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1. Economic News

If it hadn't been for the onset of the COVID-19 pandemic in late February, Hungary could possibly have expected another year of 4-5 percent annual economic growth. In 2019 the country registered a 24 percent growth in FDI compared to the previous year, real wages were on the rise again and the country reached almost full employment. However, in mid-March, with coronavirus beginning to make itself felt in the country, the Hungarian government enacted a state of emergency, which in essence was a lockdown of the type now familiar to millions of people around the world.

To combat the economic effects of the shutting down of the country, Prime Minister Orbán announced an array of new economic measures. The government undertook to take over a portion of wage payments from firms that have had to resort to shortened work hours due to the coronavirus epidemic and allocated HUF 450 billion (EUR 1.23 billion) to investments for job creation. It also provided specific support for hard-hit economic sectors, such as tourism and hospitality, and pledged HUF 2 trillion worth of preferential, government-backed loans to Hungarian companies.

While most signs suggest that Hungary is now beyond the worst part of the crisis and some key economic figures, such as the unemployment rate, were back at their pre-COVID levels by mid-August or early-September, some sensitive industries, including tourism, catering and hotels, that employ a large number of Hungarians, continue to be driven out of business.

With new restrictions being put in place to combat the spread of coronavirus in the autumn, the government announced a fresh batch of economic measures, including the moratorium on loan repayments for families and businesses being extended until July 1, 2021, the reimbursement of two-thirds of the salary payments of businesses in the catering, tourism and hotel sectors that had to temporarily close, and the halving of local business taxes for small- and medium-sized enterprises. Meanwhile, in late October the Council of the European Union approved a EUR 504 million loan for Hungary as part of the EU's SURE program to protect jobs and sustain incomes amid the pandemic.

Ultimately, it its most recent report the European Commission projected that Hungarian GDP would fall by 6.5 percent in 2020, which is a considerable improvement from the 7.0 percent decline forecasted in July. This tends to suggest that economic activity in Hungary "rebounded vigorously" after the spring lockdown.

2. Political developments

Domestically, after COVID-19 hit Europe in March, the Hungarian parliament – like so many governments across the world – enacted emergency measures to contain the virus. However, the government was criticised internationally for what was perceived as extending its powers far beyond what was necessary. The law, which allowed for rule by decree, was open-ended and had no sunset clause, raising concerns that Viktor Orban, the prime minister and leader of the ruling Fidesz party, had spotted an opportunity, under the cover of a crisis, to tighten the government's grip on power. However, the government did lift the state of emergency and its related powers in June, after the first wave of the virus had abated.

At the European level, throughout 2020 Hungary (together with Poland) was at odds with the EU. The majority of EU member states wished to introduce new rules allowing the bloc to curb flows of EU funds to states that violate its main rule of law principles. Under current rules Article 7 of the Lisbon Treaty opens a path for sanctions against a member state and a temporary loss of EU Council voting rights. The mechanism is triggered when one of the bloc's members violates the vales of "human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities." In September 2018 the European Parliament voted to start an Article 7 procedure against the Hungarian government for "eroding democracy and failing to uphold fundamental European Union values". The report triggering the vote found that Orban's attacks on independent media, academics, the judiciary, migrants and refugees and the rights of minorities pose a "systemic threat" to the EU's fundamental principles.

However, under Article 7 the requirement for unanimity means any two countries can stop action against each other — as Hungary and Poland have pledged to do, effectively stalling the processes targeting them. The commission reverted to a strategy of bringing cases to the ECJ but, the time judgments are handed down, the damage is often done. In October, the ECJ ruled against a 2017 Hungarian law that in effect forced the Central European University, founded by the billionaire backer of liberal causes George Soros, to shut down in Budapest. The victory came too late for the institution, which had already relocated to Vienna. Likewise, the Hungarian government has also refused to implement another ECJ decision which found that a recent law requiring non-governmental organisations to declare foreign funding above a certain threshold was contrary to the free flow of money and ideas. The government responded by doubling down and made complying with the rule a requirement to access Erasmus funds - an EU programme to support education and training - in Hungary.

Unsurprisingly, Hungary and Poland opposed the proposed new mechanism tying payments to rule of law principles and, because of it, actually threatened to veto the €1.8tn EU budget and post-pandemic recovery package needed for Europe's recovery from the coronavirus pandemic. Finally, both countries dropped their vetoes after being won over with a non-binding declaration designed to assure them they would not be singled out under the new rules. The four-page "interpretative declaration" gives reassurances that the rule of law mechanism will apply only to the next EU budget — starting from 2021. It also gives the European Court of Justice a role in ruling on the legality of the tool, should it be challenged by a member state in court even before it is used.

3. Notable Arbitration Matters

3.1 *Edenred SA v Hungary (ICSID Case No. ARB/13/21)*

An ICSID annulment committee dismissed Hungary's annulment application of a €23 million award in favour of Edenred, a French company that provides voucher and other in-kind payment services for employees. In spite of the annulment proceedings, Hungary has already paid Edenred voluntarily. This is the first time that an ICSID annulment committee has rejected an annulment claim based on the ECJ's 2018 decision in the Achmea case.

