to host the formerly Moscow-based International Investment Bank, promising its employees broad diplomatic immunity, and has promoted a China-friendly policy despite scepticism towards Beijing from neighbours and key Nato allies.

Some analysts and diplomats think Hungary's manoeuvrings are part of Mr Orbán's strategic approach to the next multiannual EU budget for 2021-2027, which is under negotiations. Hungary and its neighbours are concerned about potential cuts to cohesion funds and about proposals that would tie funding to rule-of-law benchmarks.

Hungary's moves also come as the Fidesz party faces potential ejection from the centre-right European People's Party (EPP) bloc, and as it undergoes an EU disciplinary procedure, the so-called article 7 procedure, which seeks to discipline member states seen as at risk of breaching the EU's basic democratic values.

The potential expulsion from the EPP and the article 7 procedure are related to the "*Stop Soros*" legislation passed by the Hungarian parliament in 2018 which, amongst other things, imposes a tax of 25 per cent on any assistance given to migrants or propaganda activity about migration, and also provides for the imposition of potential prison terms of up to a year on those, including lawyers and civil society organisations, found guilty of trying to help illegal immigrants claim asylum or apply for residence. The "*Stop Soros*" title is derived from Mr Orbán's firm opposition to George Soros, the billionaire philanthropist, whom he alleges is behind a plan to foster illegal migration into Hungary. Mr Soros, whose Open Society Foundations moved its European headquarters to Berlin in August 2018, says there is no such plan. These laws resulted in the European Commission initiating infringement procedures against Hungary, with the commission stating that the "*Stop Soros*" legislation is incompatible with the bloc's legal standards. The Commission has also referred Hungary to the European Court of Justice over elements of the country's asylum laws.

The European Union parliament stated that Hungary's government poses a "*systematic threat*" to democracy and the rule of law. Under the article 7 procedure, the assent of four-fifths of EU member states is needed to issue the first formal warning. The next step requires unanimity, and a mutual defence pact between Hungary and Poland could scupper further action, diminishing the chances of the so-called "*nuclear option*" – the loss of voting rights.. Poland has threatened to veto any EU action against Hungary but the hearings place the country under extra scrutiny as key financial decisions are being made.

Domestically, the main political headlines relate to the country's municipal elections held in October, 2019, during which Gergely Karacsony, a political science lecturer who leads the tiny Green party, became the new mayor of Budapest by beating the Fidesz-backed incumbent mayor by a six percentage point margin. In addition, the opposition took control of 10 other cities. Until these elections, Mr Orbán's Fidesz party seemed to have an almost unbreakable hold on the country's politics. Since Mr Orbán regained power in 2010, the opposition had been divided and weak, losing seven consecutive elections and holding mayoral posts in only four cities. The success of the opposition in this campaign was modelled on similar triumphs in Istanbul and Warsaw, where the success of opposition candidates has challenged entrenched elites. It was also built on an unprecedented level of co-operation between opposition forces, which it is said will continue in the run-up to the 2022 general elections.

2. Notable Arbitration Matters

2.1 *Sodexo Pass International SAS v Hungary (ICSID Case No. ARB/14/20)*

At the beginning of the year, French food services company Sodexo Pass International SAS secured a EUR 73 million, high-profile victory at an ICSID tribunal against the Hungarian state. The tribunal awarded the decision on 28 January 2019 and ordered Hungary to pay the amount plus interest. It is important that the tribunal rejected the European Commission's amicus brief submitting that the ICSID tribunal lacks jurisdiction following the Court of Justice of the European Union's (CJEU) landmark judgment in the *Achmea* case.

The present proceedings concerned the effects of Hungary's legislative package reforming Hungary's fringe benefit system. Sodexo argued that the reform constituted indirect expropriation of Sodexo's investment under the French/Hungarian bilateral investment treaty.

It is very rare that an ICSID award is delivered against an EU Member State, so this was an outcome which got the attention of the international arbitration community.

Hungary applied to have the decision annulled on 31 May, 2019.

2.2 *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v Hungary (ICSID Case No. ARB/17/27)*

An ICSID tribunal upheld its jurisdiction and awarded a UK farming company €7 million in an intra-EU investment treaty claim brought over the expropriation of a plot of land. The tribunal issued a unanimous award on 13 November, 2019, which dismissed jurisdictional objections based on the *Achmea* decision and found that Hungary had expropriated without compensation the investment of Magyar Farming and its subsidiaries.

The dispute arose over a Hungarian regulation which Magyar, a company founded in 1997 by a group of British farmers, says resulted in the expropriation of its leasehold rights to 760 hectares of state-owned land in Hungary's North-Western region of Ikrény and also damaged the value of its business. Along with its Hungarian subsidiaries Kintyre and Inicia, Magyar filed the claim under the UK-Hungary bilateral investment treaty in 2017, seeking €17.9 million in damages.

3. Legal Updates and New Legislation

A few elements of the recent legislative activity of the Hungarian Parliament and other legal updates will be considered below.