In 2016, an ICSID tribunal had ordered Hungary to pay Edenred €23 million plus interest for changes in legislation on employee fringe benefits provided with vouchers that had breached the bilateral investment treaty (BIT) signed by France and Hungary.

Hungary challenged the award by bringing an annulment application based on the Achmea case where the ECJ had concluded that arbitration clauses contained in BITs signed between member states were incompatible with EU law. However, in the arbitration proceedings Hungary failed to raise an objection based on the Achmea ruling in time.

Two weeks earlier, a tribunal also declined – for the same reasons - Hungary's application for the Tribunal to revise a €5 million award in favour of Portuguese food supplier Dan Cake.

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

Hungary has applied to annul a €7 million intra-EU investment treaty award issued by an ICSID panel in favour of a UK farming company. ICSID registered Hungary's application to overturn the award won by Magyar Farming and its subsidiaries on 19 March, 2020. Previously, 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 Inícia, Magyar filed the claim under the UK-Hungary bilateral investment treaty in 2017, seeking €17.9 million in damages.

4. Legal Updates and New Legislation

4.1. *Foreign investment control approval regime introduced as a result of the pandemic*

During the state of emergency introduced by the Hungarian Government with respect to the COVID-19 pandemic in May, 2020, the Hungarian Government implemented new rules for purposes of screening foreign investments in Hungarian companies. The new regulation set out in Act LVIII of 2020 requires the approval of the Minister of Innovation and Technology as a precondition for the implementation of foreign investments into Hungarian companies carrying out certain activities important to the management of the pandemic situation. The transaction cannot be completed without the acknowledgment of the Minister; therefore, the ownership of the foreign investor cannot be registered by the Hungarian Court of Registration without the duly executed acknowledgement document. A company that breaches its notification obligation may be subject to an administrative penalty of up to twice the amount of the value of the transaction. According to the latest changes to the relevant legislation, the term of the notification obligation is extended until 30 June, 2021 (originally it was applicable until 31 December, 2020).

4.2. *The Hungarian version of "Kurzarbeit" was introduced in April for a 3-month period*

As a measure to counter the effects of the pandemic and save as many workplaces as possible, the Hungarian government – similarly to other European nations – introduced a wage-subsidy for employees with reduced working hours. The extent of the subsidy was 70% of the proportionate part of the net base salary for the lost working time capped at HUF

112,418 per employee, per month, provided that the employer maintains the employment of the subsidised employee for a certain period. An application for the scheme could be filed with the competent authority until 31 August, 2020 for a 3-month period ending on 31 December, 2020 at the latest.

4.3. *Amendments to the ordinary decision-making processes of Hungarian companies*

As a result of mandatory stay-at-home orders during spring 2020 and later the restrictions on gatherings of more than 10 persons, certain laws have been amended or created in order to facilitate the smooth decision making of Hungarian companies. Government Decree 102/2020. and later 502/2020. relaxed the rules of the Civil Code on alternative decision-making processes (i.e. video-conferences, written decision-making). The new laws also enable the management of a company to take decisions instead of the shareholders in special circumstances or if alternative decision-making processes are not available. Even in these matters, however, the management's competencies are not without limits. The decree itself establishes matters in which the management cannot decide, such as the amendment of the Articles of Association, the decrease of share capital, or the dissolution of the company without succession. Furthermore, the shareholders may amend or revoke the decision of the management at a general meeting to be held any time before or on the 90th day following the termination of the emergency situation.

4.4. *Amendments to the Code of Civil Procedure*

Experience with the application of the Code of Civil Procedure which was adopted in 2018, the decisions of the Constitutional Court and feedback from courts have highlighted the need to simplify, make more flexible and fine-tune certain provisions of the procedural law. The amendment, which was adopted in November 2020 and which became effective as of January 1, 2021, makes it easier for the rights-seeking public to go to court, while maintaining the idea of a concentrated lawsuit, the benefits of a split structure and the parties' right to self-determination during the proceedings.

4.5. *Introduction of new legal framework for medical professionals*

On 6 October, 2020, the bill on the legal status of healthcare professionals was adopted. The new act not only includes provisions for the withdrawal of customary gratitude money, but also painted a picture of a restructured health care system. The new bill introduces a new "medical service legal relationship" instead of employment relationships, certain restrictions on private practices and a more general rule on the mandatory re-allocation of doctors within the hospital system. The new bill comes amid unprecedented pressure on healthcare workers, many of whom publicly opposed the new regulations, which led to the delayed application of certain restrictions still under debate.

5. Bar news

5.1 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.

5.2 Despite obvious restrictions, all Hungarian bar associations have devoted large amounts of time and resources to implementing legislation – adopted on 1 January, 2020 - which made continuing professional education for lawyers compulsory.