3.1 *Lawyers' Continuing Professional Development*

According to Section 1(4) of Act LXXVIII of 2017 on the legal profession, a lawyer must develop his professional skills through self-training and compulsory further education. The obligation to undergo further training is mandatory for lawyers, employed lawyers, Bar Legal Counsels (i.e. Hungarian in-house legal counsels registered by the Bar), European Community lawyers practicing in Hungary on a permanent basis and employed European Community lawyers. The compulsory further education can be completed in 5-year cycles, during which 80 credit points – with a minimum 16 credit points per year – must be obtained. The first cycle began on 1 January, 2020 for all persons falling under the scope of the regulation on that date. The courses can be completed electronically or in the traditional way, and lawyers will also receive credits for attending professional conferences and events. Failure to comply with the further education obligation could result in the loss of Bar membership for the offending individual.

3.2 *The Data Protection Authority ("NAIH") is now issuing fines*

Following the lapse of a 1-year quasi "freeze" on GDPR fines, the Hungarian Data Protection Authority ("NAIH") issued almost two dozen fines in 2019. The largest fine (EUR 93,000) was imposed on Sziget Kulturális Menedzser Iroda Zrt., the organizer of the three largest, internationally recognized and extremely popular summer festivals (Sziget, Balaton Sound, Volt Festival) in Hungary. According to the facts of the case, the organizer was in breach of data protection laws when it scanned the IDs of the attendees and took photos and videos of the attendees upon the latter's entry to the festivals. The organizer based its data processing rights on the consent of the data subjects, which was supposedly automatically given by the data subjects when they passed through the entry points to the festivals. However, NAIH contested this approach and established – amongst other findings – that consent cannot be accepted as a valid legal basis if it is not given voluntarily by the data subject.

3.3 *The Hungarian act on the implementation of the EU Shareholder's Rights Directive*

Act LXVII of 2019 on the encouragement of shareholders' long-term involvement implements the EU's SRD II directive into the Hungarian legal system. The implementing act eases the identification burden placed on shareholders by calling on intermediaries to communicate information regarding shareholders upon a company's request (e.g., their name, contact information, registration number, number of shares, etc.). It also calls on

publicly listed companies to improve the involvement of their shareholders in corporate governance by providing them with the means to exercise their shareholders' rights, and it also gives influence over directors' remuneration to shareholders by involving them in the process of establishing, voting on and publishing remuneration policies and reports on their implementation. The Civil Code has been modified in order to reflect these changes, with certain amendments being effective from July 2019 and others starting from the second half of 2020.

3.4 *Amendments to the Anti-Money Laundering Act*

Act CXIX of 2019 amended the Anti-Money Laundering Act with effect from 20 January, 2020. The strict regulations of the act now apply to numerous new service providers, such as cryptocurrency providers, crypto currency exchanges and crypto wallet providers. The act will also extend its scope to businesses involved in the trading and storing of works of art and antiquities. Although the AML act has been in effect since June 26, 2017, a central register of beneficial ownership information has not yet been set up. However, the current amendment authorizes the government to lay down detailed rules for this database by decree, so that the system can be set up in the near future.

3.5 *Mandatory electronic filings*

According to Government Decree (XII. 19.) Nr. 451/2016 on the detailed rules of electronic administration, effective as of 1 January, 2019, individual attorneys, European Community lawyers and individual patent attorneys are obliged to use the Cékgapu portal for all electronic communications with the courts. Cékgapu registrations can be done at cegkapu.gov.hu. Also with effect from 1 January, 2019, all business organizations (including individual lawyers) are obliged to use the Cékgapu in all of their communications with NAV (Hungary's national tax authority).

3.6 *Legislation on foreign investments*

On 2 October, 2018 the parliament passed Act LVII of 2018 (the "Act") on control of foreign investments that compromise the security interests of Hungary - a piece of legislation that may well make transactions more time consuming. The Act mandates the Minister to review proposed acquisitions relating to certain sensitive sectors (the "Sensitive Sectors"). The Act became effective from 1 January, 2019, thus the ministerial procedure has to be added to the step-plans of transactions initiated in 2019.

Several EU Member States have taken steps to protect the EU from politically motivated, strategical foreign investments, which could harm the critical areas of the EU Member States (e.g. military or telecommunication sectors). As a result of Member States' pressure, the EU has proposed a framework for the screening - by the Member States and the Commission - of foreign direct investments in the Union on the grounds of security or public order. Whilst it is difficult to predict the EU legislation over the coming years, an increasing number of Member States are attempting to protect their key sectors from harmful foreign investments at a national level and Hungary is no different.

4. Bar news

4.1 The elections of the President, Vice-Presidents, General Secretary and Board of the Hungarian Bar Association (the "HBA") took place on 25 February, 2019. Dr. János Bánáti was re-elected as President of the Hungarian Bar Association.

4.2 The legal community is presently concerned with the limiting of lawyers' professional liabilities. Under the current regime, law firms are not able to limit their liability by law (i.e. with an LLP-type legal structure), meaning that potential claimants can also attempt to recover damages from the law firms' members' personal assets. Together with the country's public notaries and bailiffs, lawyers are aiming at lobbying parliament in this matter.

4.3 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.